

# **Response Form to the Consultation Paper**

Draft Guidelines on Enforcement of Sustainability Information (GLESI)

## Responding to this paper

ESMA invites comments on all matters in *Consultation Paper – Draft Guidelines on Enforcement of Sustainability Information* (ESMA32-992851010-1016) and in particular on the specific questions summarised in Annex III of the Consultation Paper and included in this response form. Comments are most helpful if they:

- respond to the question stated;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by 15 March 2024.

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading “Open consultations” → “Consultation on draft Guidelines on Enforcement of Sustainability Information”.

### Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA\_QUESTION\_GLESI\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA\_GLESI\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_GLESI\_ABCD\_RESPONSEFORM.
5. Upload the form containing your responses, **in Word format**, to ESMA’s website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading “Open consultations” → “Consultation on draft Guidelines on Enforcement of Sustainability Information”).

### **Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

### **Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading '[Data protection](#)'.

### **Who should read this paper?**

This consultation paper will be of interest to listed undertakings required to publish sustainability information by the Corporate Sustainability Reporting Directive and Article 8 of the Taxonomy Regulation, to investors and other users of sustainability information and to auditors and independent assurance services providers.

## General information about respondent

Name of the company / organisation	Accountancy Europe
Activity	Non-financial counterparty
Are you representing an association?	<input checked="" type="checkbox"/>
Country / region	Belgium

## Questions

**Q1 Do you have comments on the proposed scope of the GLESI? If yes, please explain your views and provide alternative suggestions where needed.**

<ESMA\_QUESTION\_GLESI\_1>

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<ESMA\_QUESTION\_GLESI\_1>

**Q2 Should any further legislative references be added to section 2.1 of the GLESI? If yes, please explain which ones and why.**

<ESMA\_QUESTION\_GLESI\_2>

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<ESMA\_QUESTION\_GLESI\_2>

**Q3 Should any other abbreviations be added to section 2.2 of the GLESI? If yes, please explain which ones and why.**

<ESMA\_QUESTION\_GLESI\_3>

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<ESMA\_QUESTION\_GLESI\_3>

**Q4 Do you agree with the definitions ESMA proposes for inclusion in section 2.3 of the GLESI? Has ESMA covered all the concepts that need to be defined? If not, please explain your concerns and propose how to address them.**

<ESMA\_QUESTION\_GLESI\_4>

Accountancy Europe calls for clarity on the definition of (double) materiality which is not referred to / not included by reference to European Sustainability Reporting Standards (ESRS) and/or the upcoming EFRAG materiality assessment guidance.

Accountancy Europe also calls for definitions on “material omission” and “material misstatements”, which are terms used when defining “infringement”.

It is key to clarify the role and the focus of ESMA and enforcers in their mission on the enforcement of sustainability information. This is particularly relevant as the materiality and users of sustainability reporting are different from those of financial reporting.

Under the CSRD, auditors will issue an opinion on the *compliance* with the sustainability reporting standards as well as on the process carried out by the undertaking to identify the reported information (the “materiality assessment”). As opposed to financial reporting, auditor’s assurance is generally not considered to be an opinion on the “*true and fair presentation*” on sustainability disclosures.

Therefore, we believe that it is important to understand the materiality angle of enforcers.

We also noticed that the section “types of examination” only mentions communication with issuers when defining different types of examinations. We strongly recommend ESMA also includes communications with the assurance provider when undertaking these different types of examinations as this would help ensure consistency, save resources and avoid duplication.

<ESMA\_QUESTION\_GLESI\_4>

**Q5 Do you agree with the proposed purpose of the GLESI? If not, please explain why and make a proposal for what should change.**

<ESMA\_QUESTION\_GLESI\_5>

<ESMA\_QUESTION\_GLESI\_5>

**Q6 Do you have any remarks on the compliance and reporting obligations?**

<ESMA\_QUESTION\_GLESI\_6>

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<ESMA\_QUESTION\_GLESI\_6>

**Q7 Do you agree with the proposed objective of the enforcement of sustainability information? If not, please explain why and provide suggestions for amendments.**

<ESMA\_QUESTION\_GLESI\_7>

Accountancy Europe believes that the proposed GLESI objective is too ambiguous and leaves a lot of room for interpretation, particularly for the “consistent application of the sustainability information framework”. In our view, the objectives of the enforcement of sustainability information should be closely linked to the objectives of the sustainability information framework.

