

# Final Report

Guidelines on Enforcement of Sustainability Information

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## 1. Executive Summary

### Reasons for publication

The Corporate Sustainability Reporting Directive (CSRD), published in the Official Journal of the European Union on 16 December 2022, expands the scope of undertakings who must report sustainability information and requires the European Commission to adopt mandatory European Sustainability Reporting Standards as delegated acts. To promote convergent supervision of sustainability reporting by issuers subject to the Transparency Directive, the CSRD mandates ESMA to issue guidelines on the supervision of sustainability reporting by national competent authorities.

On 15 December 2023, in accordance with Article 16(2) of the ESMA Regulation, ESMA published a Consultation Paper (CP) with proposed draft Guidelines on the Enforcement of Sustainability Information (GLESI). The consultation period closed on 15 March 2024. ESMA received a total of 16 responses, none of which confidential. These responses included, as required by the Transparency Directive, requested comments from the European Environment Agency (EEA) and the European Union Agency for Fundamental Rights (FRA). In addition, ESMA also sought the advice of the Securities and Markets Stakeholders Group (SMSG). All responses received are available on ESMA's website as none of the respondents requested otherwise. This Final Report summarises the responses to the CP and explains how the responses have been taken into account. ESMA recommends reading this report together with the CP to have a complete view of the rationale for the guidelines.

### Contents

The main body of this Final Report (Section 2) summarises the feedback received to the consultation conducted by ESMA and broadly explains how this feedback has been considered in developing the final guidelines. The content of individual contributions and ESMA's feedback is further outlined in more detail in Annex V.

Additionally, the Annexes present the cost-benefit analysis related to the guidelines, the opinion of the SMSG, the EEA and the FRA and the full text of the final guidelines.

### Next Steps

The guidelines in Annex VI will be translated in the official EU languages and published on ESMA's website. The publication of the translations in all official languages of the EU will trigger a two-month period during which NCAs must notify ESMA whether they comply or intend to comply with the guidelines.

## 2. Overview of the Guidelines on Enforcement of Sustainability Information

### 2.1 Background

1. On 16 December 2022, the Corporate Sustainability Reporting Directive<sup>1</sup> (CSRD) was published in the Official Journal of the European Union. The CSRD introduced a number of notable changes to the EU rules on reporting of non-financial – now referred to as sustainability – matters. Among these changes were an expansion of the scope of undertakings who will be required to provide sustainability reporting and a mandate for the European Commission to adopt delegated acts setting out detailed sustainability reporting standards. The first such delegated act – enacting an amended version of the first European Sustainability Reporting Standards (ESRS) delivered by the European Financial Reporting Advisory Group (EFRAG) in November 2022 – was adopted by the European Commission on 31 July 2023 and published in the Official Journal of the European Union in December 2023<sup>2</sup>.
2. Member States must transpose the CSRD into national legislation by 6 July 2024 and a phased application of the CSRD and the ESRS will commence on 1 January 2025 when the first undertakings will start publishing sustainability statements (covering financial year 2024) under the new regime. The CSRD will replace the current Non-Financial Reporting Directive<sup>3</sup> (NFRD).
3. The CSRD introduces a new Article 28d in the Transparency Directive<sup>4</sup> which obliges ESMA to issue guidelines, in accordance with Article 16 of the ESMA Regulation<sup>5</sup>, on the supervision of sustainability reporting by national competent authorities. The guidelines should apply to the supervision of undertakings whose securities are admitted to trading on a regulated market in the European Union. This mandate forms the legal basis<sup>6</sup> for the Guidelines on Enforcement of Sustainability Information (GLESI) which ESMA has finalised following public consultation.

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<sup>1</sup> Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting, OJ L 322, 16.12.2022, p. 15–80.

<sup>2</sup> Commission Delegated Regulation (EU) 2023/2772 of 31 July 2023 supplementing Directive 2013/34/EU of the European Parliament and of the Council as regards sustainability reporting standards, OJ L 2023/2772, 22.12.2023.

<sup>3</sup> Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, OJ L 330, 15.11.2014, p. 1–9.

<sup>4</sup> Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, OJ L 390, 31.12.2004, p. 38–57.

<sup>5</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC, OJ L 331, 15.12.2010, p. 84–119.

<sup>6</sup> Along with Article 16 of the ESMA Regulation.

## 2.2 Consultation process

4. On 15 December 2023, ESMA published a Consultation Paper (CP)<sup>7</sup> on the draft guidelines on the enforcement of sustainability information to explain its rationale and gather input from stakeholders. The consultation period closed on 15 March 2024.
5. ESMA received a total of 15 responses. All answers received are available on ESMA's website as none of the respondents requested otherwise. ESMA also sought the advice of the Securities and Markets Stakeholder Group's (SMSG). Respondent types included: non-governmental organisations and industry associations (66.6%), consultancy firms (13.4%), European Union (EU) agencies (13.4%) and law firms (6.6%).
6. Article 28d of the Transparency Directive requires ESMA to specifically consult the European Environment Agency (EEA) and the European Union Agency for Fundamental Rights (FRA). In agreement with the EEA and the FRA, ESMA has invited both agencies to submit a response to the public consultation conducted on the CP. ESMA has taken the responses from the EEA and the FRA into account when analysing the feedback to the consultation and it has kept the EEA and the FRA informed of changes to the draft GLESI which may be of interest to their respective remits. The input received from the EEA and the FRA is presented respectively in Annexes III and IV of this Final Report.
7. This Final Report summarises and analyses the responses to the CP and explains how the responses, together with the SMSG advice, have been taken into account. ESMA recommends reading this report together with the CP to have a complete view of the rationale for the guidelines.

## 2.3 Key elements of the GLESI

8. In the context of financial reporting, since 2014, ESMA's Guidelines on Enforcement of Financial Information<sup>8</sup> (GLEFI) have been in place. The GLEFI are by now well-implemented and well-known by national competent authorities and by issuers under enforcement. The content of the GLEFI is largely relevant also to the supervision (from here on out, reference is made to "enforcement" in this paper to ensure consistency with the GLEFI) of sustainability information.
9. As such, in preparing the GLESI, ESMA has aimed to align them as closely as possible with the GLEFI to ensure that enforcement of sustainability information is consistent with enforcement of financial information and to contribute to bringing sustainability

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<sup>7</sup> [ESMA32-992851010-1016](#) - Consultation Paper Draft Guidelines on Enforcement of Sustainability Information.

<sup>8</sup> [ESMA32-50-218](#) Guidelines on enforcement of financial information, 4 February 2020.

information on a par with financial information. As further explained in Section 2.3 of the CP, the drafting approach to the GLESI has taken into account a number of adaptations of the content of the GLEFI to reflect specificities of sustainability information compared to financial information, most notably on terminology.

10. The GLESI apply to all competent authorities undertaking supervision under Article 24(4) of the Transparency Directive of sustainability information prepared by issuers listed on an EU regulated market in accordance with Articles 19a, 29a and 29d of the Accounting Directive<sup>9</sup> along with the European Sustainability Reporting Standards and Article 8 of the Taxonomy Regulation along with the related Disclosures Delegated Act<sup>10</sup>.

11. The GLESI comprise of 22 guidelines grouped into six main areas:

- a. Basic concepts
- b. Enforcers' internal organisation
- c. Selection
- d. Examination
- e. Enforcement actions
- f. European coordination

12. In accordance with Article 16(3) of the ESMA Regulation, competent authorities must make every effort to comply with the GLESI and shall notify ESMA whether they: (i) comply, (ii) do not comply, but intend to comply, or (iii) do not comply and do not intend to comply with the guidelines and the reasons for the non-compliance. ESMA will publish on a regular basis on its website a list of the competent authorities with the indication of their compliance status vis-à-vis the GLESI.

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<sup>9</sup> Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, OJ L 182, 29.6.2013, p. 19–76.

<sup>10</sup> Commission Delegated Regulation (EU) 2021/2178 of 6 July 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities and specifying the methodology to comply with that disclosure obligation, OJ L 443, 10.12.2021, p. 9–67.

### 3. Feedback statement

13. The feedback statement summarises the principal responses to the CP. Annex V of this Final Report provides a more detailed view of the responses and explains how these contributions, together with the SMSG advice and the EEA and FRA responses, have been taken into account in the finalisation of the guidelines.

#### 3.1 Scope of the GLESI (Question 1)

14. All respondents agreed with the proposed scope for the GLESI. Some respondents noted that the draft GLESI scope reflects ESMA's remit but that the scope of the CSRD is broader as also encompassing large unlisted entities. These respondents suggested making an explicit reference to the difference in the scope of application of the GLESI and of the CSRD in the text of the GLESI, for clarity's sake.
15. To address this aspect, ESMA has decided to make a targeted amendment to the Purpose section of the draft GLESI (par. 7) by mentioning that while the scope of the requirements in the sustainability reporting includes non-listed undertakings, the GLESI are intended for the supervision by a national competent authority of listed undertakings (see Question 5).

#### 3.2 Legislative References, Abbreviations and Definitions (Questions 2 - 4)

16. In response to the comments received on the legislative references (section 2.1), ESMA has decided to make a targeted modification to the ESRS legislative reference so as to ensure that the reference will always reflect the applicable set of reporting standards.
17. Some respondents suggested to add a definition of "material misstatement" and "material omission" in section 2.3. (definition of infringement) and called for an alignment of these definitions with the ones proposed by draft international auditing standards. ESMA however recalls that there are significant differences in an enforcer's and auditor's (or independent assurance services provider's) assessments. In addition, the GLESI relies on different materiality regimes depending on the part of the sustainability information framework considered, as further clarified in Guideline 13.
18. ESMA however has decided to include a definition of "double materiality" in section 2.3, as suggested by some respondents, to give more prominence to this important concept in the context of enforcement of sustainability information. ESMA considers that the coordination at European level of national authorities, as defined in Guidelines 15 to 21, as well as one single reference to materiality coupled with ongoing dialogue

with issuers, auditors / independent assurance services providers and users of the sustainability information will be the most effective ways to develop a common understanding of the application of the principle of materiality in practice. This approach will also limit the possible divergence in the respective assessments of auditors / independent assurance services providers and enforcers with respect to material misstatements and omissions.

19. Other comments related to the mention of greenwashing, with some respondents expressing doubts on the clarity of the concept. A definition of "greenwashing" was introduced in section 2.3, which uses the common definition devised by the ESAs<sup>11</sup>.

### **3.3 Purpose of the GLESI (Question 5)**

20. Respondents to the question relating to the purpose of the GLESI generally supported the proposed objective, but highlighted the need that the practice of enforcement should be reflective of the learning curve that all parties involved in the sustainability reporting process are going through to apply the new ESRS requirements. Particularly, some respondents questioned the relevance of having the enforcement of sustainability information closely resembling the one of financial information and modelling the GLESI on the GLEFI. ESMA, however, notes that the CSRD sets an objective of making the status of sustainability information comparable to that of financial information (CSRD Recital 37).
21. While ESMA did not see the need to amend the GLESI to reflect these aspects, it acknowledges the importance of taking a proportionate approach to the enforcement of sustainability information to reflect the developing stage of the reporting framework and the emerging practice especially with regards to the implementation of the new ESRS.

### **3.4 Compliance and reporting obligations (Question 6)**

22. Respondents to this question agreed with no further comment, including ESMA's SMSG which nevertheless advised ESMA to have sustained dialogue with the NCAs within the SRWG on experience sharing on the application of the GLESI.
23. ESMA agrees on the importance of ongoing dialogue and experience sharing with the SRWG members on the application of the GLESI and is organising internal ad-hoc sessions for this purpose.
24. ESMA also notes that due to various constraints some NCAs may not be able to fully comply with the GLESI from the first reporting cycle. This may be the case due to

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<sup>11</sup> [ESMA30-1668416927-2498](#) - Progress Report on Greenwashing - 31 May 2023



resource constraints, legal impediments at national level, or both. Temporary non-compliance with the GLESI does not mean that NCAs do not fulfil their supervisory obligations at national level.

### **3.5 Basic concepts (Question 7; Guideline 1)**

25. Generally, respondents had mixed views with respect to the proposed objective of enforcement as set out in Guideline 1. While some respondents supported it, others expressed the view that some references in the proposed text required further clarification. This was the case most notably in relation to the nature of enforcement vis-à-vis audit activities, the reference to the consistent application of the sustainability information framework, the notion of enforcement as entailing a priority-based examination. It was also highlighted that the alignment in the objective of enforcement between the GLEFI and the proposed GLESI may be misleading with regards to the more recent development of the sustainability information framework compared to financial reporting framework. The objective of contributing to consistent application of the new framework was seen by some respondents as suggesting that enforcers would somehow force a certain uniformity in the application of the standards across different sectors, thus disregarding the fact that comparability is more meaningful across similar sectors and that, especially in the first years of application of the new requirements, divergence is likely to emerge.
26. ESMA notes that the objective of contributing to consistent application of the EU requirements is a general feature of ESMA's convergence work of which guidelines are one of the key operational tools, as per its founding regulation. ESMA and NCAs are well aware of the transitional element that characterises the first years of application of the new sustainability information framework and therefore in pursuing the objective of contributing to the consistent application of the requirements they will take the specificities of this initial phase into account. ESMA also notes that it is not the objective of the GLESI to provide detailed reconciliation between the tasks and the role of enforcers and those of auditors /independent assurance services providers as these are set out in law, rather the GLESI include elements that help explain the possible divergence between the conclusions of enforcers and those of auditors / independent assurance services providers. ESMA highlights that, while acknowledging the differences in the stages of development of the practice attached to the respective frameworks, the experience that enforcers have gained with the supervision of financial reporting will be helpful also to address the tension that may emerge in sustainability reporting between relevance of the information, including materiality assessments for individual sectors, and the need for comparability across sectors.

### **3.6 Enforcers' internal organisation (Questions 8 – 10; Guidelines 2 – 4)**

27. In light of the feedback received, in addition to a few editorial changes, ESMA has decided to include a more general point regarding the possibility for enforcers to rely on regular dialogue, as they deem appropriate, with issuers, auditors / independent assurance services providers or users of the sustainability information to exchange views on relevant matters. ESMA considers that ongoing dialogue will be particularly important in the first years of application of the new sustainability information framework.
28. Respondents generally agreed with the proposed Guideline 2 addressing the human and financial resources necessary to ensure an effective enforcement process. Respondents to this question suggested to acknowledge in the GLESI that there is a learning curve issue for supervisors as well as a shortage of skilled resources. The risk was highlighted that due to resource constraint the enforcement process may be of limited quality and that, to avoid this issue, enforcement should be gradual and training should be put in place, alongside continued collaboration with other supervisory authorities as well as dialogue with issuers and auditors / independent assurance services providers.
29. ESMA acknowledges the concerns expressed by the respondents with regards to the organisational and resource-related challenges that the novelty and the complexity of the new sustainability reporting framework may pose for enforcers. As previously indicated, ESMA's view is that rather than amending the GLESI to reflect these aspects, the application of the GLESI will be reflective of the gradual adjustment of the level of expertise and experiences of enforcers, proportionate to the status of advancement in the practical adoption of the sustainability information framework. ESMA will also continue to support NCAs through training initiatives.
30. Respondents addressing Guideline 3 regarding the sustainability information prepared under third country sustainability reporting generally agreed with the proposed guideline in that area. One respondent highlighted the risks linked to the use of the consolidation exemption by listed SME undertakings that would belong to a third country group and the fact that enforcers should apply the GLESI also to these circumstances.
31. ESMA notes that the use of the consolidation exemption does not expand the scope of the supervision of national authorities to the consolidated reporting of a non-listed parent. However, the use of the exemption is itself subject to supervision by NCAs which can investigate whether the listed SME that has elected to apply this option has fulfilled all the relevant eligibility conditions, including whether the consolidated

sustainability report of the parent undertaking has been drawn up in accordance with Article 29a of the Accounting Directive.

32. Respondents generally agreed with the proposed Guideline 4 in relation to the independence of enforcers. One respondent suggested to expand the provision to also include the processes to nominate the leadership of the competent authorities and to envisage procedures for managing conflicts of interest. Another respondent suggested that the GLESI envisage mechanisms to involve users of the information in the enforcement process. Finally, one respondent suggested that the enforcement process applies the principles of adversarial proceedings and “equality of arms”.
33. ESMA notes that the GLESI address a specific sectorial matter, i.e. the enforcement of sustainability information and therefore they cannot generally provide indications on broader reach on the organisation of national authorities, except where necessary to specify cases of undue influence which may directly affect the enforcement of sustainability information (such as the provisions with regards to independence from national governments, notwithstanding the fact that national legislation may determine how the members of the board or other decision-making body are to be protected from undue government intervention). ESMA also highlights that the Joint European Supervisory Authorities’ criteria on the independence of supervisory authorities include general requirements on the set up and internal organisation and resources of national competent authorities, including on the appointment of governing bodies of the authorities<sup>12</sup>.

### **3.7 Selection (Questions 11 – 13; Guidelines 5 – 7)**

34. The majority of respondents agreed with the proposed approach to Guideline 5 on the mixed selection approach and to Guideline 6 in relation to the timing of the selection model. Respondents provided targeted suggestions to improve the readability of the draft GLESI, for example, with regards to the definition of the period over which all issuers in a given jurisdiction need to be selected for examination, as well as in relation to the fact that the selection model shall capture infringements of disclosure requirements linked to both sustainability risks and impacts. Other respondents suggested to add specificity to the types of risk factors that are included in selection models, to better define the notions of 'probability of infringement', 'grounded complaints', and 'management's ethical conduct' as otherwise these requirements may be prone to subjectivity. It was also noted that selection models should capture specificities of issuers' sectors.
35. In relation to this feedback, ESMA has amended the GLESI to include the references to issuers' sectors and geographies as examples of the elements that may be taken

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<sup>12</sup> [JC 2023 17](#), Joint European Supervisory Authorities’ criteria on the independence of supervisory authorities, 25 October 2023

into account within selection models. ESMA also considers that it is important to clarify that indications of risk of infringement are not limited to aspects relating to 'financial materiality', but also relate to 'impact materiality' as infringements are defined vis-à-vis the applicable sustainability information framework which includes the requirement to provide information on sustainability-related impacts, risks and opportunities.

36. On other requests for clarifications raised by respondents, ESMA notes that enforcers implement the GLESI through more detailed operational procedures which are developed by also taking into account a common understanding reached within ESMA about the key notions and the key risk factors to consider when setting up selection models. This flexibility is necessary to enable the GLESI to remain relevant over time. ESMA and NCAs regularly discuss how the GLESI are applied to respond to practical issues and therefore ESMA does not think that it should further specify the concepts referred to by respondents as these elements are intentionally left open to case-by-case assessments.

37. Finally, all respondents agreed to the proposed Guideline 7 on the selection universe.

### **3.8 Examination (Questions 14 – 17; Guidelines 8 – 11)**

38. While respondents mostly agreed with the different types of examination that enforcers can use when they examine sustainability information, thus not requiring any amendments to Guideline 8, more substantial comments were shared on enforcers' examination processes (Guideline 9).

39. Comments focused on transmission of information from enforcers to auditors / independent assurance services providers and issuers during the examination process, notably of any potential issue. One respondent requested additional description of the essential steps of the examination process, while another requested that the guidelines take account of the situation when a desktop examination transforms into an interactive examination. ESMA encourages dialogue between enforcers, auditors / independent assurance services providers and issuers. ESMA has decided that it would not add substantial elements for enforcers to assess as part of their examinations, as this would risk exceeding the scope and procedural nature of the GLESI. The sustainability information framework precisely constitutes the information to be examined and requesting additional information on certain social or environmental aspects already forms part of the process of interactive examinations. Further, while ESMA recalls that desktop examinations ought to be confined to a limited use and that enforcers may only rarely find infringements on their basis, it has included corresponding text in the guidelines to reflect a transformation from a desktop to interactive examination.

40. Regarding pre-clearance, most respondents agreed with the draft Guideline 10, requiring further clarification on the role of auditors / independent assurance services

providers, the rationale and meaning of the fact that the proposed guideline requires a firm position by the auditor / independent assurance services provider on the issue at hand and the timeline relative to the pre-clearance process. While ESMA considered the need for pre-clearance processes to be sufficiently robust and formal, such formality remains to be determined by NCAs, notably on timing and scope, for which ESMA did not suggest any amendment to the guidelines. ESMA however deemed essential for enforcers to have the auditors' / independent assurance services providers' and issuers' finalised view on the matter. The enforcer should only provide a decision once the auditor / independent assurance services provider and issuer have finalised their technical position.

41. Such broad agreement was also noticeable with regards to the need for NCAs to conduct quality reviews (Guideline 11) at an appropriate level. Respondents suggested to include the requirement that the results of these reviews be discussed amongst staff with sufficient experience, expertise, seniority and independence. ESMA included a reference to these discussions, which it deems should be conducted by staff with sufficient experience and expertise. ESMA also notes that all supervisory activities relating to sustainability reporting, including quality reviews are covered by the Guideline 4 on independence. ESMA also endorsed a proposal to also have the results of quality reviews shared by NCAs with ESMA as part of general ESMA work on convergence of supervisory practices on sustainability reporting.

### **3.9 Enforcement actions (Questions 18 – 20; Guidelines 12 – 14)**

42. Regarding enforcement actions, some respondents questioned the added value of having enforcement actions in relation to immaterial departures from the sustainability information framework. ESMA's view is that such enforcement actions will only take place in the specific cases defined by the GLESI. ESMA sees such actions as part of the constructive role of supervision it promotes.

### **3.10 European coordination (Questions 21 – 22; Guidelines 15 – 22)**

43. The majority of respondents directly supported draft Guidelines 15-22 on European coordination, with few contributions recommending substantial changes to the text. Specific proposals for drafting adjustments were particularly noted in relation to Guideline 22, on reporting on enforcement activities at a national level, mostly suggesting that enforcers move to annual reporting (draft Guideline 22 only specifies that enforcers should report 'periodically'). However, ESMA notes that, at present, only a minority of supervisors are known to publicly report on an annual basis on their enforcement policies and decisions.

### **3.11 Cost-benefit analysis (Questions 23 – 24)**

44. In relation to the chosen policy option to align the GLESI on the GLEFI (policy option 1), most respondents agreed that this was the preferable course of action from a cost-benefit perspective. Despite some comments suggesting to further emphasise the distinctions between sustainability reporting and financial reporting, the SMSG supported alignment of enforcement of sustainability information with that of financial information as much as possible. For these reasons, ESMA has decided not to bring any modification to its policy option choice, which allows enforcers to engage their resources effectively in this new area of reporting.

### **3.12 Additional comments (Question 25)**

45. Lastly, some respondents also provided additional comments to their main responses and considered that regular reviews of the GLESI should be conducted following their implementation. The SMSG concurred with this view and suggested to regularly update and develop guidelines in the sustainable finance area, given its dynamism. One respondent proposed to add a reference to the “necessary progressiveness” to implement sustainability reporting, in the introduction to the GLESI. Given the balance that has been struck in the drafting of the GLESI for the necessities of the first few years of enforcement between the precision of its scope and breadth of application, thus catering for future developments, ESMA has decided not to further underscore the “necessary progressiveness” put forward by one respondent. Nonetheless, to continuously build on a common supervisory culture at a European level, ESMA does intend to conduct a supervisory convergence assessment on the GLESI, including for example a peer review in due course.

## ANNEXES

### I. Cost-benefit analysis

#### Introduction

1. Article 24(1) of the Transparency Directive obliges enforcers to ensure that the provisions adopted pursuant to the Transparency Directive are applied, including the requirement for issuers with securities admitted to trading on a regulated market to provide a sustainability statement – drawn up in accordance with the ESRS and the Disclosures Delegated Act – in the management report which forms an integral part of the annual financial report.
2. Article 28d of the Transparency Directive mandates ESMA, following consultation of the European Environment Agency (EEA) and the European Union Agency for Fundamental Rights (FRA), to issue guidelines on national competent authorities' supervision of sustainability reporting.
3. According to Article 16 of the ESMA Regulation, the goal of ESMA guidelines is to “[establish] consistent, efficient and effective supervisory practices within the ESFS, and to [ensure] the common, uniform and consistent application of Union law.”
4. The objective of performing a cost-benefit analysis is to assess the costs and benefits of the policy options which were analysed during the process of drafting the guidelines.

#### Assessment of the proposed policy options

<p><b>Specific objective</b></p>	<p>According to Article 16 of the ESMA Regulation, the goal of ESMA guidelines is to “[establish] consistent, efficient and effective supervisory practices within the ESFS, and to [ensure] the common, uniform and consistent application of Union law.”</p> <p>Specifically in relation to the GLESI, Recital 79, second paragraph of the CSRD clarifies that “[...] given the novel character of the sustainability reporting requirements, ESMA should issue guidelines for national competent authorities to promote convergent supervision of sustainability reporting by issuers subject to [the Transparency Directive].”</p>
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<b>Policy option 1</b>	
Description	<p>To establish Guidelines for Enforcement of Sustainability Information (GLES<sub>I</sub>) which closely resemble ESMA's Guidelines for Enforcement of <u>Financial</u> Information (GLEFI).</p> <p>The GLEFI have been in place since 2014 and are well-established among European enforcers. They provide detailed instructions for the various steps of the enforcement process (how to select the information which will be examined, how to undertake the examination, how to determine which enforcement action to use in case an infringement is discovered). Additionally, they establish expectations regarding enforcers' internal organisation (resources, powers, independence) and regarding coordination of enforcement at a European level.</p> <p>While using the GLEFI as the starting point for the GLES<sub>I</sub> and trying to maintain alignment between the two sets of guidelines, this policy option adjusts the content of the GLES<sub>I</sub> to the specificities of sustainability information.</p>
How would this policy option achieve the objective described above?	<p>Policy option 1 would meet the objective as it would promote convergence of supervisory practices and consistency across enforcement of sustainability and financial information, leading to efficient use of enforcers' resources.</p> <p>More specifically, it would establish harmonised approaches across all jurisdictions to selecting and examining issuers and taking enforcement actions against them in cases of infringements as well as harmonised approaches to enforcers' internal set-up and contributions to coordination at a European level.</p> <p>In addition, where appropriate, it would create closely similar practices for enforcement of sustainability and financial information. This would permit enforcers to incorporate the new enforcement requirements into their existing enforcement models relatively seamlessly, as such leading to efficient use of their resources.</p>
<b>Policy option 2</b>	
Description	To develop the GLES <sub>I</sub> from scratch without reference to the GLEFI.



<p>How would this policy option achieve the objective described above?</p>	<p>While this policy option may lead to a similar level of supervisory convergence <u>within</u> the enforcement of sustainability information as policy option 1, it would not ensure consistency <u>across</u> enforcement practices in the realms of sustainability and financial information.</p> <p>ESMA suggests that there is no obvious reason to establish fundamentally different enforcement practices for sustainability and financial information, since issuers' processes for preparing the two types of information are similar, including a requirement for both types to be subject to assurance (though limited as opposed to reasonable in the first years of reporting under the CSRD). Additionally, differences in enforcement practices could lead to inconsistent supervisory treatments of sustainability and financial information whereas there is a need for connectivity between the two. In addition, a fundamentally different enforcement approach to sustainability information would be more difficult to implement, and therefore less efficient, for enforcers.</p>
<p><b>Conclusion</b></p>	
<p>Which policy option is the preferred one?</p>	<p>Policy option 1, as it will lead to convergence in the enforcement of sustainability information, to consistency in the way sustainability and financial information are enforced and to an efficient use of enforcers' resources as they can extend the enforcement processes they already use for financial information to sustainability information.</p>
<p>Is the policy chosen within the sole responsibility of ESMA? If not, what other body is concerned / need to be informed or consulted?</p>	<p>ESMA is responsible for issuing the guidelines after consulting the EEA and the FRA. In agreement with the EEA and the FRA, ESMA has invited both agencies to submit a response to the public consultation on the GLESI. ESMA will take the responses from the EEA and the FRA into account when it analyses feedback to the consultation and will keep the EEA and the FRA informed of changes to the GLESI which may be of interest to their respective remits.</p> <p>In addition, ESMA is consulting the Securities and Markets Stakeholders Group (SMSG) on the development of the guidelines as foreseen in Article 16(2) of the ESMA Regulation.</p>

## Impacts of the proposed policy options

Policy option 1	
Benefits	<p>Policy option 1 would firstly provide clear guidance on how enforcers should carry out enforcement of sustainability information, thus leading to convergent enforcement practices. Secondly, it would ensure consistent enforcement of sustainability and financial information. Thirdly, it would lead to an efficient use of enforcers' resources by allowing them to benefit from economies of scope across the enforcement of sustainability and financial information. For example, enforcers will be able to build on common principles to set up their selection models, which will be particularly helpful when integrated supervisory models between financial and sustainability information are in place. Similarly, when examining the annual financial report of an issuer in relation to both financial and sustainability information, relying on the same principles to determine the different types of examination will facilitate and streamline any interaction with the issuer.</p> <p>Another benefit of policy option 1 would be the contribution of enforcement to the transparency of sustainability information and as such the protection of investors looking to base their investment decisions on sustainability information.</p>
Costs to regulators	<p>The supervision of the sustainability reporting framework will entail additional costs for NCAs. ESMA envisages that, under option 1, the additional costs to enforcers will remain within a reasonably low range since they already follow most of the practices in relation to enforcement of <i>financial</i> information which policy option 1 would require them to apply in relation to enforcement of <i>sustainability</i> information. This option will also help limit the incremental costs which will inevitably arise due to the new set of reporting requirements to be supervised.</p>
Compliance costs	<p>ESMA does not foresee direct compliance costs from policy option 1, as the GLESI are directed at enforcers and should not have a direct impact on market participants. There may be indirect compliance costs as issuers will be expected to take account of more specific recommendations compared to the past in the European common enforcement priorities and the decisions published in accordance with the GLESI.</p>

Innovation-related aspects	No innovation related impacts are expected from this option.
ESG-related aspects	Due to the nature of the GLESI, all issues discussed in this cost-benefit analysis are of relevance to ESG-related aspects.
Proportionality-related aspects	<p>Option 1 allows enforcers to rely on existing enforcement practices and exploit economies of scope, hence no proportionality-related aspects are expected to be impacted by this option.</p> <p>With regards to the issuers under supervision, Option 1 would build on the sustainability information framework and therefore rely on the proportionality of its requirements, in particular the reliance on the materiality principle to determine infringements vis-à-vis this framework. However, by building on similar principles for supervision of sustainability information compared to the principles for supervision of financial information, Option 2 would not impose additional burdens on issuers.</p>
<b>Policy option 2</b>	
Benefits	<p>Policy option 2 would provide clear guidance on how enforcers should carry out enforcement of sustainability information, thus leading to convergent enforcement practices.</p> <p>Another benefit of policy option 2 would be the contribution of enforcement to the transparency of sustainability information and as such the protection of investors looking to base their investment decisions on sustainability information.</p>
Costs to regulators	The supervision of the sustainability reporting framework will entail additional costs for NCAs. ESMA estimates that policy option 2 would imply additional moderate costs for enforcers, connected with setting up entirely new enforcement practices (one-time cost), training staff in their application (one-time cost) and managing different practices in the enforcement of sustainability and financial information for those enforcers who have integrated enforcement teams (ongoing cost).
Compliance costs	ESMA does not foresee direct compliance costs from policy option 2, as the GLESI are directed at enforcers and should not have a direct impact on market participants. There may be indirect compliance costs as issuers will be expected to take

	account of the European common enforcement priorities and the decisions published prepared in accordance with the GLESI.
Innovation-related aspects	No innovation related impacts are expected from this option.
ESG-related aspects	Due to the nature of the GLESI, all issues discussed in this cost-benefit analysis are of relevance to ESG-related aspects.
Proportionality-related aspects	<p>The comparably higher one-time costs identified in option 2 may impact enforcers with limited resources to a greater extent and thus has the potential to create disproportionate costs and an unlevel playing field among enforcers. This may be further exacerbated by the additional ongoing costs, which may require enforcers to employ additional staff resources for the different supervisory lines of financial and sustainability information.</p> <p>With regards to the issuers under supervision, Option 2 would build on the sustainability information framework and therefore rely on the proportionality of its requirements, in particular the reliance on the materiality principle to determine infringements vis-à-vis this framework. However, by building on different principles for supervision of sustainability information compared to the principles for supervision of financial information, Option 2 may impose additional burdens on issuers.</p>
<b>Conclusion</b>	On the basis of the analysis above, ESMA concludes that the benefits of issuing these guidelines on the basis of policy option 1 outweigh the costs.

## II. Advice of the Securities and Markets Stakeholder Group (SMSG)

1. This annex includes the full reproduction of the advice provided by the SMSG. The original document presenting the advice submitted by the SMSG is available on the [ESMA website](#).

### Background

2. ESMA, on 15 December 2023, published a consultation paper (the Consultation) on Draft Guidelines on Enforcement of Sustainability Information (GLES I) with 25 detailed consultation questions, see appendix.
3. The SMSG considered whether it should provide specific comments to each of the questions but decided to limit its response to the general comments set out below.
4. The Corporate Sustainability Reporting Directive (CSRD) was published in the Official Journal on 16 December 2022. It replaces the current Non-Financial Reporting Directive (NFRD) and introduces several changes to what is presently referred to as non-financial reporting rules which will in future be referred to as sustainability reporting rules.
5. The CSRD is to be transposed by Member States into national legislation by 6 July 2024, with a phased application of CSRD and the European Sustainability Reporting Standards (ESRS) commencing on 1 January 2025.
6. The first undertakings will have to start publishing sustainability statements on 1 January 2025, covering the financial year 2024.

### Guidelines on Enforcement of Sustainability Information (GLES I)

7. The legal mandate for GLES I is set out in Art 28d of the Transparency Directive (TD) which obliges ESMA to issue guidelines on the supervision of sustainability reporting by national competent authorities (NCAs) in accordance with Article 16 of the ESMA Regulation.
8. The guidelines apply to the supervision of undertakings whose securities are admitted to trading on a regulated market in the EU (listed issuers). The guidelines will not be applied to unlisted companies or micro undertakings. NCAs may however choose to apply GLES I also to such other issuers by way of national “gold plating” rules.
9. The SMSG notes that the scope of GLES I to listed issuers does not cover all entities that have to provide sustainability information under the Accounting Directive and the

Taxonomy Regulation. Neither the enforcement of large unlisted undertakings nor listed micro-undertakings are in scope. ESMA notes, however, that enforcers (as well as other entities) may use GLESI on a voluntary basis.