Whilst we understand that this objective stems from GLEFI, we do not agree for it being taken at face value as we believe also GLEFI needs improvement in this area. Many “material deviations” evidenced by national enforcers, and in turn ESMA, do not match with the auditor’s findings or opinion, especially in relation to disclosures. Indeed, this has caused confusion in the market, particularly on the work within the profession and quality of the assurance. These problems will only be further highlighted for sustainability statements, which differently to financial statements do not incorporate the concept of “material as a whole”. As a result, this leaves more room for the scope of an “infringement”, which may cover anything from the sustainability statement as a whole, to the universe of impacts, risks and opportunities identified. Specifically, paragraph 16) in Guideline 1 raises concern as it refers to enforcers *choosing certain topics for further examination and concluding whether infringements were discovered in relation to the issues/areas assessed*, without any reference to (double) materiality of the sustainability reporting.

To mitigate the above confusion, we suggest ESMA clearly defines the scope of “consistency” in the application of the sustainability information framework, including, what would make an infringement (see our suggestion in improving this definition for further clarity in our response in Q4) impair this consistency.

ESMA should also better clarify how to determine “consistent application of the sustainability information framework” considering that enforcers’ focus is on investors, but the ESRS (and any future equivalent standards) recognise a broader set of users. Namely, ESRS recognise as users, “other users of sustainability statements”, which include business partners, trade unions and social partners, civil society and non-governmental organisations, governments, analysts and academics. This clarification is important because of the double materiality aspect and the extended boundaries of reporting, which include the value chain. Companies, even those operating in the same sectors, will have different “impacts” because of their different operations, and they may also have different (sized) value chains. It cannot be reasonable to expect “consistency” of sustainability information for all companies, without considering proportionality or their specific circumstances.

In our view, the consistent “enforcement of sustainability information” is a result of harmonised enforcement processes and actions across all jurisdictions. As a consequence of this consistency, ESMA sustainability enforcement reports should reflect actions that achieve the highest degree of comparability.

Finally, the role of the assurance providers including auditors should be recognised in the enforcement process. Assurance providers should not only be made aware of any enforcement examination at any of their clients but should also be involved in the interactions between enforcers and companies. Otherwise, the lack of awareness and involvement can impair the quality of mutual understanding.

<ESMA\_QUESTION\_GLESI\_7>

**Q8 Do you agree with the draft Guideline 2 on how enforcers should ensure that they have an effective process for enforcing sustainability information? If not, please explain why and provide suggestions for amendments.**

<ESMA\_QUESTION\_GLESI\_8>

Accountancy Europe supports the objective of Guideline 2. However, we suggest adopting a step-by-step approach when it comes to resources and skills of NCAs on enforcing sustainability information.

Firstly, it is important for ESMA to consider that the currently skilled resources are scarce in the market and in very high demand. Not all NCAs will be able to access the necessary resources during the first years. Considering the learning curve the ESRS involve for all parties, NCAs will have to accept and face the consequences of this shortages that will exist for a while. Most importantly, the lack of resources shouldn't be a pretext for hurried enforcement processes or be at the expense of the required quality. We appreciate footnote (23), but we believe that further clarification is needed for the enforcement actions, particularly as the enforcers too are learning. It is important to recognise that there will be an asymmetry of information and that the quality of enforcement will improve over time.

As learning is a journey, we ask ESMA to consider the consequences of stimulating mature sustainability reporting rather than start with strict enforcement. In this regard, we call for more progressivity in the enforcement actions and especially more flexibility when there is remediation from the preparers.

To mitigate this, we suggest ESMA includes such considerations in Guideline 2.

Secondly, we strongly recommend ESMA includes some actions on how to review and report on whether NCAs have ensured the appropriate level of skills and resources. This will help



provide background and ensure a level playing field when aggregating the many enforcement actions from various NCAs.

Enforcers should reflect on ensuring coordination measures between examinations of financial reporting and sustainability reporting in order to prevent parallel or time-separated enforcement processes in cases where an NCA is examining the same report for both financial and sustainability information.