## ESMA's approach to GLESI

10. CSRD aims to place sustainability information at a comparable level to that of financial information. ESMA notes in the Consultation that it considers the enforcement of sustainability information by NCAs to play an important role in reaching this goal. ESMA also notes the importance of ensuring a consistent supervisory approach across the annual financial report which will encompass both the financial statements and the sustainability statement.
11. ESMA is basing the draft GLESI on its Guidelines on Enforcement of Financial Information (GLEFI) as they have been in place, with updates, since 2014. ESMA seeks to align GLESI as closely as possible to GLEFI, to ensure that enforcement of financial and sustainability information is aligned. ESMA notes that it has also made some changes to align GLESI also with ESMA's updated templates for guidelines.
12. The SMSG supports the approach set out in the CSRD and described by ESMA in the Consultation, to align enforcement of financial and sustainability information as much as possible. It also understands that certain changes have been made to align GLESI with ESMA's updated templates for guidelines and would in this regard question if not also GLEFI should be updated as regards format and terminology (rather than substance) in line with the same templates.

## Sustainable finance is an area that develops fast

13. Sustainable finance as a topic, as well as the regulatory framework surrounding it, has developed fast and to some extent on different tracks. Market participants including issuers, banks, and investment firms, as well as regulators, spend significant resources and time on tracking and striving to comply with new rules. This means that guidelines applicable to this area may also have to be continuously updated and developed.
14. Against this background, the SMSG agrees with ESMA's statement, that as the requirements relating to the sustainability information framework is newer than the corresponding framework for financial information, there may be a steep learning curve for all parties in the first years of reporting. This will be especially true in the case for first time preparers.
15. It is thus important to retain a certain degree of flexibility regarding the enforcement model, meaning e.g. that NCAs would be free to apply an integrated model in which the enforcement of financial information and sustainability information is done in one process and at the same time. Enforcement of ESRS should be made with a good

sense of proportion, as the ESRSs are complex, implementation must be done under significant time pressure, and considering that audit standards and usances are still under development. The SMSG further highlights that to the extent that financial intermediaries may be consumers of issuers' reports for their own reporting purposes, a proportionate approach to enforcement will be necessary throughout the reporting chain until such time as the production of issuer metrics is stabilised.

16. The SMSG would in this respect want to note ESMA's comments that enforcers will have to prepare their GLESI compliance notifications to ESMA in relation to 2025 on an ex-ante basis, before they have full experience with enforcing the new requirements. The SMSG would therefore recommend that ESMA have a continuous dialogue with NCAs to share experiences and approach in this regard. The SMSG also takes note of the fact that Guideline 15 of GLESI establishes the principle that the forum for this dialogue could be ESMA's Sustainability Reporting Working Group (SRWG).
17. The SMSG notes the fact that ESRS will be applied both by entities supervised by ESMA and NCAs and by corporates that may fall outside the scope of such supervision, outside the realm of the Prospectus Regulation and the Transparency Directive. The SMSG would here recommend that ESMA and NCAs monitor and clarify the application of the rules by non-supervised entities and consider the potential risk for an unlevel playing field vis-à-vis supervised entities. A similar question relates to non-EU corporates and what will happen if they do not comply with EU-standards. It would in these cases be preferable to have an EU-wide standard rather than 27 national standards.
18. A particular concern has shown to be translation of ESRS into national languages. While it is difficult to read and interpret ESRS in the English language, several (AI-generated) translations into national languages (Polish, Danish etc.) have proven to be substandard, even at the time of publication in the OJ. There is thus a risk (even if corrections are made at a later stage) that different interpretations by NCAs may arise due to differences in the translations.
19. The SMSG notes and agrees with ESMA's comment that enforcers may play a role in accompanying issuers in the implementation process. The SMSG would against this background propose that ESMA, EBA and EIOPA, take the initiative to establish an annual Sustainable Finance Day, corresponding to the popular and useful JC Consumer Protection Day where practical aspects of sustainable finance can be discussed.

### Comments on specific definitions and rules

20. The SMSG notes, in relation to the definition of "Infringement" that it is not clear in the document how ESMA will define "material omission or misstatement". It is important that this definition is applied consistently by national enforcers. At present guidance



can only be found in the proposed ISSA 5000 and ESMA will need to define how it assesses the notion of material error.

21. ESMA proposes a 'mixed selection model' for determining which issuers to check (Draft Guideline 5). This model combines a risk-based approach with sampling and rotation. The SMSG supports this approach. However, we suggest that the risk-based element of the selection model be better aligned with the CSRD concept of double materiality. This concept assigns equal importance to financial risks (financial materiality) and the impacts on people and planet (impact materiality). Draft Guideline 5, paragraph 37 states: 'Determination of risk should be based on the combination of the probability of infringements in the issuer's sustainability information and the potential impact of an infringement on the financial markets.' Properly incorporating impact materiality would mean to also consider the risks of real-world sustainability impacts connected to an issuer's operations. This means, among other things, taking into account which issuer comes from a high-impact sector.
22. Another question relates to the reference in Guideline 5, point 37 a, to "management's ethical standards" as this can cover many aspects, financial, social etc.

### Audits and oversight

23. Auditors will play an important role in the field of sustainable finance. This is however a new area for auditors leading to a risk that auditors may interpret rules differently. Member states will also have to have limited assurance, but may choose to have reasonable assurance, which will add complexity to the system.
24. It is important that we, in this new field, do not add layers of gold plating but strive to the extent possible to a level playing field. It should here be kept in mind that, in comparison, non-financial information may to some extent include forward looking information while financial information is traditionally based on historical data.
25. The SMSG here notes that ESMA in its annual report on corporate reporting enforcement has qualified as "material departures" from IFRS requirements some departures that are not so material, as they do not require for most of them a restatement of the financial statements, but rather a correction in future financial statements, and furthermore in most cases a correction of a disclosure. While this may be perceived as an issue relating to ESMA's internal statistics methodology, it this does not convey a good image of the quality of corporate reporting in Europe.<sup>3</sup> If this trend continues and is amplified in the first years of ESRS application, it could be counter-productive for European companies.



### III. Input received from the European Environment Agency (EEA)

1. This annex includes the full reproduction of the response submitted by the EEA. The original document presenting the response is available on the [ESMA website](#).
2. Please note that EEA only responded to those questions covered by the EEA mandate. As such, we only provide responses to a limited number of questions, as set out below.

**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.**

3. We fully support the upcoming role of **independent assurance services providers** and agree that they should be subject to high standards.
4. Regarding the definitions of the **sustainability information framework**, we suggest broadening the definition. GLESI currently refers only to the European Sustainability Reporting Standards (ESRS) and Article 8 of the Taxonomy Regulation, along with its Disclosures Delegated Act as stipulated by Articles 19a, 29a and 29d of the Accounting Directive. According to Article 1 paragraph 3 of the Accounting Directive, Articles 19a and 29a shall also apply to the laws, regulations and administrative provisions of the Member States relating to insurance undertakings and credit institutions. This includes the Sustainable Financial Disclosure Regulation (SFDR), and we therefore suggest that the SFDR is explicitly mentioned. The Corporate Sustainability Due Diligence Directive (CSDDD) might also have further disclosure and reporting requirements that fall under the broad “sustainability information framework”.
5. As for the **types/goals of selection for assessment purposes**, we agree with the three criteria for selecting cases for assessment, namely risk-based, rotation based and randomised selection. Although the frequency of assessments should enable the enforcers to identify issuers being susceptible to infringements, we have identified a possible need for ad-hoc assessments (i.e. in case of serious greenwashing rumours). If such ad-hoc assessments are already intended to be covered by the risk-based selection, we would like ESMA to express this in the risk-based criterion more explicitly. If not, then we propose that a fourth selection criteria be included to enable enforcers to react to acute infringements.

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

6. EEA fully supports the proposed **purpose of the GLESI**. We also see opportunities for other entities to make use of the GLESI. For example, GLESI could be used by financial institutions when assessing the quality of sustainability information submitted by

undertakings within their remit. The EEA explicitly proposes to add the following to the guidelines text:

7. “GLES I can the guide non-mandatory supervision of sustainability information by financial institutions of entities under their supervision that are not subject to the GLES I.”
8. This would be fully in line with what ESMA has already stated in the explanatory part on page 9, paragraphs 18 and 19.

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

9. With reference to Guideline 1, Objective of enforcement, the EEA fully supports ESMA’s ambition to making the sustainability information provided by different entities **consistent and comparable**, as well as to make the enforcers’ assessments consistent. The EEA suggests adding “reliable” as an additional requirement of the information disclosed.
10. Although the EEA acknowledges the law-based role of an enforcer, and that the enforcer should not issue an opinion with a positive or negative assurance on the sustainability information, we would propose an addition to empower enforcers to immediately react to sustainability information that is clearly erroneous. We strongly believe that in times of mis-information the objective of ensuring that information is consistent, comparable and reliable information can be supported by enabling enforcers to react immediately in the cases where information is clearly erroneous.

**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.**

11. Regarding Guideline 2, “Enforcers’ internal organisation”, EEA would like to highlight the need for enforcers to have **appropriate expertise and sustainability literacy**. We fully support the requirement for enforcers to have sufficient human and financial resources. Professionally skilled human resources, including experience with sustainability and financial information are essential criteria for individuals to be able to deliver on the task of enforcers. In this context, the sustainability literacy of the workforce must be significantly improved.
12. For EEA, it is crucial that those experts that assess sustainability information, enforce quality standards, and assess whether information is correct have high levels of sustainability literacy. This is especially the case for experts working for financial institutions that are responsible for communicating reliable information to their customers, and for entities that have significant impacts on the environment.

13. We suggest making the requirements for expertise and knowledge in the field of sustainability and environmental reporting more prominent, to guide the national competent authorities in the process of building internal capacities. Such guidance would promote the development of comparable, specialised expertise throughout the European Union and thus increase the credibility of the supervision.
14. Regarding the delegation of tasks to enforce the quality of sustainability information, the last sentence of the first paragraph of Guideline 2 should also cover the responsibility to not just supervise the delegated entity, but also to ensure that the delegated entity has sufficient expertise. The reference to Article 24(2) of the Transparency Directive may not fully address this requirement:

“... Any delegation of tasks shall be made in a specific manner stating the tasks to be undertaken and the conditions under which they are to be carried out. Those conditions shall include a clause requiring the entity in question to be organised in a manner such that conflicts of interest are avoided and information obtained from carrying out the delegated tasks is not used unfairly or to prevent competition. In any case, the final responsibility for supervising compliance with the provisions of this Directive and implementing measures adopted pursuant thereto shall lie with the competent authority designated in accordance with paragraph 1.”

15. This article can be interpreted in two ways. If ESMA considers Article 24(2) of the Transparency Directive to directly address the expertise and literacy of the delegated entities, then EEA agrees with the wording of Guideline 2 and would find it helpful to clarify this interpretation in the explanatory part. If ESMA finds Article 24(2) of the Transparency Directive not to be applicable to the delegated entities, then EEA would propose to emphasise this aspect in Guideline 2 specifically.

**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.**

16. Even though Guideline 11 refers to a procedural issue, EEA would like to emphasise that quality reviews are crucial to ensuring and improving the quality of disclosed sustainability information. We also very much support the reference to experienced and trained staff.

**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.**

17. Guidelines 13 and 14 address materiality and follow-ups. The EEA explicitly supports the concept of double materiality and follow-ups and encourages ESMA to treat both guidelines as non-negotiable in terms of content.

**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.**

18. See response on Q19.

## IV. Input received from the Fundamental Rights Agency (FRA)

1. This annex includes the full reproduction of the response submitted by the FRA. The original document presenting the response is available on the [ESMA website](#).
2. FRA notes that while the document emphasizes the importance of enforcing sustainability information, it does not explicitly mention fundamental rights risks. FRA understands the focus is primarily on enhancing the comparability and quality of sustainability reports to align them with financial reporting standards.
3. The Guidelines emphasizes the objective of enforcement as contributing to a consistent application of sustainability information frameworks. The Guidelines focus on aligning enforcement practices with sustainability reporting requirements, promoting convergence in supervision by national competent authorities, and establishing consistency in the supervision of both financial and sustainability information. The document highlights the importance of responding to specific questions with clear rationale and alternatives for consideration, aiming to enhance the enforcement of sustainability information across listed companies under relevant directives and regulations.
4. FRA notes that the Guidelines indirectly touch on the right to access to information, which is a fundamental right in the context of sustainability reporting. It mentions the importance of ensuring that sustainability information is not misleading or false, which could potentially impact the right to information and freedom of speech. Additionally, the document discusses the importance of transparency and accountability in sustainability reporting, which could potentially impact labour rights if the reporting is related to labour practices within an organisation.
5. FRA considers the Guidelines could benefit from strengthening, or more consideration, as regards:
  - a. privacy rights by adding relevant provisions related to data protection as the document does not contain any information that directly relates to privacy rights, however, the enforcement of sustainability information may involve the collection and processing of personal data. - handling complaints
  - b. the Guidelines provide that where grounded complaints are received, containing concrete indications of infringements and appearing reliable after preliminary scrutiny, they should also typically lead to a selection of the sustainability information for further examination. This underscores the significance of external feedback and complaints in guiding the enforcement process and ensuring the thorough examination of sustainability information

for compliance with the sustainability information framework. However, this recommendation/ obligation could be strengthened, given that failure to take action when there are clear signs of infringements can lead to various negative outcomes. It is important for organizations to take prompt and appropriate action when signs of non-compliance are identified to mitigate these adverse consequences and uphold regulatory compliance standards.

- c. possibly adding explicit reference to the right of access to information.

## V. Feedback on the Consultation Paper

### V.1 Scope (Question 1)

1. In the CP we sought input of stakeholders on the scope of the GLESI. We asked:

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

2. All respondents agreed with the proposed scope for the GLESI.
3. Some respondents noted that the draft GLESI's scope reflects ESMA's remit but that the scope of the CSRD is broader as also encompassing large unlisted entities. These respondents suggested making an explicit reference to the difference in the scopes of application of the GLESI and of the CSRD in the text of the GLESI, for clarity's sake.
4. These respondents also suggested that this clarification should appear in ESMA's related enforcement reports.
5. One respondent noted that it is unclear how ESMA's GLEFI and GLESI – respectively for the supervision of financial reporting and sustainability reporting – apply to the marking up in digital format in line with the ESEF regulation for non-listed entities and encouraged ESMA to address this question.
6. **ESMA's response:** ESMA's view is that clarity is best achieved by only including in the Scope section of the GLESI the description of the companies in scope (*"issuers, who have securities admitted to trading on a regulated market and who are required to publish sustainability information under the Accounting Directive"* in par. 2 of the draft GLESI). ESMA notes that Recital 79 of the CSRD indicates that: *" Those guidelines should only apply to the supervision of undertakings whose securities are admitted to trading on a regulated market in the Union"*.
7. To further clarify this aspect, ESMA has decided to make a targeted amendment to the Purpose section of the draft GLESI (par. 7) by mentioning that while the scope of the requirements in the sustainability reporting includes non-listed undertakings, the GLESI are intended for the supervision by a national competent authority of listed undertakings (see Question 5).
8. Regarding the comment on the supervision of digital reporting, ESMA notes that supervisory convergence work takes place in ESMA with NCAs in relation to the supervision of the electronic format of the annual financial report of listed entities, ESMA therefore is not in the position to address the supervision of digital reporting for non-listed entities. In general, ESMA notes that for listed entities these convergence activities include discussions on issues that emerge during the supervisory practices, the continuous maintenance of the reporting manual and the annual public reporting of

the activities of EU supervisors in the area of digital reporting. The GLESI do not address the supervision of the digital mark-up of the sustainability statement as they deal with the content of this statement and its compliance with the sustainability information framework.

## V.2 Legislative references, abbreviations and definitions (Questions 2-4)

9. The CP proposed a number of legislative references, abbreviations and definitions on which we requested the feedback of stakeholders.

10. In relation to legislative references, we asked:

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

11. All respondents agreed with the legislative references included. Some suggest additional references:

12. Regarding the legislative reference to the European Sustainability Reporting Standards, one respondent noted that this reference should encompass all Delegated Acts to be adopted under Article 29b and Article 29c of the Accounting Directive (e.g., Listed SME ESRS, sector ESRS) and not only the first set of ESRS.

13. This respondent also pointed at the FAQ published by the European Commission in relation to the Taxonomy Regulation; other FAQ which could be published by the EC in relation to the CSRD or ESRS; implementation guidance and Q&A published by EFRAG on ESRS; as well as reports from the Platform of Sustainable Finance. The respondent suggested that these references should be introduced, with the non-legally binding references being referred to as background to the enforcement of sustainability information. Another respondent suggested an additional reference to the Prospectus Regulation (Regulation (EU) 2017/1129 of 14 June 2017) as the Annual Financial Report, and hence the Sustainability Statement could be included in the Universal Registration Document defined by this regulation.

14. **ESMA's response:** Under Articles 29b and 29c of the Accounting Directive, the European Commission will be issuing additional European Sustainability Reporting Standards in the coming months and years. In consideration of these future standards which will, after their publication in the Official Journal, become an integral part of the ESRS, ESMA has decided to make a targeted amendment to the corresponding legal reference so that the GLESI would refer to the most up to date version of the ESRS: *“European Sustainability Reporting Standards as per Commission Delegated Regulations issued pursuant to Article 29b and Article 29c of the Accounting Directive.”*



15. ESMA welcomes the publication of FAQs by the European Commission in relation to the Taxonomy Regulation and CSRD, as well as of implementation guidance, Q&A and reports by EFRAG and the Platform on Sustainable Finance in their respective roles of advisors to the European Commission, as they constitute helpful guidance for the preparers and contribute to the delivery of high-quality sustainability reporting. These documents, however, cater to the application of the legislative framework whereas the GLESI is meant to be principle-based. They are in addition of diverse legal nature and will evolve in the future. Similar guidance for financial reporting has not been included in the GLEFI.
16. A reference to the Prospectus Regulation was not considered necessary in the legislative references included in the GLESI because, irrespective of whether the sustainability statement is included in a Universal Registration Document, the requirements set out in the Transparency Directive for the preparation of this statement would still apply and therefore enforcers would need to apply the GLESI to supervise them. Similarly, the GLEFI do not include a reference to the Prospectus Regulation even though in the course of the enforcement activities, national competent authorities select for examination financial statements that are included in universal registration documents.
17. In relation to abbreviations, we asked:

*Q3. Should any other abbreviations be added to section 2.2 of the GLESI? If yes, please explain which ones and why.*
18. All three respondents to this question agreed with the proposed list of abbreviations. One respondent suggests adding EFRAG (European Financial Reporting Advisory Group) to the list of acronyms. In addition, another respondent to Question 2 made a similar suggestion.
19. **ESMA's response:** The draft GLESI only included one mention of EFRAG, in relation to the ESRS Delegated Act, prior to its publication in the Official Journal. As the definition of ESRS will be updated in the final GLESI, the mention of EFRAG will disappear from that definition. However, following the feedback from the public consultation, ESMA has decided to add a new reference to EFRAG in Guideline 16 in the context of discussions of possible reporting issues which enforcers consider particularly controversial. Nevertheless and as a consequence, ESMA thinks that there will be no need to include the acronym in the corresponding list. Furthermore, EFRAG's as per its statutes<sup>13</sup> in 2022, the name "EFRAG" is no longer further expressed as "European Financial Reporting Advisory Group".

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<sup>13</sup> Statutes of EFRAG AISBL available at [www.efrag.org](http://www.efrag.org)

20. In relation to definitions, we asked:

*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.*

21. Some respondents suggested including “*double materiality*” to the definitions, with a clear reference to the definition provided in the ESRS (section 3.3 of ESRS 1). One respondent also suggested referencing EFRAG’s Implementation Guidance on materiality in the definition. Another respondent proposed to include “*impact materiality*” and “*financial materiality*” in the list of definitions as well.
22. Six respondents (mainly issuers and auditors) commented on the definition of “*infringement*”:
- a. Most called for a clarification of “*material omission*” and “*material misstatement*”, asking for further explanations in relation to the use of the term “*material*” in this context and, for some, recommending a clarification of how materiality in the context of an enforcer determining the significance of non-compliance relates to the double materiality as defined in the ESRS. Some respondents also pointed in this regard at the use of the term “*immaterial*” in the definition of “*immaterial departure*”. The SMSG also included a similar need for clarification of the definition in its advice.
  - b. Two respondents stressed differences in the definition of “*misstatement*” in the international auditing standards (ISAE 3000(R) and ISSA 5000 ED) and called for better alignment.
  - c. One respondent also suggested better coordination with the terminology used in ESRS 1 (Section 7.5 - “Reporting errors in prior period”; paragraph 48 relating to financial materiality; Appendix B - Qualitative characteristic of information with reference to “Faithful Representation”).
23. A few respondents commented on the definition of “*Sustainability information*” and “*Sustainability information framework*”.
24. All suggested broadening the scope of the framework: one respondent suggested including the Sustainable Finance Disclosure Regulation (SFDR) and potentially, the Corporate Sustainability Due Diligence Directive (CSDDD). Another respondent suggested also explicitly mentioning the frameworks determined as equivalent by the European Commission. The third respondent recommended including the opinion provided by the statutory auditor or independent assurance services provider.

25. In addition, one of the respondents pointed out that “sustainability information framework” should be replaced by “sustainability reporting framework” for better alignment with the Accounting Directive wording (Art 29d).
26. The few respondents commenting on the definitions of the section “Types of examination” recommended inclusion of communications with the assurance provider where communications with the issuer are mentioned. On the use of “enforcement” instead of “supervision” for consistency with the wording used in the GLEFI, one respondent questioned the change by pointing out the lower emphasis on the preventive and knowledge sharing actions of the national authorities that the change could entail.
27. In relation to the section “*Types of selection*” and the definition of “*risk-based selection*”, the EEA suggested clarifying whether risk-based selection covers situations where the enforcer is made aware of a specific greenwashing risk. Alternatively, the EEA suggested adding an “ad-hoc” category. The FRA also made reference in its comment letter to the GLESI provisions regarding grounded complaints, when assessed as credible after preliminary scrutiny, which should lead to a selection for further examination.
28. Another of the FRA's comments related to the right of access to information. In further exchanges, the FRA explained that the GLESI are by themselves supporting the overall objective of transparency on sustainability information and stressed the need for such transparency to cover all areas of sustainability, including social matters.
29. **ESMA's response:** Double materiality is defined in the draft GLESI (in relation to Guideline 13), through a footnote referencing “*the meaning in recital 29 to the preamble of the Corporate Sustainability Reporting Directive*”.
30. For clarity's sake, and to give more prominence to the concept in the context of enforcement of sustainability information, ESMA has decided to include “*double materiality*” in the list of definitions, based on the definition provided in the ESRS Delegated Act. As a consequence, the corresponding footnote in Guideline 13 will be removed. In ESMA's view, including this definition also addresses the comment by the FRA on the scope of sustainability matters as the corresponding definition in the ESRS Glossary (referenced in the definition of “double materiality”) lists environmental, social and human rights and governance factors. ESMA notes that the CSRD does not establish a specific order of relevance of the different sustainability matters that need to be addressed in the sustainability statement. Therefore, ESMA expects that from the supervisory and enforcement perspective, compliance with all requirements of the sustainability information framework, irrespective of whether they address environmental, social or governance-related matters is equally relevant. The application of risk-based supervisory models may result in closer and more frequent scrutiny of disclosures on impacts, risks and opportunities relating to some

sustainability matters compared to others. However, over time ESMA expects that disclosures about all sustainability matters will be made subject to a comparable level of scrutiny depending on the features of the underlying requirements.

31. Regarding the definition of “*infringement*” and of “*material*” in “*material omission or material misstatement*”, Guideline 13 of the draft GLESI clarifies the materiality regime to be applied depending on the part of the sustainability information framework considered and states unambiguously that “*when the sustainability information framework relies on double materiality, this should therefore form the basis for the enforcer’s materiality assessment of any omission or misstatement*”.
32. As for the need for alignment of the terms with the ones used in the international auditing standards, ESMA’s view is that, although alignment has been sought when similar concepts are introduced, other constraints (such as the GLESI being modelled on the GLEFI) are prioritised in some instances. In addition, as recalled in the draft GLESI, par. 34 of the Consultation Paper, there are significant differences in an enforcer’s assessment as compared to the assessment by an auditor or independent assurance services provider (such as differences in scope, objective, timing of examination).
33. The Consultation Paper, in fact, highlighted that “As regards scope, in contrast to assurance, an enforcer’s examination is a priority-based examination in which, based on screening the published sustainability information as well as monitoring the respective issuers and markets, certain topics are selected for further examination. As regards objective, an enforcer’s examination does not result in an opinion where a positive or negative assurance is provided on the sustainability information (this matter is further addressed in draft Guideline 9). Furthermore, the enforcer bases most of its examinations – except pre-clearance for those enforcers who offer that – on information which has already been subject to limited or reasonable assurance and published”. ESMA does not see benefit in aligning the terminology relating to material misstatements and omissions and removing the general category of ‘infringements’ (which is meant to capture both misstatements and omissions to the terminology used in the audit and assurance standards. This is because this alignment would create the misleading expectation that the scope, objective and timing of the respective assessments of assurance providers and supervisors are the same. Neither does ESMA consider that this alignment would be possible from a practical perspective given the absence of consistent EU-wide guidance on the application of the materiality principle in the context of assurance of sustainability reporting, also taking into consideration the pending developments of the international assurance standard ISSA 5000.
34. Rather, ESMA expects that the first years of adoption of the ESRS will provide multiple examples of specific areas in which the application of the ESRS requirements, including in relation to double materiality, will potentially be challenging. Similarly,

assurance providers and supervisors will gradually gain more and more experience with handling these requirements in fulfilling their respective obligations. Regular dialogue between issuers, assurance providers and supervisors will therefore be critical to create a common understanding of the applicable requirements and, in particular, of the materiality assessment. Dialogue with users of the information will also be important to ensure that the materiality conclusions of issuers ultimately match the needs of investors and other relevant stakeholders.

35. ESMA plans to hold discussions about these matters as part of its supervisory convergence work with national authorities. These discussions will also address how misstatements and omissions of ESRS disclosures were assessed and where they were deemed material in line with the notion of materiality set out in the ESRS.
36. ESMA also plans to discuss any controversial issues relating to sustainability reporting, as appropriate, with the European Commission and with EFRAG when this will be necessary to address issues relating to the consistent and correct application of ESRS. In this respect, ESMA has decided to clarify in Guideline 16 that it may engage in discussions not only with the European Commission, as the ultimate standard-setting body for the ESRS, but also with EFRAG in its capacity as the Commission's technical adviser on these matters.
37. These tools – internal dialogue amongst supervisors, dialogue with issuers, assurance providers and stakeholders, engagement with Commission and EFRAG – will be particularly important in the first years of application of ESRS which will constitute an 'adjustment period' for all parties of the sustainability reporting ecosystem.
38. Regarding the proposal to expand the scope of the legal framework to which the GLESI would apply, as explained in par. 29 of the Consultation paper, the legal basis of the guidelines relies on “Firstly, Article 28d of the Transparency Directive which presents ESMA’s mandate to issue the GLESI and covers sustainability reporting (i.e., reporting of information related to sustainability matters in accordance with Articles 19a, 29a and 29d of the Accounting Directive). Secondly, Article 16 of the ESMA Regulation which ESMA has applied to ensure that the GLESI also cover enforcement of disclosures under Article 8 of the Taxonomy Regulation (information on how and to what extent an undertaking’s activities are associated with environmentally sustainable economic activities).” It is thus not relevant to further broaden the scope of the framework as suggested by some respondents.
39. Regarding the terminology used, “Sustainability information framework” is defined to encompass both Articles 19a, 29a and 29d of the Accounting Directive, along with the ESRS (including the datapoints that are necessary to meet specific obligations of other EU legislation, such as SFDR) and Article 8 of the Taxonomy Regulation, along with the Disclosures Delegated Act. ESMA’s view is that “sustainability reporting framework” would have a narrower meaning, as only referring to the reporting of information related

to sustainability matters in accordance with Articles 19a, 29a and 29d of the Accounting Directive.

40. Regarding the suggestion to include interaction with the auditor, when there is a mention of interaction with the issuer in the definitions of the different types of examination, ESMA considers the point of the communication between enforcers, issuers and auditors / independent assurance services providers in relation to the relevant consultation questions. In the corresponding definitions, ESMA's view is that only key features of the different types of examinations should be mentioned. This approach also ensures alignment with the definitions in the GLEFI, as departure from them does not seem warranted in this particular case.
41. As for the use of the term "enforcement" instead of "supervision" (as referred to in Article 28d of the Transparency Directive), the definition of "enforcement" provided in the draft GLESI clarifies the link between the two terms. Using consistently the same term also brings clarity and should be seen as a clear signal of the intention to "ensure that enforcement of sustainability information is consistent with enforcement of financial information and as such to contribute to bringing sustainability information on a par with financial information" as stressed in par. 7 of the draft GLESI.
42. Regarding the opportunity to introduce an "ad hoc" type of selection, in addition to "risk-based" selection as suggested by EEA, ESMA's view is that the criteria proposed for such ad-hoc category would fit those referenced in the definition of risk-based selection and that, as a consequence, an additional category and corresponding definition is not necessary. The point is further discussed in relation to Question 11 of the Consultation.
43. In addition, in relation to comments made in relation to Question 5 of the Consultation, regarding the mention of greenwashing, and the need for a clear definition of the concept, ESMA stresses that a common definition has been adopted by the ESAs and is reproduced in footnote 21 of the CP. ESMA has decided to include it in the list of definitions, for clarity and consistency in the way important concepts are defined in the GLESI.

### **V.3 Purpose (Question 5)**

44. The CP set out a proposed purpose for the GLESI and requested input of stakeholders on it. We asked:

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

45. Two respondents referred to the learning curve that issuers will follow in sustainability reporting as mentioned in the Consultation paper (paragraph 2.3). One of them recommended explicitly acknowledging this evolution in the purpose section of the GLESI and explaining how enforcers will accompany and adapt to this journey. This



respondent was of the view that a too strict level of enforcement in the early years leading to a high number of enforcement actions would be unhelpful and undermine the trust of users in sustainability reporting. It was therefore suggested to initially focus on the most material misstatements and omissions as identified through engagement with all stakeholders in the sustainability reporting sphere (enforcers, preparers, users, assurance providers).

46. Two respondents also commented on the objective to ensure that the enforcement of sustainability information closely resembles the enforcement of financial information. One of them noted that, in its experience, sustainability reporting under ESRS and, in particular, materiality assessment, are more judgemental than financial reporting (especially in the early years, before common practice emerges) and stressed inherent differences. Another respondent pointed out crucial differences between financial and sustainability reporting in terms of type of information, time horizon, users and purpose. This respondent suggested that the purpose section of the GLESI should explicitly acknowledge these inherent differences and further explain how the ambition to bring the two frameworks as close as possible is implemented, including by detailing which of the principles of the GLEFI find application in the GLESI.
47. Five respondents commented on the mention of greenwashing in the proposed purpose of the GLESI.
48. One respondent considered the reference as inappropriate and recommended adopting a language less prone to interpretation at this stage of maturity on sustainability reporting. Another respondent suggested rephrasing the last sentence of the purpose section to clarify that the enforcement is limited to compliance with the ESRS and Taxonomy Regulation (with greenwashing considered in that context only). On the contrary, another respondent felt that the reference is too narrow in pointing at infringements only (i.e., material misstatements or omissions) and not covering other potential cases of greenwashing.
49. Three respondents agreed with mentioning greenwashing but called for further clarification to ensure consistent application. They stressed that the term is still lacking the necessary harmonised definition and common understanding (with two respondents pointing to the current work undertaken by the ESAs in this regard).
50. While agreeing with the proposed purpose of the GLESI, two respondents suggested some additions:
  - a. One respondent recommended adding the overarching objective of assisting meaningful sustainability disclosures across EU Member States for the benefit of investors but also of other stakeholders (including consumers, policy makers and civil society actors) enabling them to evaluate companies'

performance as it relates to the sustainability objectives set by the European Union.

- b. The other respondent suggested adding to this section the potential use of the GLESI as guidance for entities involved in non-mandatory supervision of sustainability information (as mentioned in section 3.1 of the Consultation paper).

51. **ESMA's response:** The Consultation Paper recalls in its par. 5 that the objective of having GLESI closely resembling GLEFI stems from the CSRD objective “*to make the status of sustainability information comparable to that of financial information (CSRD Recital 37).*”
52. As mentioned in par. 8 of the CP, however, “while having modelled the GLESI on the GLEFI, ESMA is mindful that the requirements of the sustainability information framework are newer than the requirements of the financial reporting framework, and there may be a learning curve for all parties in the first years of reporting.”
53. ESMA notes that the acknowledgement of the existence of a learning curve in the CP implies that there will be an adjustment period to reach a common understanding of the new requirements in the first years of implementation. To accompany this process, ESMA's view is that the application of the GLESI will need to be proportionate and realistic vis-à-vis this initial phase.
54. ESMA notes that the role of supervisors will be critical in supporting the uptake of the new requirements by highlighting areas where issuers are expected to improve their reporting. This supportive role will not necessarily entail the application of enforcement actions. As the first years of application of the NFRD showed, NCAs' action rate has gradually increased between 2018 and 2023 as reported by ESMA in its annual publication on the activity of corporate reporting enforcers.
55. Under the GLESI, enforcers will still be able to apply a combination of proper enforcement actions, when deemed necessary, and other measures, such as engaging in interaction with the issuers and possibly its assurance providers to signal to issuers areas of possible improvement on individual cases, as well as engaging in broader dialogue with industry associations on issues of more general applicability. This supporting approach in the first years should be perceived as a tool to improve reporting quality, allow the necessary data collection and analysis processes to be fine-tuned, while fostering a culture of compliance. At the same time, in this initial period, NCAs would still be able to take prompt enforcement actions when they identify practices that are clear examples of non-compliance. With regards to the distinction between the GLESI and the GLEFI, ESMA notes that par. 9 to 12. of the CP provide detailed explanations on the drafting approach of the GLESI and on how the GLEFI were adapted to reflect the specificities of sustainability information. ESMA's view is



that more considerations on how financial and sustainability information differ would not bring additional value to the GLESI. These considerations are part of the discussions that will take place on the implementation of GLESI.