We also believe that the conclusions of sustainability enforcement actions should be communicated to those administrative, supervisory and management board and in particular, those monitoring sustainability information at the entity's level.

Finally, we also believe that discussions or a roundtable between issuers, the assurance providers including the audit profession and NCAs should at regular time intervals be organised on jurisdictional level to continue to better understand the enforcement examination process, the resulting actions and to exchange views what would qualify as a material departure at national level.

<ESMA\_QUESTION\_GLESI\_8>

**Q9 Do you agree with the draft Guideline 3 on enforcement of sustainability information prepared under equivalent third country sustainability reporting requirements? If not, please explain why and provide suggestions for amendments.**

<ESMA\_QUESTION\_GLESI\_9>

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<ESMA\_QUESTION\_GLESI\_9>

**Q10 Do you agree with the draft Guideline 4 on the independence of enforcers? If not, please explain why and provide suggestions for amendments.**

<ESMA\_QUESTION\_GLESI\_10>

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<ESMA\_QUESTION\_GLESI\_10>

**Q11 Do you agree with the draft Guideline 5 on the mixed selection model? If not, please explain why and provide suggestions for amendments.**

<ESMA\_QUESTION\_GLESI\_11>

We emphasise that selection models should be harmonised and used consistently across all jurisdictions.

When communicating to external readers about enforcement actions, it is important to make it clear that the infringements identified at selected issuers cannot be extrapolated to the whole market.

<ESMA\_QUESTION\_GLESI\_11>

**Q12 Do you agree with the draft Guideline 6 on the timing of the selection model? If not, please explain why and provide suggestions for amendments.**

<ESMA\_QUESTION\_GLESI\_12>

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<ESMA\_QUESTION\_GLESI\_12>

**Q13 Do you agree with the proposed Guideline 7 on the selection universe? If not, please explain why and provide suggestions for amendments.**

<ESMA\_QUESTION\_GLESI\_13>

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<ESMA\_QUESTION\_GLESI\_13>

**Q14 Do you agree with the draft Guideline 8 on the four types of examination enforcers can use when they examine sustainability information? If not, please explain why and provide suggestions for amendments.**

<ESMA\_QUESTION\_GLESI\_14>

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<ESMA\_QUESTION\_GLESI\_14>

**Q15 Do you agree with the draft Guideline 9 which addresses the enforcer's examination process? If not, please explain why and provide suggestions for amendments.**

<ESMA\_QUESTION\_GLESI\_15>

We believe that auditors are an integral part of the sustainability reporting ecosystem. Therefore, it is important to ensure they are involved and informed during the different communication phases of the examination process. Accountancy Europe strongly believes that if an issue has been identified by the NCA during the examination process, issuers and their auditors should have the possibility to bring up and potentially challenge the materiality of the preliminary findings.

In our view, the internal documentation of NCA should specify whether discussions with preparers and auditors on materiality occurred and whether there was consensus or whether a difference of view remained. An adjustment to the sustainability report by the preparer does not imply an agreement by default on the materiality of the infringement.

<ESMA\_QUESTION\_GLESI\_15>

**Q16 Do you agree with the draft Guideline 10 which presents the conditions which enforcers should apply when they offer their issuers pre-clearance of sustainability information? If not, please explain why and provide suggestions for amendments.**

<ESMA\_QUESTION\_GLESI\_16>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_GLESI\_16>

**Q17 Do you agree with the draft Guideline 11 which requires enforcers to undertake quality reviews of their enforcement processes? If not, please explain why and provide suggestions for amendments.**

<ESMA\_QUESTION\_GLESI\_17>

We support the idea of carrying out periodic quality reviews of the enforcement processes in order to identify areas for improvement and achieve consistency.