56. ESMA's view is also that the principles-based approach underlying the GLESI allows for the flexibility and ability to adapt the guidelines in the first years of their application as called for by several respondents. ESMA therefore does not think that the GLESI should include specific wording to this effect, as the GLESI are meant to set out principles whose practical application will be reflective of the level of development of the sustainability reporting ecosystem, which cannot be codified or anticipated into the guidelines themselves.
57. Furthermore, ESMA notes that sustained dialogue (among NCAs in the SRWG and with issuers, auditors / independent assurance services providers and other stakeholders at both national and European level) will be the adequate way forward. An alternative route lowering the ambition for the enforcement in the first years would risk creating confusion on the ultimate goal to be achieved and/or would entail a need for regular updates that could be detrimental to consistent application.
58. The ESAs have been working on greenwashing for the past months, in response to a European Commission "*request for input on greenwashing risks and the supervision of sustainable finance policies*" (with final reports published in Q2 2024<sup>14</sup>). A common definition of greenwashing was issued as part of the Progress reports, to which the draft GLESI makes reference (in footnote 21 of the CP) and which ESMA has decided to include in the definitions section of the GLESI (see Question 4).
59. Regarding the other comments on par. 7 of the draft GLESI ("The guidelines also assist enforcers in discovering potential infringements within issuers' sustainability information, for example in relation to greenwashing."), ESMA's view is that as far as the sustainability information covered by the GLESI is concerned, enforcement will play a key role in fighting greenwashing through relying on inherent features of the ESRS, such as the qualitative characteristics of sustainability information to be reported (including relevance and faithful representation) in ESRS 1, or the consistency between the different disclosures embedded in the ESRS structure.
60. This does not mean, however, a change in the basis for enforcement, which is clearly established in the legislative references (part 2 of the GLESI).
61. Regarding the suggested complements to the purpose section, ESMA considers that the purpose of the GLESI needs to reflect the legislative requirements attached to the enforcement of sustainability information and does not see merit in departing from the

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<sup>14</sup> [ESMA36-287652198-2699](#) - Final Report on Greenwashing. See also the [Press Release](#) on the publication of the ESMA Final Report on Greenwashing containing links to the Final Report of both EBA and EIOPA.

GLEFI model in that area. As indicated in ESMA's feedback to the responses to Question 1 on the scope of the GLESI, the mandate envisaged in the CSRD for ESMA to develop guidelines addressing the supervision of sustainability information is only limited to listed undertakings and, therefore, ESMA neither prevents nor encourages the use of the GLESI as a model for supervision of non-listed undertakings.

62. In consideration, however, of the specificity of sustainability reporting, with the CSRD applying on a broader scope than covered by the GLESI, ESMA has amended the purpose section to include a reference to such broader scope of the sustainability reporting requirements.
63. This will also address a comment on the broader scope of CSRD as compared to the GLESI's in Consultation Question 1.

#### **V.4 Compliance and reporting obligations (Question 6)**

64. The CP proposed compliance requirements for competent authorities and related reporting obligations and requested stakeholders' feedback on them. We asked:

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

65. Three respondents answered to this question and agreed with no comment.
66. In addition, the SMSG recommended in its advice that, in light of the draft GLESI requirement to have enforcers prepare their first compliance notifications to ESMA on an ex-ante basis before having full experience with enforcing the new requirements, ESMA should have sustained dialogue with the NCAs within the SRWG on experience sharing.
67. **ESMA's response:** ESMA takes good note of the SMSG comments and is preparing for such dialogue with the SRWG members.
68. ESMA is aware that it may be possible that, due to various constraints, some NCAs may not be able to fully comply with the GLESI from the first reporting cycle. This may be the case due to resource constraints (e.g. in connection with Guideline 2), legal impediments at national level, or both.
69. Temporary non-compliance with the GLESI does not mean that NCAs do not fulfil their supervisory obligations at national level or that they will not be able to contribute to ESMA's work, as well as benefit from the European coordination activities that ESMA puts in place.
70. ESMA will continue to engage with all NCAs to support them in the application of the GLESI and particularly those which will not be able to declare compliance with the guidelines since the first CSRD reporting cycle.

## V.5 Basic concepts (Question 7)

71. The CP set out a proposed notion for the objective of enforcement of sustainability information and requested stakeholders' feedback on it. We asked:

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

72. Out of the 10 respondents who addressed this question, 4 explicitly supported the proposal in the CP, 6 respondents – generally audit and issuers' representatives – indicated that further clarifications were needed in relation to the proposed objective of enforcement.

73. Several respondents highlighted the need for further clarity on the notion of "consistent application of the sustainability information framework". In these respondents' view, this wording would be open to ambiguity and contradict the fact that different interpretations of the sustainability reporting provisions, especially in the first years of application, may exist and that therefore this objective would be not achievable in practice. Amongst these respondents, one specifically called on ESMA to acknowledge that sustainability reporting will evolve over time.

74. Amongst these respondents, some argued that, while the notion of "consistent application" is aligned with the GLEFI, the approach to materiality in the ESRS is different than the approach in the IFRS and that, therefore, the alignment between the two set of guidelines should take account of the differences in the respective frameworks.

75. Some representatives of the audit profession, in particular, have indicated that, in the past, the lack of clarity on the notion of consistency in application in the context of the application of the GLEFI has led to confusion on the notion of materiality adopted by auditors compared to the notion of 'material departures' as assessed by securities regulators. In these respondents' views, this situation would have led to confusion in the market. In this respect, some noted that the distinction between the work of the enforcers and the work of auditors and external assurance providers should be further clarified in the GLESI.

76. Several respondents also noted that the reference in the proposed GLESI to the fact that an enforcer would choose certain topics for further examination, would benefit from additional clarification as to how this selection of topics would take into account the double materiality principles and, in particular, the notion of impact materiality. One respondent specifically supported that ESMA continues setting its enforcement priorities with reference to the ESRS, in line with the past practice under the IFRS and NFRD.

77. One respondent in particular suggested that the text of draft Guideline 1 would benefit from further clarification on the fact that consistency in supervision also depends on the common understanding of the sustainability information framework and not only on the common understanding of the guidelines per se.
78. Some of the respondents suggested that amongst the tools that could foster compliance with applicable requirements, the guidelines should also list the dialogue between securities regulators and issuers and auditors / independent assurance services providers.
79. The MSG, while not addressing any of the consultation questions specifically, provided comments on the notion of ESMA's proposed enforcement objective and supported the approach to align enforcement of financial and sustainability information as much as possible.
80. The EEA provided a specific comment to this question supporting the proposed Guideline 1. This comment also suggested that a reference to reliability of information is potentially added to the proposed text alongside the notion of comparability of information and that ESMA also considers specifying the importance of taking timely corrective action vis-à-vis erroneous sustainability information disclosed by issuers.
81. **ESMA's response:** Draft Guideline 1 builds on one of ESMA's tasks as set out in Article 8 of its founding Regulation to 'contribute to the consistent application of legally binding Union acts, in particular by contributing to a common supervisory culture, ensuring consistent, efficient and effective application' of relevant EU capital markets' legislation.
82. In principle, the objective of enforcement of the sustainability information framework is not any different from the enforcement of other areas of EU legislation in which ESMA acts to promote supervisory convergence. However, differences in the underlying legal frameworks based on which enforcement takes place are and should be taken into account in the practical implementation of the enforcement work. This work typically reflects the conditions that exist at the time of enforcement, including features such as the novelty of the applicable regime or the experience with its application by the various stakeholders affected by it.
83. In re-stating the importance of bringing financial and sustainability reporting to a similar level of maturity, the proposed GLESI take account of the objectives of the CSRD, but they do not set an expectation in terms of timing when market participants are expected to have the same level of experience and ability with applying the sustainability information framework, as they have with the financial reporting framework.
84. Nor does ESMA expect that consistent application of the sustainability information framework will go beyond mere uniformity of application by taking into account that differences in application may exist, when reflecting differences in underlying fact

patterns. As set out in paragraph 14 of the proposed GLESI: "if facts and circumstances are similar, the disclosures will be similar to the extent required by the sustainability information framework". This principle will find concrete application in practice through discussions amongst practitioners, auditors, standard-setters, users of the information, as well as securities regulators. The experience with the application of the GLEFI shows that over the years, the level of sophistication of the areas on which objective uncertainty exists in the application of the corporate reporting requirements evolves as do the experience and knowledge of all parties involved in the ecosystem.

85. ESMA also highlights that, while acknowledging the differences between the stage of development in the practice between the respective frameworks, the experience that enforcers have gained with the supervision of financial reporting will be helpful also to address the tension that in sustainability reporting may emerge between relevance of the information – including materiality assessments for individual sectors – and the need for comparability across sectors.
86. Therefore, it is natural that in the first years more debates are likely to take place also due to the novelty of the double materiality principle as applied on a much broader scale than under the NFRD. As acknowledged already in par. 8 of the CP: '*While having modelled the GLESI on the GLEFI, ESMA is mindful that the requirements of the sustainability information framework are newer than the requirements of the financial reporting framework, and there may be a learning curve for all parties in the first years of reporting. ESMA acknowledges that this may particularly be the case for those issuers preparing sustainability information for the very first time and that enforcers may play a role in accompanying issuers in the implementation process*'.
87. While acknowledging this fact, ESMA does not consider it appropriate to introduce concepts directly in the GLESI which may quickly and unnecessarily make the provisions in these guidelines outdated. Rather, ESMA aims at making the GLESI as principles-based as possible, in order to remain flexible to respond to changing conditions.
88. These expectations and acknowledgment do not contradict the fact that enforcement should continue to aim to build consistency in the way the sustainability information framework is applied and supervised.
89. In this respect, ESMA notes that the suggestion from some respondents to give more emphasis to the dialogue between supervisors and issuers and possibly auditors / independent assurance services providers is in line with the efforts to achieve consistent application of the sustainability information framework. Therefore, in finalising the GLESI, ESMA has decided to make targeted amendments respectively to draft paragraphs 15 and 19 of the GLESI to reflect the importance of reaching a common understanding amongst supervisors about the requirements of the sustainability information framework and the importance of dialogue between

supervisors and issuers, as well as auditors / independent assurance services providers and users of information.

90. ESMA has also considered whether it could more specifically draw a line between the work of auditors / independent assurance services providers and the work of enforcers. ESMA notes that the co-legislators have intended to create a system whereby the public disclosures of issuers are subject to at least three levels of scrutiny: internal governance, external assurance and supervision. These three levels are independent from one another and they have specific responsibilities which are set out in the respective EU provisions. Each of those levels look at the public disclosures from a different perspective and this can explain why there is divergence in the respective assessments, including on what constitutes an infringement (in supervisory terms) or a misstatement (in audit terms). Particularly, let alone the type of assessment required by EU law, divergence in the conclusions on the existence of any infringements in an issuers' sustainability statement between auditors / independent assurance services providers and supervisors may depend on three main sources of differences in the perspective: the visibility on the process to prepare the sustainability statement, the timing of the scrutiny and the information available to conduct the assessment.
91. ESMA considers that the continued dialogue at technical level amongst all relevant parties involved is the best tool to address possible divergence in views across the different interested parties in the sustainability reporting chain, knowing that ultimately supervisors will need to draw their conclusions in full independence and autonomy from any vested interests.
92. Lastly, regarding the assessment by supervisors of topics for further examination following a preliminary multi-dimensional screening of issuers (through the "selection" procedures as per draft Guidelines 5-7), the extent of the topics analysed during an examination will depend on the type of examination conducted as per draft guidelines 8 and 9 (i.e. desktop or focused) and will take account of the priority areas established at EU level through the European Common Enforcement Priorities as well as national specific priorities and other considerations on the relevance of specific areas of reporting that may require specific scrutiny. In any case, given that the sustainability information framework will cover both financial and impact materiality as well as the qualitative characteristics such as reliability of the information, the scrutiny of supervisors will cover also those and many other aspects of the reporting. Therefore, in finalising the GLESI, ESMA has not specified those aspects.
93. The draft GLESI, in the proposed paragraphs 7 in the section on "Purpose" already indicate that 'The guidelines also assist enforcers in discovering potential infringements within issuers' sustainability information, for example in relation to greenwashing'. ESMA notes that by aiming at enforcing the applicable sustainability information framework, the GLESI will also look to help prevent and address cases of misinformation stemming from sustainability statements.



## V.6 Enforcers' internal organisation (Questions 8-10)

94. The CP proposed three guidelines addressing Enforcers' internal organisation and in particular the requirements to: (i) ensure effective enforcement (Guideline 2), (ii) enforce sustainability information prepared under third-country standards (Guideline 3), and (iii) ensure independence in the enforcement work.

95. In relation to the proposals to ensure effective enforcement (Guideline 2), we asked:

*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.*

96. Out of 6 respondents addressing this question, 4 explicitly supported it with 2 respondents either not expressing a view or requiring specific amendments in the absence of which the GLESI would remain problematic in their view.

97. Generally, respondents suggested to acknowledge in the GLESI that there is a learning curve issue for supervisors as well as a shortage of skilled resources which may require a specific acknowledgement in the guidelines. One respondent suggested indicating that expertise and resources take account of the date of initial application of the requirements. Another respondent noted that it would be important to avoid the risk that due to resource constraints the enforcement process will be rushed or of limited quality. This respondent suggested that enforcement should be gradual in the application of actions and in the time available to issuers to implement any recommended corrections.

98. As possible measures to address resource shortage issues, respondents emphasised the importance of continued training by supervisors, the reliance on collaboration amongst authorities and ESMA and on the dialogue with issuers and auditors, including communication with administrative and supervisory bodies of issuers affected by supervisory actions and the development of skills not only on the sustainability information framework per se, but also on the underlying sustainability matters.

99. The MSG, while not addressing any of the consultation questions specifically, acknowledged that enforcers will have to prepare their GLESI compliance notifications to ESMA for 2025 on an ex-ante basis, before they have full experience with applying and enforcing the new requirements. Therefore, the MSG recommended that ESMA has a continuous dialogue with NCAs in the SRWG to share experiences and approaches in this regard. The MSG also advised that enforcement of ESRS should be proportionate, taking into account the complexity of the ESRS, the significant time pressure to implement them, the uncertainties on the applicable assurance standards and the fact that, particularly for financial institutions, sustainability reporting will depend on metrics from other issuers.

100. The EEA particularly stressed the importance of ensuring the appropriate expertise and sustainability literacy of supervisors and to consider including a specific reference to the skills and training requirements of entities to which supervisory tasks are delegated.
101. **ESMA's response:** ESMA notes that, as already indicated in relation to Question 7 on the "Objective of Enforcement", the principles in the GLESI are meant to be sufficiently specific to be applied in practice, but still sufficiently general to be applicable to a variety of stages of maturity of the sustainability information framework and its application. This explains why, while acknowledging the fact that there is a learning curve for all parties involved in the application of the framework, ESMA did not propose to introduce provisions which would be reflective of a specific temporary condition in relation to the application of the new requirements.
102. ESMA also notes that the ESRS build on general requirements set out in the NFRD (including on the concept of double materiality<sup>15</sup>) that have been in place since 2014 for first application in 2018. At the same time, the ESRS constitute a set of standards whose structure, level of granularity and coverage of sustainability matters is new. The sustainability information framework also includes the taxonomy reporting provisions which have been in place for three reporting periods, but which were recently updated to reflect new activities and additional environmental objectives. These requirements are complemented by a copious literature of Commission FAQs.
103. While acknowledging the complexity and the novelty of the sustainability information framework, ESMA does not consider it is necessary to amend the principles regarding the experience and training of supervisors, but that, in the application of the GLESI requirements there will be a reflection of the status of current knowledge and expertise with sustainability matters and sustainability reporting requirements. For example, supervisors will continue to leverage on the already existent expertise for the enforcement of the NFRD and taxonomy which will need to be duly enhanced while looking to gradually expand the capacity of their existing teams in response to the increasing supervised population.
104. ESMA also notes that the transitional provisions in the ESRS will generally create a gradual demand for expertise also on the side of supervisors which will give additional preparation time to national authorities and ESMA. The gradual entry into application of the requirements, first for larger issuers already subject to NFRD, then for other large issuers and finally for listed SMEs, generally creates possibility to adjust supervisors' resources to the size of the supervised population.

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<sup>15</sup> As clarified in the European Commission's Guidelines on non-financial reporting as complemented by the Communication from the Commission C/2019/4490. However, Recital 29 of the CSRD indicates that "The fitness check on corporate reporting shows that those two perspectives are often not well understood or applied."



105. As already indicated in response to Question 7, the interaction with the issuers and auditors / independent assurance services providers as well as with the community of various users of the reporting, will also constitute an important source of continuous training for ESMA and the national authorities.
106. At this stage, ESMA has already put in place a comprehensive internal training programme for ESMA staff and national supervisors on the ESRS, leveraging on the expertise of several EU agencies and institutions, as well as the EFRAG Secretariat. Furthermore, ESMA regularly holds meetings of its SRWG during which discussions on application questions and cases take place and internal workshops on the application of the GLESI will be held shortly after the finalisation of these guidelines.
107. ESMA does not think that the approach to enforcement should be determined based on the resources available, but rather that the type of enforcement should be chosen to be the most effective to promote consistent application of the sustainability information framework at a given point in time of its maturity journey. The resources of supervisors in terms of skills, experience and manpower should reflect this objective.
108. Therefore, it can be expected that, for example, while there will be no 'experienced' supervisors on the ESRS per se given their novelty, there will be supervisors with other experience on pre-existing frameworks which will leverage on this experience to complement their skills both through theoretical and on-the-job training. This will naturally imply that, as knowledge will build up on the new requirements, supervisors will acknowledge that for an initial period both issuers and supervisors are on an education journey, while still being ready to take action if necessary. Acknowledging this learning curve does not relieve issuers from the responsibility to ensure compliance with ESRS.
109. As experience in the application of the new requirements evolves, so will the expectations of supervisors increase, in terms of the quality of the disclosures as well as the level of refinement of the compliance assessment that supervisors will be able to undertake.
110. With regards to the suggestion to strengthen the reference to training and expertise, ESMA proposes to include in the explanatory text accompanying Guideline 2 that enforcers should offer training activities at regular intervals on the sustainability information framework and the underlying sustainability matters to ensure an adequate level of competence of their staff to undertake their supervisory responsibilities. Enforcers should also establish the conditions to ensure the continuous training and adequate expertise of the entities to which they have delegated supervisory tasks, as per Article 24 of the Transparency Directive.
111. Finally, one respondent suggested that the GLESI include provisions on how to review the application of the guideline on resources across different NCAs. ESMA notes that

the founding Regulation of ESMA requires it to regularly assess convergence of supervisory functioning, including through peer reviews, including on resource aspects, and therefore there is no need to address this aspect specifically in the GLESI. On an annual basis, national authorities declare their compliance, non-compliance or intention to comply with the ESMA guidelines. This assessment is performed by the respective authorities and it is a point-in-time assessment which implies that adjustments to internal processes and resources are possible year after year, especially in response to increasing supervisory experience and changing market conditions, requiring ad hoc adjustment to ensure the supervisory approach remains fit-for-purpose. ESMA notes that in 2017 a peer-review exercise was run in collaboration with national authorities on the application of Guidelines 2, 5 and 6 of the GLEFI<sup>16</sup>. In the future, ESMA will conduct similar exercises on the GLESI, as appropriate.