Accountancy Europe suggests that the results of these quality review are discussed at the appropriate level at NCAs. These quality reviews could, for instance, be performed cross regulators. Also, we suggest these conclusions to be shared with ESMA for further harmonisation across countries. Finally, for transparency purposes, we encourage making publicly available these quality reviews (or their summary)

<ESMA\_QUESTION\_GLESI\_17>

**Q18 Do you agree with the draft Guideline 12 which presents the considerations enforcers should apply when they identify an infringement in the sustainability information and have to determine which enforcement action to use? If not, please explain why and provide suggestions for amendments.**

<ESMA\_QUESTION\_GLESI\_18>

Enforcers should avoid tagging actions related to other immaterial departures as material, simply because the issuer accepted and corrected the requested enforcer amendment. However, on the classification of what is “material”, we believe that an immaterial intentional error should be considered as material only if it influences users’ decisions.

In addition, we reiterate our comments in Q4 and strongly suggest ESMA and enforcers consider clarifying their role in GLESI given the different perspectives between NCAs, which when seeking “investor protection” look at “investors” as users, and ESRS where there are other users in addition to investors.

Furthermore, we suggest Guideline 12 emphasise more consistent and harmonised use of actions across all the jurisdictions for better comparability. It is important that ESMA ensures that all NCA undertake the same actions for similar infringements or immaterial departures. This way, when ESMA consolidates actions, it is ensured consistency in the cause of the action as well. In cases of differences, ESMA should consider making the necessary adjustments before publishing its annual report.

Finally, Accountancy Europe is a strong supporter of transparency. Therefore, we believe that if an enforcer decides to impose an enforcement action on an entity, it should be clearly justified.

<ESMA\_QUESTION\_GLESI\_18>

**Q19 Do you agree with the draft Guideline 13 which clarifies the approach to materiality in the enforcement of sustainability information? If not, please explain why and provide suggestions for amendments.**

<ESMA\_QUESTION\_GLESI\_19>

Accountancy Europe strongly suggests ESMA develops Guideline 13 further to:

- ensure materiality is considered in line with the ESRS, not the NCA's perspective (for users and materiality of topics)
- ensure consistency between NCAs on how they apply materiality.

ESRS, and by analogy any other frameworks that will be considered as equivalent to the ESRS and fall under the scope of “sustainability information framework”, recognise investors as well as broader stakeholders as “users”. Investors generally are interested in the “financial” angle of double materiality, and increasingly interested in the “impacts materiality”. Despite this interest, investors are not all the users of the sustainability statement, and thus, information disclosed will not only fulfil their needs. Therefore, there may be an expectation gap between what ESMA and NCAs expect from the sustainability report as they focus on “investors” due to their remit, and what is actually reported from the issuers, and reviewed by assurance providers, when they have considered the complete group of users in preparing the report. There may be a trade-off or prioritisation of information disclosed based on whose needs it serves.

In addition, ESRS aim to report on material sustainability matters, not only information that is material to users (investor and broader stakeholders).

ESMA and NCA need to recognise these elements when determining “materiality” under Guideline 13 and as a result when classifying “infringements” or “immaterial departures”. The approach is different from financial reporting, therefore, it is important ESMA and NCAs do not apply their financial reporting enforcements practices by analogy to sustainability reporting.

We finally reiterate our comments on consistency in approaches between different NCAs: ESMA needs to ensure that all NCA understand materiality consistently as this will affect how NCAs determine infringements or immaterial departures as well as what actions they take. In cases of differences, ESMA should consider making the necessary adjustments before publishing its annual report.

<ESMA\_QUESTION\_GLESI\_19>

**Q20 Do you agree with the draft Guideline 14 which establishes that enforcers should check whether issuers took appropriate action when they were subject to an enforcement action? If not, please explain why and provide suggestions for amendments.**

<ESMA\_QUESTION\_GLESI\_20>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_GLESI\_20>

**Q21 Do you agree with the proposed requirements for how to coordinate enforcement of sustainability information at a European level in draft Guidelines 15, 16, 17, 18, 19 and 20? If not, please explain why and provide suggestions for amendments.**

<ESMA\_QUESTION\_GLESI\_21>

We welcome Guideline 15 and appreciate its objective. However, experience with financial reporting enforcement has shown that NCAs are not always converged in their enforcement practices.

Therefore, we call for ESMA to include a “review of supervisory convergence” provision to Guideline 15. ESMA could run a review periodically to determine if and how supervisory convergence was achieved. An existence of such a review would help further emphasise the need for consistency with different NCAs.

<ESMA\_QUESTION\_GLESI\_21>

**Q22 Do you agree that it is useful to publish extracts of decisions taken by enforcers, as required by draft Guideline 21, and to report on enforcement activities at national and European level, as required by draft Guideline 22? If not, please explain why and provide suggestions for amendments.**

<ESMA\_QUESTION\_GLESI\_22>

Accountancy Europe supports Guideline 21. For transparency purposes as well as to help stakeholders better understand the object of enforcement actions, we strongly support publishing regularly extracts of decisions taken by enforcers. This would also help to better understand the approach of the enforcer which do not always line up with those of the issuer and the assurance provider.

<ESMA\_QUESTION\_GLESI\_22>

**Q23 Do you agree that the proposed policy option 1 is preferable from a cost-benefit perspective? If not, please explain. If yes, have you identified other benefits and costs which are not mentioned above?**

<ESMA\_QUESTION\_GLESI\_23>

Accountancy Europe believes that GLESI should be developed by using a mixed approach between option 1 and 2. GLESI can use the concepts of GLEFI, but better finetuning is needed in order for GLESI to be fit for purpose for the enforcement of sustainability information.

Indeed, we found that the draft GLESI as per this consultation does not consider the main differences between financial information and sustainability information and thus does not adapt enforcement actions to them. Namely, these differences are:

- materiality lens, whereby ESRS consider "impact" materiality too
- time horizon
- more data of a prospective nature and more qualitative information in ESRS compared to financial reporting which relies on a quantitative recognition of items
- reporting boundaries, whereas the ESRS include reporting on impacts, risks and opportunities for the value chain in addition to own boundaries
- wider group of users, as for a sustainability report to be compliant with ESRS it should meet the needs of investors but also broader stakeholders.

<ESMA\_QUESTION\_GLESI\_23>

**Q24 If you advocate for a different policy option, how would it impact the benefits and costs? Please provide details.**

<ESMA\_QUESTION\_GLESI\_24>

As noted in Q23, Accountancy Europe advocates for a mixed approach when developing GLESI: using GLEFI but better incorporating the ESRS principles.

In addition, failing to include ESRS specificities to GLESI will very likely increase “compliance costs” as NCA could be in a situation where they undertake actions that undermine the integrity

of the ESRS report. This is a cost ESMA has not evidenced in either of its considerations for policy 1 and policy 2.

We believe that other costs listed such as “costs to regulator”, “innovation-related aspects” and “proportionality-related aspects” would not significantly change whichever of the proposed two options is chosen. However, we believe that in both options ESMA may have undermined costs, particularly regarding the resources and training costs of regulators.

Regarding benefits, ESMA and NCAs would contribute to real benefits on “compliance” as their enforcement would help stakeholders in the reporting ecosystem improve sustainability reporting.

In addition, we believe that there is a significant “ESG-related benefit” from our suggested approach as ESMA and NCAs would be ultimately contributing to issuers’ shift towards more sustainable business models – the ultimate goal of sustainability reporting.

<ESMA\_QUESTION\_GLESI\_24>

**Q25 Do you wish to raise any other points which ESMA should consider as it finalises the guidelines?**

<ESMA\_QUESTION\_GLESI\_25>

Accountancy Europe suggests ESMA foresees a “post-implementation review” of the GLESI every set number of years. This is a necessary process to ensure that the enforcement guidelines remain fit for purpose. Indeed, from our experience with GLEFI, we have noticed that how the findings are reported by NCAs and how the ESMA’s enforcement report is read by stakeholders has significantly changed throughout the years. This proves that the expectations have changed, but the practices have remained the same. For the enforcement of sustainability information, setting an official review process for GLESI is necessary also because it is widely recognised that the quality of reports will change as issuers obtain more experience, but also because sustainability topics are so dynamic.

We also highly support publishing on regular basis extracts of “best practices” in term of sustainability disclosures, from the enforcers point of view.

Finally, we believe that efficient communication between enforcers and other stakeholders will be key. In this respect, We encourage enforcers to organise roundtables on jurisdictional level with auditors and issuers and implement regular exchange mechanisms to discuss enforcement actions, materiality and enforcers expectations.

<ESMA\_QUESTION\_GLESI\_25>