112. In relation to the proposals on the enforcement of third-country standards (Guideline 3), we asked:

*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.*

113. Respondents generally agreed with the proposed Guideline 3 addressing the sustainability information prepared under equivalent third country sustainability reporting requirements.

114. One respondent highlighted the importance of including in the scope of the GLESI those small and medium size issuers which will make use of the exemption from the preparation of their individual sustainability statements given that the group they belong to will prepare a consolidated sustainability statement based on ESRS or any future equivalent standard for third-country issuers.

115. Another respondent highlighted the importance of ensuring that conflict-of-interest provisions apply to ESMA staff when requested to support NCAs in the supervision of third-country issuers.

116. **ESMA's response:** ESMA notes that the legitimate use of the exemption from preparing a sustainability statement under the conditions set out in the CSRD does not expand the scope of the supervision of national authorities to the consolidated reporting of a non-listed parent. However, the use of the exemption does not prevent national authorities from requesting information from the issuers that have benefitted from this exemption to explain the use of this exemption and whether they have fulfilled all the relevant eligibility conditions, including whether the consolidated sustainability report of

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<sup>16</sup> [ESMA42-111-4138](#) - Peer Review in Guidelines on Enforcement of Financial Information – 18 July 2017

the parent undertaking has been drawn up in accordance with Article 29a of the Accounting Directive. The GLESI will therefore also apply to those situations.

117. Regarding the conflict-of-interest policy, ESMA notes that the GLESI do not need to specifically cross-refer to the existing ESMA Policy on Conflict of interests and ethics<sup>1</sup> which applies in all circumstances in which a member of ESMA staff is carrying out the tasks conferred upon him/her by ESMA.

118. In relation to the proposals on independence (Guideline 4), we asked:

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

119. Respondents generally agreed with the proposed Guideline 4 in relation to the independence of enforcers. One respondent suggested to expand the provision to include also the processes to nominate the leadership of the competent authorities and to envisage procedures for managing conflicts of interest. Another respondent suggested that the GLESI envisage mechanisms to involve users of the information in the enforcement process. Finally, one respondent suggested that the enforcement process applies the principles of adversarial proceedings and “equality of arms”.

120. **ESMA’s response:** In general terms, the provisions on conflict of interest and independence are set out in national legislation establishing the authorities responsible for the enforcement of sustainability information. As a result, ESMA's intervention in these areas is targeted at addressing key issues.

121. ESMA notes that the GLESI address a specific sectorial matter, i.e. the enforcement of sustainability information. Hence, they cannot generally provide indications of broader reach on the organisation of national authorities. An exception to this principle is the inclusion in the GLESI of a basic principle of independence of enforcers and their decision-making bodies from national governments with the specific provision that it should not be possible to change the composition of the board or other decision-making bodies of the enforcer through government intervention before the end of the period for which its members have been appointed, unless exceptional circumstances apply. ESMA notes that national legislation may determine how the members of the board or other decision-making body are to be protected from undue government intervention. ESMA highlights that the Joint European Supervisory Authorities’ criteria on the independence of supervisory authorities include general requirements on the set up and internal organisation and resources of national competent authorities, including on the appointment of governing bodies of the authorities<sup>17</sup>.

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<sup>17</sup> [JC 2023 17](#), Joint European Supervisory Authorities’ criteria on the independence of supervisory authorities, 25 October 2023

122. ESMA also considered the possibility of including a reference to the management of conflicts of interest alongside the existing provision on the avoidance of conflicts of interest. However, ESMA concluded that the emergence of conflicts of interests should be avoided in the first place and that by referring to the management of such conflicts some may perceive it as an implicit form of acceptance by ESMA of the emergence of such conflicts.
123. Regarding the suggestion to involve users in the examination process, ESMA notes that a proposal to add a reference to dialogue with issuers, auditors / independent assurance services providers and users of information was included under the proposed Guideline 1.
124. Finally, ESMA notes that the enforcement proceedings are regulated by national law and that the general principles of adversarial proceedings and equality of arms would generally apply under national legislation. Therefore, it would be inappropriate for the GLESI to intervene on such matters. However, ESMA highlights that the GLESI promote the interaction between enforcers and issuers as they envisage that the primary procedure used for the enforcement of sustainability information is the interactive examination.

## V.7 Selection (Questions 11-13)

125. The CP proposed three guidelines addressing the approach to the selection of issuers for the purpose of enforcement. These proposals focused on: (i) a mixed selection model (Guideline 5), (ii) the timing of the selection (Guideline 6), and (iii) the selection universe (Guideline 7).
126. In relation to the proposals on a mixed selection model (Guideline 5), we asked:
- Q11. Do you agree with the draft Guideline 5 on the mixed selection model? If not, please explain why and provide suggestions for amendments.*
127. Six out of 10 respondents generally agreed with the proposed approach to the proposed Guideline 5 on the mixed selection approach. These respondents provided targeted suggestions to improve the readability of the draft GLESI, for example, with regards to the definition of the period over which all issuers in a given jurisdiction need to be selected for examination and with respect to the distinction between grounded complaints and indications stemming from auditors / independent assurance services providers.
128. Amongst these respondents, one specifically supported the need to preserve the ability of national authorities to apply an integrated supervisory model which may result in the selection of the same issuer for the examination of both financial and sustainability information.

129. Two respondents recommended to clarify that the risk-based selection adequately captures cases of infringements relating to impact materiality aspects of sustainability reporting under the CSRD. In these respondents' view, the risks stemming from sustainability factors should be more clearly spelled out as part of the risk-based model and the potential impact of an infringement on the ability of 'other users' to consider the sustainability information should also be considered.
130. One respondent suggested, in particular, that additional indications of risks should be included in the GLESI, such as (i) information about corporate misconduct and handling thereof, (ii) in relation to alleged involvement in human rights, abuses or environmental degradation incidents, as well as other factors such as (iii) the severity of issuer's potential or actual impacts on sustainability matters, (iv) affiliation to high-risk sectors, operations in high-risk countries or conflict territories as well as (v) information stemming from credible third-party reports about negative sustainability impacts.
131. The other respondents, while not explicitly disagreeing with the proposals, indicated specific concerns and suggested possible ways to address them. Amongst these respondents, one indicated that it is important that, in reporting on the findings of the supervisory activities on the samples of issuers examined at national level, it is made clear that these findings are not necessarily representative of the entire supervised population in a given jurisdiction.
132. Another respondent noted that the notion of 'probability of infringement' and 'grounded complaints' or references to management's ethical conduct and willingness to apply the requirements may be prone to subjectivity and would therefore benefit from additional clarification. This respondent also suggested that risk-based selection should mainly focus on the economic sectors and exposures to sustainability-related risks, that the observations from auditors / independent assurance services providers may not be relevant due to the lack of harmonised European standards for assurance on sustainability information and that the GLESI should recommend the publication by national authorities of their selection methodologies.
133. Another respondent indicated that the notion of "infringement" in relation to possible indications of risk stemming from assurance reports or other sources relating to the assurance profession, would not be consistent with the notion of misstatements commonly used by auditors. This respondent also noted that it is not clear what other sources than the assurance report could be used as sources of information on risk factors, given that only the assurance report formalises the conclusions of auditors and independent assurance services providers. This respondent reiterated the importance of dialogue between issuers, auditors and supervisors and suggested that the GLESI indicate the type of information to be exchanged and the means of communication.
134. The MSG supported the proposed approach set out in the draft Guideline 5 and suggested that the notion of risk-based model be better aligned with the CSRD notion

of double-materiality and that impact materiality, in particular, should be properly incorporated into the mixed selection model, for example by taking into account whether issuers belong to high-impact sectors. The SMSG also questioned the notion of "management's ethical standards" which is included in the draft Guideline 5.

135. The EEA and FRA suggested that it be clarified that the risk-based model adequately captures complaints, or other reliable information from third parties in relation to greenwashing.

136. **ESMA's response:** ESMA notes that the GLESI – similar to the GLEFI – build on a mixed selection model to ensure that through different means (i.e. risk, rotation and random selection) there is an effective deterrent to address non-compliance with the applicable requirements. To be effective as deterrent and remain flexible vis-à-vis a changing environment, the level of detail as to how the selection of issuers takes place and the specific risk factors and methodologies adopted are set out at the level of the principles that shall inform the supervisory models.

137. This principles-based approach is also necessary to give supervisors sufficient flexibility to adapt to specific facts and circumstances that occur at different stages of the economic cycle. Therefore, ESMA does not think that the GLESI should provide additional details as to how supervisors define the timeframe over which the entire supervised population has to be selected for examination, the specific details of the supervisory methodologies and the list of all risk factors that are taken into account. Convergence on more detailed aspects of how the principles in the GLESI are to be applied is achieved through discussions amongst NCAs and ESMA as part of the ongoing convergence work of ESMA's Sustainability Reporting Working Group (SRWG). This flexibility is necessary to enable the GLESI to remain relevant over time.

138. Nevertheless, ESMA considers that it is important to clarify that indications of risk of infringement are not limited to aspects relating to 'financial materiality', but they also relate to 'impact materiality' as infringements are defined vis-à-vis the applicable sustainability information framework which includes the requirement to provide information on sustainability-related impacts, risks and opportunities. The draft Guideline 13 clarifies that double materiality applies to define material misstatements or omissions when the sustainability information framework envisages a double materiality principle (i.e. for ESRS, but not for the reporting requirements pursuant to the Taxonomy Regulation).

139. In assessing the probability of infringement, enforcers consider, amongst various risk factors, country-specific and industry-specific factors when it comes to sustainability matters including human-rights, anti-corruption, fraud and social aspects. These are aspects that pertain to an issuer's specific situation which, as already indicated in draft paragraph 35 of Guideline 5: 'Risk-based selection takes account of the issuer's specific situation and characteristics'.



140. Regarding the notion of management's ethical standards, ESMA notes that this is a general reference to various possible indications of management behaviour, for example public information about breaches of laws or company's ethics codes, that may suggest to enforcers the possibility of an increased risk of occurrence of instances of non-compliance with the sustainability information framework. ESMA also emphasises that risk-based selection models combine different risk factors and do not solely focus on one aspect of an issuer's risk profile.
141. ESMA also notes that the reference in draft paragraph 37 of the GLESI to the 'impact of an infringement on the financial markets', is not intended to imply that issuers with a high probability of infringements on their sustainability reporting in relation, for example, to impact reporting will not be selected for examination. Rather this reference is meant to ensure that the risk-based model results in a prioritisation of resources that ensures that enforcers address risks of infringements (irrespective of whether the infringement relates to financial materiality, impact materiality or both) which pose a threat to the objectives that financial markets authorities have a primary mandate to preserve, such as financial stability and investor protection.
142. Furthermore, when grounded complaints are identified by supervisors in relation to specific sustainability-related issues, authorities would generally include these issuers automatically in the risk-based selection. With respect to the definition of grounded complaints, ESMA notes that supervisors assess the reliability of the complaints. This generally includes, but is not limited to, complaints raised through whistleblowing mechanisms of public authorities as well as formal court cases. It is important that supervisors take any complaints seriously, but that they exercise their professional judgement to assess cautiously and diligently the reliability of such complaints on a case-by-case basis.
143. Notwithstanding the above-mentioned aspects, in response to respondents' input as well as feedback from the SMSG, ESMA amended the text accompanying Guideline 5 to further specify that in assessing the risk of infringement, amongst other factors, enforcers shall take into account, as appropriate, sustainability related matters set out in the sustainability information framework and the materiality approach identified in Guideline 13 (which implies a double materiality approach when so required by the applicable requirements).
144. In relation to the references in draft Guideline 5 to 'indications of infringements from the auditors / the independent assurance services providers, whether in their reports or otherwise' ESMA notes that, in addition to reviewing audit reports, national authorities may engage in dialogue with the audit profession and determine that certain areas or sectors are particularly prone to risks of infringements in a given year and therefore require prioritisation in a risk model. Audit firms also often produce guidance on their understanding of the application of certain reporting requirements which may signal that divergence in application exists which may require enforcers' scrutiny of



issuers involved in certain transactions or sectors or geographies for which divergence in application risks arise.

145. Finally, ESMA notes that risk-based selection models are regularly adjusted by national enforcers to take account of the experience gained in the course of the supervisory activities as well as to reflect relevant input arising from the regular dialogue with all the relevant parties in the sustainability reporting ecosystem. Such dialogue is important to fine-tune selection models to be able to update risks factors to relevant market trends. The proposed amendments to Guideline 1 to acknowledge the importance of dialogue amongst issuers, auditors / independent assurance services providers, users and enforcers which, amongst other things, will serve as a helpful basis to refine the selection models of supervisory authorities.

146. In relation to the proposals on the timing of the selection model (Guideline 6), we asked:

*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.*

147. Out of 4 respondents to question 12, 3 agreed to the proposed approach to Guideline 6 on the timing of the selection model, however one respondent questioned the fact that flexibility is given to individual enforcers to select a period over which to ensure that each issuer is examined at least once. In this respondent's view, this proposed requirement would harm supervisory convergence.

148. **ESMA's response:** ESMA notes that the purpose of Guideline 6 is to establish two principles relating to the timing of selection: 1. ensure that selection takes place sufficiently frequently, i.e. at least annually; and 2. that national authorities commit to setting a time limit over which the entire supervised population has to be made subject to selection. This latter principle is then to be implemented in a converged way following implementation discussions amongst national authorities and ESMA in the Sustainability Reporting Working Group (SRWG) and the outcome of these discussions is typically a converged position as to how the principles shall be implemented. As indicated also in the analysis of the feedback to question 11, the need to preserve the deterrent nature of supervisory methodologies and their effectiveness vis-à-vis ongoing investigations explains the fact that the specificities of these methodologies can be disclosed only to a limited extent.

149. In relation to the proposals on the selection universe (Guideline 7), we asked:

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

150. All respondents addressing this question agreed with the proposed Guideline 7.

## V.8 Examination (Questions 14-17)

151. The CP proposed four guidelines addressing the approach to examination of sustainability information for the purpose of enforcement. These proposals focused on: (i) the types of examinations (Guideline 8), (ii) the examination process (Guideline 9), (iii) the possibility of pre-clearance (Guideline 10) and (iv) the quality review process (Guideline 11).

152. In relation to the proposals on the type of examinations (Guideline 8), we asked:

*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.*

153. Three of the four respondents to question 14 expressed their agreement with the four types of examination available to enforcers put forth in the draft guidelines.

154. One respondent however relayed some reservations to the possibility for enforcers to infer the presence of an infringement solely from a desktop examination. This respondent considered that issuers should be provided with such conclusion prior to publication, enabling them to challenge it with supporting documents. This respondent would also favour a consideration of the materiality assessment process in desktop examinations as well as information to be provided by companies to their auditors regarding any enforcement activity.

155. **ESMA's response:** Regarding the possibility for enforcers to infer the presence of an infringement solely from a desktop examination, ESMA points to the paragraph of the Consultation Paper mentioned by the respondent (par. 55 a ii)), which specifies that this situation is only to arise on "rare occasions when infringements are obvious without interaction with the issuer". ESMA also underscores at par. 51 of the Consultation Paper under Guideline 8 that the "use of desktop examinations should be limited". Therefore, the guidelines as they are refer to a context where an infringement can be duly and undoubtedly identified without requiring interaction with the issuer.

156. Further, ESMA recalls the procedural nature of the guidelines, which are directed at NCAs to provide them with appropriate guidance in their enforcement of sustainability information; setting out obligations to companies to involve their auditors would thus be out of scope of the GLESI.

157. For these reasons, ESMA has decided not to bring any modification to Guideline 9 of the GLESI.

158. In relation to the proposals on the examination process (Guideline 9), we asked:

*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.*

159. While some respondents (three) explicitly agreed with the approach set out in Guideline 9 on the enforcer's examination process, most of them either suggested to include additional points or clarify some aspects of the guidelines.
160. Some argued that auditors, independent assurance services providers and issuers themselves should be duly informed and given the possibility to challenge preliminary findings during the examination process, notably of any issues identified. One respondent suggested that, when different than the assurance service provider, the financial statement auditor should also be informed of any identified issues given the connectivity between financial and sustainability information. Any discussion on materiality between the enforcer and auditors or preparers should figure in corresponding documentation, to be shared amongst NCAs.
161. Regarding the examination process itself, one respondent emphasised the need for further description of its essential steps in Guideline 9, along with the type of information to be considered by enforcers, to prevent them from engaging in a "tick-box approach" in this exercise. The respondent specifically demanded more details on the assessment of compliance under Guideline 9 (i), without which the respondent argued the GLESI would risk promoting assessments of formal compliance rather than substantial examinations.
162. In the view of one respondent, the guidelines should stress that such communication between NCAs focus on the consistency assessment between sustainability information and other types of information, to ensure a homogeneous approach across jurisdictions.
163. Some respondents further requested that the guidelines acknowledge the learning curve ahead for both enforcers and issuers. One respondent suggested that the guidelines take account of the possibility where a desktop examination transforms into an interactive examination. This respondent thus suggested adding the following text to point 55) letter a): 'iii) A decision that the enforcer has discovered potential infringements in the sustainability information, or in relation to the issues / areas of the sustainability information which the enforcer has analysed, and that the enforcer should perform an interactive examination to further analyse the potential infringements.'
164. **ESMA's response:** ESMA recalls the scope of the GLESI – guidelines applicable to enforcement of the requirements of the European sustainability information framework. This framework, as defined in the GLESI Consultation Paper as well as in Section 2.3 of the GLESI, refers specifically to sustainability reporting requirements stemming from Articles 19a, 29a and 29d of the Accounting Directive, the ESRS, those from Article 8

of the Taxonomy Regulation and the related Disclosures Delegated Act. Adding substantial elements for enforcers to assess as part of their examinations, such as whether the issuer's sustainability information takes into account "credible third-party reports concerning its involvement in adverse impacts on human rights or the environment or potential severe impacts associated with its activities in high-risk sectors or geographies" would risk exceeding the scope of the GLESI.

165. Moreover, the degree of sufficiency of the information referred to by one respondent is to be appreciated in line with the requirements set out in the aforementioned legal texts. ESMA concurs with the respondent's view to not promote a merely formal compliance assessment; the sustainability information framework precisely constitutes the information to be examined, to which the GLESI refers. Furthermore, requesting additional information to be provided on certain social or environmental aspects that pertain to the practices of the examined issuer already forms part of the process of an interactive examination.

166. While ESMA underlines that an infringement may be found following a desktop examination, the use of this type of examination should be limited and such a situation may arise only rarely, when infringements are obvious without interaction with the issuer (Draft Guideline 9 p.55 a) ii)). ESMA however recognises enforcers may be in doubt and subsequently require interacting with the issuer to conduct an adequate assessment. This would give rise to a situation where a desktop examination thereafter takes the shape of an interactive examination. ESMA thereby accepts to amend the guidelines to better reflect such a situation, by including the following paragraph 57): "Without prejudice to the application of paragraph 55.a), should an enforcer detect potential infringements during a desktop examination which are not considered to be obvious, it is expected to investigate those further by contacting the issuer / its auditors (when the non-financial information is subject to audit) with questions. This would then re-categorise the examination as an interactive examination."

167. In its comment letter, the FRA also mentions that the enforcement of sustainability information may involve the collection and processing of personal data and asks for provisions to be included in this regard. ESMA expects NCAs to have put in place the relevant processes for implementing the European legislation in accordance with their national provisions.

168. Finally, while issuers remain the main addressees and counterparty in the enforcement process, ESMA encourages effective communication between enforcers and issuers as well as auditors / independent assurance services providers, which fits its approach based on dialogue.

169. In relation to the proposals on the possibility of pre-clearance (Guideline 10), we asked:

*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.*

170. Four of the five respondents agreed with the draft guideline. The remaining respondent suggested to exclude questions related to double materiality assessment and limit the scope of topics which pre-clearance can address.

171. Amongst those who agreed, one stakeholder however put forward possible clarifications to be made in the text of the guideline on the role of the auditor in the pre-clearance process, with specific reference to the timeline for pre-clearance (par. 57) as well as on the “firm position” of the auditor or assurance services provider (par. 59).

172. **ESMA’s response:** While ESMA stresses the need for robust and formal processes for pre-clearance, it also recognises that the formality of these processes is determined internally by enforcers, notably in relation to their timing and the scope of topics which pre-clearance can address.

173. To ensure convergence on the way these processes are conducted at national level, ESMA envisages that a pre-clearance decision needs to be taken when the issuer as well as its assurance provider have finalised their technical position on the matter at hand. Having both the issuer's and the auditor's final view on the question raised to the enforcer is essential to avoid situations in which an enforcer is asked for pre-clearance decisions on the basis of a technical position that may then be reverted in light of diverging views between the issuer and its assurance provider. Such a situation would lead to an inefficient use of resources by all the parties involved in this process and detract from the credibility of the pre-clearance procedure.

174. With regards to the concerns of a possible mis-use of the pre-clearance procedure to undermine the adoption of foundational aspects of the sustainability information framework such as double-materiality, ESMA notes that, where envisaged by national legislation, this procedure is not limited in terms of the type of questions that can be asked since it is meant to be used to seek confirmation by the enforcer of the compliance of a specific reporting approach vis-à-vis any of the applicable requirements.

175. However, as a matter of practice, ESMA notes that the pre-clearance procedure is not meant to be used to request confirmation of whether an issuer's sustainability conduct is aligned with relevant standards, but rather to confirm whether the application of certain disclosure requirements to selected and appropriately documented fact patterns is compliant with the applicable requirements.

176. In this respect, for example, the pre-clearance procedure would not be suitable to request confirmation on the conclusions of the (double) materiality assessment for an

issuer's entire business perimeter. Rather, pre-clearance procedures are suitable for very specific situations in which an issuer requires validation of its technical reading of a certain requirement. ESMA also emphasises that pre-clearance decisions are limited to the fact pattern presented and cannot be used to reach conclusions by analogy for other situations.

177. In relation to the proposals on the quality review process (Guideline 11), we asked:

*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.*

178. All respondents agreed with draft Guideline 11 and the need for NCAs to conduct quality reviews of their enforcement processes.

179. In particular, one respondent suggested that these quality reviews be performed cross-NCAs. This respondent, along with another, respectively suggested to discuss the results of these quality reviews at an "appropriate" or "sufficiently high" level. Both also considered that reviews should be made public and, along with another respondent, that their conclusions be shared with ESMA to ensure further harmonisation.

180. This third respondent deemed it useful to provide guidance on the frequency and timing of such reviews, which could be in line with NCAs' enforcement periods.

181. One other respondent argued that staff conducting the reviews should enjoy sufficient independence, experience and expertise on the sustainability information framework, on ESG impacts by businesses and associated standards, frameworks and treaties. In its view, Guideline 11 should also further specify the focus of the review, i.e. an assessment of whether current enforcement practices facilitate meaningful sustainability reporting by enabling stakeholders to evaluate a company's sustainability performance and the effectiveness of its measures.

182. The EEA stressed the crucial aspect of quality reviews in ensuring and improving the quality of disclosed sustainability information. It further supported the reference to experienced and trained staff.

183. **ESMA's response:** ESMA regularly conducts convergence assessments, including peer reviews, that require the assessment of supervisory practices by national competent authorities vis-à-vis applicable requirements and ESMA policy instruments, including guidelines. These exercises fulfil the objective of assessing the level of quality and consistency of supervision in a specific area of ESMA's remit across multiple authorities and taking into account also the different market sizes. To add to this cross-jurisdictional element, it has to be emphasised that peer review committees are chaired by ESMA staff, composed of ESMA staff as well as of senior and experienced representatives of other national competent authorities. Findings of peer-reviews are



subject to subsequent follow-ups. As per ESMA's peer review methodology<sup>18</sup>, supervisory files are also acquired by the committee to conduct an assessment of the supervisory practices. After a few years of application of the GLESI, ESMA plans to conduct a supervisory convergence assessment, such as a peer review, on these guidelines.

184. In line with its encouragement of dialogue, ESMA agrees with the need to discuss the results of quality reviews at an appropriate level, to fulfil the objective of Guideline 11, mirroring GLEFI Guideline 6b, to have robust conclusions on the examination procedures used. In line with GLESI Guideline 11 paragraph 62) which states that “reviews should be performed by staff that has relevant experience and expertise”, ESMA acknowledges that discussions of the results of quality reviews should also take place amongst staff with such experience and expertise. ESMA has decided to include a reference to such discussions in the guidelines yet would leave their frequency and timing to the discretion of NCAs as this is a matter of internal resource allocation. ESMA also supports the proposal to have these results shared with ESMA. ESMA further encourages quality reviews to be conducted by in order to ensure that the procedures undertaken during the examination are robust and that the related conclusion of the examination is in line with the findings of the examination. ESMA also supports that supervisory practices, including the conclusions of the quality review, where relevant, are shared with ESMA as part of its supervisory convergence work with NCAs in the Sustainability Reporting Working Group (SRWG). ESMA notes that all activities of NCAs in relation to supervision of sustainability reporting are covered by Guideline 4 on independence.

185. Given the fact that the GLESI is applicable to enforcement of information required by the sustainability information framework as defined above, ESMA considers that adding substantial elements to the focus of the review would risk exceeding this scope. Indeed, the scope of these reviews remains on supervisory processes. They would ensure that the objective of enforcement is consistent with the application of EU requirements, themselves conducive to those substantial objectives mentioned by respondents on the focus of reviews.

## **V.9 Enforcement actions (Question 18-20)**

186. The CP proposed three guidelines on the approach to be taken by enforcers regarding enforcement actions: (i) the choice of enforcement action (Guideline 12), (ii) materiality (Guideline 13) and (iii) follow-ups (Guideline 14).

187. In relation to the proposals on the choice of enforcement action (Guideline 12), we asked:

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<sup>18</sup> [ESMA42-111-4966](#), *ESMA Peer Review Methodology*, 28<sup>th</sup> May 2020 (rev. 24<sup>th</sup> January 2024)



*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.*

188. Five respondents to this question disagreed with paragraph 64 and 65 regarding enforcement actions in relation to immaterial disclosures.
189. Three respondents commented on the fact that immaterial departures from the reporting framework are likely to be numerous in the first years of implementation. Two of them stressed the preliminary stage of methodologies, frequent use of estimates and high level of uncertainty and judgement in relation to sustainability aspects which may lead to an inflation of the number of such immaterial departures.
190. Another respondent specifically mentioned the immaterial departures which could result from the poor quality of some of the translations of the ESRS in national languages and suggests adding a paragraph stating that such immaterial departures originating from translation issues will not be treated as material. The SMSG also mentioned the quality of the translations in national languages as a source of immaterial departures from the sustainability information framework.
191. Three of the respondents referred to their responses to Question 4 in relation to the definition of materiality in the GLESI. Also, three were of the view that for an immaterial intentional departure from the framework to be treated as material, other considerations should be taken into account. One respondent mentioned the ability to influence users' decision while another pointed at the case of multiple immaterial misstatements and made a reference to a similar concept used in the standards on sustainability assurance.
192. Some respondents also commented on paragraph 66 regarding similar actions being taken when similar infringements are detected. While supporting the approach, two respondents suggested clarifying that this principle applies not only within an NCA but among all NCAs across the EU. One respondent indicated that it does not understand the reference to materiality in this paragraph.
193. The SMSG also noted that in its annual report on corporate reporting enforcement and regulatory activities, ESMA qualified as material departures from IFRS, some departures that did not trigger a "corrective note", but rather a "correction in future financial statements". The SMSG questioned the actual materiality of these departures since they only triggered a correction in a future reporting period. The SMSG therefore expressed concerns that if this approach is adopted also on sustainability reporting enforcement this may not convey a good image on the quality of corporate reporting in Europe and be counter-productive for European companies.

194. **ESMA's response:** In relation to immaterial departures, par. 64 of the draft GLESI limits the immaterial departures that should be treated as material, to those “*that are left intentionally uncorrected to achieve a particular presentation of the issuer*” (par. 64) while par. 65 requires an information of the issuer where “*there is a significant risk that [they] might become material in the future.*”
195. As such, both paragraphs are linked to the year-on-year evolution of the sustainability report and the related enforcement action or information is also participating to the overall learning curve towards better disclosures.
196. ESMA acknowledges that some difficulties may arise from the national translations of the ESRS, but these will be transitory. Besides, such issues alone would not entail enforcement actions or information of the issuer, if not meeting the criteria spelled out in par. 64 and par. 65.
197. In relation to the criteria in paragraph 64, ESMA notes that “*to achieve a particular presentation of the issuer*” may refer to situations in which an issuer to over(under)estimate its environmental impact leaves uncorrected certain errors which together with other disclosures may provide a misleading depiction of that issuer's sustainability profile, i.e. contributing to a form of greenwashing.
198. ESMA also wishes to clarify that immaterial departures are, by definition, not material and that additional criteria making them relevant from an enforcement perspective would make them fall in the “*infringements*” category. Par. 64 refers to enforcement actions being taken “*as if [the immaterial departure] was material*”, but the nature of the immaterial departure is not changed.
199. On the same line, an enforcer may consider multiple immaterial departures relating to the same material matter as an infringement.
200. Par. 66 applies at the level of the enforcer, as Guideline 12 covers the choice of enforcement action, at the enforcer's initiative. Guidelines 15 to 21, however provide more details on the ways in which ESMA and NCAs ensure a level playing field at European level.
201. Finally, in relation to the concern raised by the SMSG on the statistics in ESMA's annual report on enforcement activities in the area of corporate reporting, ESMA notes that the selection of the type of enforcement action to be adopted and the degree of materiality of one or more issues identified are related only to a certain extent, as an enforcer's decision to request a correction in the future statements may be based on the moment in which an infringement is discovered, for example, at a moment in time that is very close to the publication of the next annual financial report.
202. More generally, ESMA promotes a constructive role of supervision in promoting the quality of corporate reporting. This role is exercised through close scrutiny of issuers'

reporting, dialogue with all the relevant parties in the corporate reporting ecosystem and through the exercise of targeted actions when infringements are identified. In ESMA's views, all these components – market monitoring, dialogue and supervisory actions – are necessary to ensure that supervision is proportionate, credible and effective to support the uptake of the new sustainability reporting requirements.

203. In relation to the proposals on materiality (Guideline 13), we asked:

*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.*

204. Four respondents pointed at the need to further clarify in Guideline 13 how the materiality assessment exercised by the enforcer for determining material misstatements and omissions (i.e., infringements) relates to the double materiality required by the ESRS. These respondents felt that such clarifications are necessary considering ESMA and NCAs' remit and their focus on investors, while double materiality also covers the information needs of broader stakeholders, as well as material sustainability information from an impact perspective and not necessarily attached to the information needs of a specific stakeholder.

205. Some of those respondents suggested that GLESI should either resort to a different term in describing the enforcer's criteria for determining infringements or clearly establish how these criteria are linked to the double materiality assessment of companies reporting under ESRS. Others strongly recommended the second option only.

206. Two respondents stressed that such clarifications are key to ensure consistency in the way the different NCAs will determine infringements or consider misstatements and omissions as immaterial departures from the reporting framework.

207. One respondent suggested adding to the reference regarding the definition of double materiality in the footnote linked to paragraph 70 a reference to ESRS 1 (Annex I to Commission Delegated Regulation (EU) 2023/2772) and any future legislation in this regard.

208. **ESMA's response:** The draft GLESI bring together two sustainability information frameworks, to which different materiality regimes are attached. Guideline 13 clarifies that when supervising disclosures are prepared under a double materiality regime, double materiality will also be the basis for the assessment of material omissions and misstatements by the enforcer.

209. ESMA's view is that having a unique reference to double materiality, as defined in the CSRD and ESRS, provides a clearer understanding of the enforcer's basis for

assessment, as compared to introducing an additional materiality lens which basis might be difficult to establish.

210. In that regard, ESMA points at the differences between an auditor's and an enforcer's assessments, as also stressed in the CP par. 34.

211. As regards the consistency to be achieved in the way the different enforcers approach materiality, ESMA considers that the coordination at European level, as described in Guidelines 15 to 21, combined with a unique materiality reference, shared with all actors in the reporting ecosystem, will be the most effective way to develop a common practice.

212. ESMA has decided to include "double materiality" to the list of definitions to provide more clarity and give prominence to the concept within the GLESI (see response to consultation question 1).

213. In relation to the proposals on follow-ups (Guideline 14), we asked:

*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.*

214. All respondents agreed with the draft Guideline 14. One respondent stressed that such follow-up to ensure that actions are taken on a timely basis is essential for achieving a harmonised approach to enforcement across EU NCAs, with the ultimate goal of reaching consistent, comparable and transparent corporate sustainability reporting.

215. Another respondent recommended to further specify the meaning of "timely basis" and suggests including criteria which should include consideration of the severity of the infringement, including when linked to material impacts.

216. **ESMA's response:** When the action relates to an infringement on the sustainability information framework which relies on double materiality, both impact and financial materiality will have been considered in establishing the occurrence of an infringement and in determining the related enforcement action.

217. As a consequence, ESMA does not consider it necessary to change the proposed wording.

218. Regarding the comment requesting to further specify the concept of "timely basis" for the follow up to the actions required by an enforcer, ESMA notes that this concept depends on national provisions and therefore it is a matter on which the guidelines cannot set a specific timing. ESMA also notes that the timing of the follow up may

depend on the extent of the issues to be addressed and the type of action taken by the enforcer.

## V.10 European coordination (Questions 21-22)

219. The CP proposed 8 guidelines on the approach to be taken to coordinate enforcement of sustainability information at a European level: (i) European common enforcement priorities (Guideline 15), (ii) coordination in SRWG (Guideline 16), (iii) emerging issues (Guideline 17), (iv) decisions (Guideline 18), (v) taking earlier decisions into account (Guideline 19), (vi) submission of emerging issues and decisions (Guideline 20), (vii) publication of decisions (Guideline 21), (viii) reporting on enforcement activities (Guideline 22).

220. In relation to the proposals on enforcement coordination (Guidelines 15, 16, 17, 18, 19, 20), we asked:

*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.*

221. All eight respondents implicitly or expressly stated their endorsement for draft Guidelines 15-20. Of these, three contributions did not put forward any adjustments to the drafting. The remaining five respondents have suggested drafting amendments, notably:

- a. Draft Guideline 15: Adding an ESMA action for a periodic review of if and how supervisory convergence was achieved.
- b. Draft Guideline 16: Adding an ESMA action to share material controversial reporting issues and ambiguities discovered during the enforcement process with assurance providers in a timely manner.
- c. Draft Guideline 17: Adding an action for ESMA's SRWG to confer with standard setters, representatives of issuers and the assurance profession(s) regarding "key matters or emerging issues of significant importance for the internal market", when determining:
- d. Common views as to what constitutes a consistent approach.
- e. Outcomes of discussions of an emerging issue on the same or similar reporting issue.
- f. Cases where there is an identified risk of significantly different reporting practices by issuers across Europe.

- g. When further guidance from other enforcers in relation to a complex matter is desired.

222. Linked to no particular draft Guideline, adding an action for ESMA's SRWG to:

- a. Conduct a review of the effectiveness of the enforcement of sustainability information as part of GLESI post-implementation reviews.
- b. Coordinate the enforcement of national enforcements in relation to emerging issues or decisions pertaining to entities that are not listed on regulated markets and thus not covered by the Guidelines. The SMSG did not specifically address draft Guidelines 15-20 but generally agreed with the reference to the SRWG in Guideline 15.

223. **ESMA's response:** ESMA notes that common enforcement priorities are in and of themselves (ex-ante) supervisory convergence implementation tools, aimed at enhancing the consistency of current or future work of enforcers. While these do not preclude the complementary recourse to ex-post convergence assessments, this is already the primary purpose of ESMA's annual Corporate Reporting Enforcement and Regulatory Activities Report and of ESMA's supervisory convergence tools. ESMA's view is that no change to the text of Guideline 15 is required to reflect this clarification.

224. ESMA considers that the scope of the proposal for ESMA to share preliminary findings of examinations conducted by national authorities goes beyond the spirit of draft Guideline 16. The objective of this draft guideline is to achieve harmonised enforcement practices among enforcers at EU level. Moreover, ESMA considers that "timely" disclosure to entities may not be possible when addressing a live issue or cases where disclosing the circumstances at hand is likely to prejudice enforcement action. Nevertheless, ESMA has generally acknowledged the importance of dialogue with issuers, auditors / independent assurance services providers and users in Guideline 1 and it plans to engage in regular dialogue with representatives of auditor / independent assurance services providers. ESMA has also proposed to add a reference in Guideline 16 to the possibility of raising issues of controversial nature in relation to sustainability reporting not only with the European Commission, but also with EFRAG as the Commission's technical advisor on the ESRS.

225. ESMA also notes, pursuant to Guideline 21, that, similarly to the practice in the area of financial reporting, it expects to regularly publish extracts of enforcement decisions on topics deemed relevant to the enforcement of sustainability information. The publication of extracts of decisions supports the consistent application of the EU requirements and it is one of the tools that ESMA puts in place to pursue this objective. Targeted studies of reporting practices constitute another tool that is also used by ESMA to highlight areas of improvement and promote convergence around identified good reporting practices. The timing and frequency of publication of enforcement



decisions depends on the emergence of relevant issues on which enforcers' views converge and which are deemed to be helpful examples of how NCAs read the applicable requirements. It is reasonable to expect that in the first years of application of the ESRS, ESMA will have a limited amount of decisions published until market practice stabilises and that efforts will be put in place to monitor sustainability statements published by issuers and develop fact-finding exercises.

226. ESMA considers that the scope of the proposal to confer with standard setters, representatives of issuers and the assurance profession(s) regarding “key matters or emerging issues” goes beyond the spirit of draft Guideline 17. The objective of this draft guideline relates to the functioning of the SRWG in the coordination of emerging issues and decisions. However, ESMA notes that in the context of its stakeholder outreach activities, it already engages at regular intervals and on an ad-hoc basis as needed, in dialogue on sustainability reporting matters with standard setters and the audit and assurance industries. ESMA is also an official observer in EFRAG, where it can therefore raise specific issues on the basis of specific supervisory evidence.

227. In relation to publication of decisions and reporting on enforcement activities (Guidelines 21 and 22), we asked:

*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.*

228. All eight respondents implicitly or expressly stated their endorsement for draft Guideline 21, 22, or for both. Of these, five were succinct in their contribution and did not put forward adjustments to the draft guidelines. The remaining three respondents suggested minor drafting amendments, notably:

- a. Clarifying that the selection criteria should not deter publication of decisions (Guideline 21).
- b. Replacing the “periodically” reference in draft Guideline 22 with “normally annually”, to facilitate the development of ESMA’s yearly corporate reporting enforcement and regulatory activities report and the identification of annual common enforcement priorities.
- c. Amending Guideline 22 so as to make the frequency of periodic reporting on enforcement policies and decisions annual during the first five years of application of each set of ESRS (full, sector-specific and LSME ESRS, as they gradually enter into force).
- d. Reframing draft Guidelines 21 and 22 to reflect that the publication of decisions and reporting on enforcement should consider the enforcement of



sustainability information of entities not listed on regulated markets, which enforcers may simultaneously supervise.

- e. Specifying that reporting on enforcement activities (Guideline 22) should include the disclosure of qualitative and quantitative information substantiating how the enforcer carries out its activities in practice (e.g. number of assessments in previous year, details clarifying how assessments are implemented in practice, etc).

229. **ESMA's response:** ESMA takes this opportunity to clarify that setting out explicit and comprehensive selection criteria for its publication of extracts of decisions in Guideline 21 is precisely aimed at limiting the number of such publications to relevant decisions. ESMA does not think that the transparency of enforcement-related sustainability information, one of the primary objectives of the GLESI, is harmed by this. Guideline 22, for instance, encourages the publication of decisions taken in individual cases by enforcers at a national level. ESMA also notes that such a reference is absent from GLEFI Guideline 17 - on which GLESI draft Guideline 21 is based - to no known detrimental effect on the publication of enforcement decisions related to published financial information.

230. ESMA welcomes the practicality of the proposal to align the frequency of enforcers' reporting on enforcement activities with ESMA's annual Corporate Reporting Enforcement and Regulatory Activities Report and annual ECEP exercise. However, it does not see a material need to depart from the broad GLEFI Guideline 18 formulation, where no predetermined reporting frequency is set.

231. ESMA notes that setting a temporary annual reporting frequency for enforcers linked to the application entry into force of the ESRS, as described above, would result in a significant departure from the simpler process set out in GLEFI Guideline 18 (no predetermined enforcement reporting frequency), on which GLESI draft Guideline 22 is based. Such a change could also lead to an inefficient use of enforcers' resources, from the difficulty in extending the enforcement reporting process already in place for financial information to sustainability information. ESMA also notes that enforcers already report to ESMA on an annual basis on their enforcement activities and actions taken at national level and these data are used to compile ESMA's annual Corporate Reporting Enforcement and Regulatory Activities Report.

232. While ESMA recognises the added value of disclosing such information at national level, it does not feel the need to prescribe the content of the reporting of "enforcement policies and decisions", leaving this to the discretion of enforcers. ESMA further notes that the level of granularity of such reporting may vary and evolve following the implementation of the GLESI. As such, while ESMA has not yet formed a clear view of enforcement in practice, it does not currently see a strong justification for deviating from the original GLEFI Guideline 18 formulation to the possible detriment of the consistency

in the way information on enforcement of sustainability and financial information are reported on at a national level.

## V.11 Cost-benefit analysis (Questions 23-24)

233. The CP concluded that, from a cost-benefit perspective, the preferred policy option is policy option 1, i.e. to ensure the GLESI closely resemble the GLEFI, as it would pave the way for consistent enforcement of sustainability and financial information and lead to an effective use of enforcers' resources.

234. In relation to respondents' opinion on the proposed policy option (policy option 1), we asked:

*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?*

235. Most respondents agreed that policy option 1, i.e. to base the GLESI closely on the GLEFI, was preferable from a cost-benefit perspective and given its contribution to the consistency and high quality of enforcement mechanisms for both financial and sustainability information.

236. Yet, some also deemed such a policy option either as not sufficient or that a balance should be found between policy option 1 and 2, or that a divergence from the GLEFI model may be beneficial over time. Three respondents notably favoured further finetuning to the GLESI to be adequately "fit for purpose" for the enforcement of sustainability information. Of these respondents, two stressed a need to reflect and further develop on the double materiality approach inherent to sustainability reporting compared with financial reporting. One of these also expressed concern with regards to the alleged lack of differentiation between the GLESI and the GLEFI on time horizon, reporting boundaries, users and the qualitative nature of sustainability information.

237. One respondent cautioned not to overemphasise the cost-benefit perspective; this may give rise to possible misinterpretation of the high costs of sustainability enforcement as a justification for more lenient enforcement. This respondent called for a balanced approach, recognising the benefits of robust enforcement in both financial and sustainability reporting.

238. The MSG expressed its support to the first policy option and to align enforcement of financial and sustainability information as much as possible. It further raised the question of whether the format of the GLEFI should be updated to mirror that of the GLESI, which uses up-to-date templates and terminology.

239. **ESMA's response:** ESMA welcomes the agreement of most respondents, including the MSG, with policy option 1: aligning the GLESI on the GLEFI to ensure consistent

enforcement of financial and sustainability information. ESMA has thus decided not to modify its policy option choice.

240. Given the principles-based nature of the guidelines, ESMA for now does not foresee a possible divergence from the GLEFI. While ESMA concurs with inherent differentiations to be made between sustainability and financial information, it deems the GLESI as striking an appropriate balance between such distinction and remaining aligned with the GLEFI from the perspective of enforcement. ESMA takes account of the concern for a potential future need for divergence from the GLEFI yet considers it too early to integrate such concern. ESMA may consider addressing this in due course following sufficient use and incorporation of the GLESI by enforcers.

241. Nonetheless, ESMA already takes good note of requests to further reflect and elaborate on the double materiality approach inherent to sustainability information. In that scope, it redirects readers of this report to its response to question 4 and the addition of double materiality within the definitions included in the GLESI (Section 2.3). GLESI Guideline 13 also clarifies the materiality regime to be applied. As part of its proposed amendments to Guideline 5, ESMA has included enforcers' consideration of sustainability related risks, impacts and factors relating to specific sectors and geographies in which the issuers operate.

242. While ESMA echoes the necessity to prevent cost-benefit concerns from justifying possible lenient enforcement of sustainability information due to its high costs, such justification is not the rationale of the conducted cost-benefit analysis. The latter rather stems from the objective of ESMA guidelines set out in *Article 16* of the ESMA Regulation, to establish “*consistent, efficient and effective supervisory practices within the ESFS, and to [ensure] the common, uniform and consistent application of Union law.*” Consideration of cost-benefit matters serves as an adequate means to contribute to such consistency, efficiency and effectiveness. Aligning the GLESI on the GLEFI enables enforcers to incorporate new enforcement requirements within the patterns they already employ, thereby paving the way for robust and fair enforcement for all parties involved.

243. In relation to the cost-benefit analysis to be provided in case of a different choice, we asked:

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

244. One respondent advocated for a different policy option to be considered in the GLESI. Indeed, the respondent suggested adopting a “mixed approach” by using the GLEFI yet better incorporating in the guidelines the ESRS principles which, if omitted, would likely increase compliance costs. The respondent further believed that ESMA may have undervalued costs related to resources and training in both policy options, yet that costs

pertinent to “costs to regulators”, “innovation-related aspects” and “proportionality-related aspects” would not significantly change regardless of the option chosen.

245. The response also put forth the benefits stemming from this mixed approach, which may have an ESG-related impact by driving issuers’ shift towards more sustainable business models and improve sustainability reporting in general.

246. **ESMA’s response:** ESMA concurs with the benefits described by the respondent that may stem from this mixed approach that it has adopted in the GLESI, i.e. to improve ESG-related impacts by driving issuers’ shift towards more sustainable business models and improve sustainability reporting. Nonetheless, the guidelines already incorporate the ESRS principles, by both making explicit references to the sustainability information framework which NCAs shall enforce as well as to the double materiality approach within the definitions.

247. Given the agreement of most respondents with policy option 1, this approach will be maintained as it stands in the final GLESI. For additional details on respondents’ views on this policy option along with its costs and benefits, please see the response to Question 23.

## V.12 Additional comments (Question 25)

248. In relation to respondents’ potential further comments, we asked:

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

249. Of the five respondents who shared additional points, three considered that the GLESI should be subject to regular review following their implementation to ensure they remain fit for purpose, due to the dynamic nature of sustainability topics, the change in expectations and issues as well as the evolution in reporting practices.

250. It was suggested that this review take place following consultation with stakeholders, periodically (annually for the first few years of implementation, then every two to three years) and consider the effectiveness and consistency of enforcement processes across NCAs. One respondent further noted that the conclusions of these reviews should be published and shared with national enforcers.

251. Another respondent approved the consistency reached between the GLEFI and the GLESI, which it deemed crucial for ensuring transparency and preventing excessive burden for companies. Nonetheless, it also stressed the need for the GLESI to remain used for ensuring compliance with the ESRS and the EU Taxonomy Regulation, not pave the way to additional obligations stemming from a possibly broad definition of greenwashing. In that scope, one final respondent considered that some elements absent from the guidelines should be inserted in the introduction, such as the

“necessary progressiveness” to implement sustainability reporting and its lower level of maturity compared with financial information.

252. Given the dynamism pertaining to the sustainable finance area and the need for market participants to track and comply with new rules, the MSG noted that guidelines in this sphere may have to be continuously updated and developed. It further shared its interrogation on the potential need to update the format and terminology adopted in the GLEFI to reflect those of the GLESI.

253. **ESMA’s response:** ESMA considers that the GLESI strike an adequate balance in their drafting for the necessities of the first few years of enforcement. The guidelines have been formulated as sufficiently precise to apply to a specific type of information, i.e sustainability information, as well as sufficiently broad to cater for future developments and the evolving nature of this field of reporting. However, to continuously build on a common supervisory culture at a European level, ESMA intends to conduct a supervisory convergence assessment on the GLESI after a few years of implementation, following a consultation, and subsequently consider eventual amendments. As previously noted, ESMA regularly conducts peer reviews to assess supervisory practices by national competent authorities vis-à-vis applicable requirements and ESMA’s convergence tools, including guidelines. Nonetheless, while it acknowledges the developmental nature of this field and the learning curve for all parties involved in the application of the framework, ESMA does not propose to introduce additional provisions to reflect a temporary condition in relation to the application of the new requirements.

254. The Guidelines are also to be used for enforcement of requirements derived from the sustainability information framework, as defined above (relevant dispositions of the Accounting Directive, the ESRS, Article 8 of the Taxonomy Regulation and the Disclosures Delegated Act). The GLESI remain therefore constrained to such a scope, which does not provide for any additional obligations stemming from the reference to greenwashing. Nonetheless, in this regard ESMA sheds light on the subsequent outcomes of enforcement of the sustainability information framework, which can be conducive to contributing to the fight against greenwashing – as defined in section 2.3 of the GLESI.

255. In relation to the interrogation of the MSG on a future update of the format and terminology of the GLEFI in line with that of the GLESI, ESMA may determine whether any such amendments will be subsequently needed in the GLEFI.

## VI. Guidelines on Enforcement of Sustainability Information (GLESI)

### 1. Scope

#### 1.1. Who?

1. These guidelines apply to all competent authorities undertaking supervision (referred to as enforcement in these guidelines, see section 2.3 *Definitions*) of sustainability information under the Transparency Directive.

#### 1.2. What?

2. These guidelines apply in relation to the enforcement of sustainability information under Article 24(4) of the Transparency Directive to ensure that sustainability information provided by issuers, who have securities admitted to trading on a regulated market and who are required to publish sustainability information under the Accounting Directive, complies with the requirements of the Transparency Directive.
3. This means sustainability information of issuers already listed on a regulated market. It includes issuers from third countries using the European Sustainability Reporting Standards as well as issuers from third countries using sustainability reporting requirements which have been declared equivalent to the European Sustainability Reporting Standards.
4. The guidelines are principles-based and define enforcement of sustainability information and its scope under the Transparency Directive, set out what characteristics enforcers should possess, describe selection techniques that should be followed and other aspects of enforcement methodology, describe as well as the types of enforcement actions that enforcers should make use of and explain how enforcement activities are coordinated within ESMA.

#### 1.3. When?

5. These guidelines shall apply to enforcement of sustainability information published from 1 January 2025.

## 2. Legislative references, abbreviations and definitions

6. Unless otherwise specified, terms used and defined in the Transparency Directive, the Accounting Directive and the Taxonomy Regulation have the same meaning in these guidelines. Some of the terms defined in the Transparency Directive are recalled hereunder for the ease of reference. In addition, the following definitions, legislative references and abbreviations apply:

### 2.1. Legislative references

<i>Transparency Directive</i>	Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC <sup>1</sup>
<i>Accounting Directive</i>	Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC <sup>2</sup>
<i>European Sustainability Reporting Standards (ESRS)</i>	Commission Delegated Regulations issued pursuant to Article 29b and Article 29c of the Accounting Directive.
<i>Taxonomy Regulation</i>	Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 <sup>3</sup>
<i>Disclosures Delegated Act</i>	Commission Delegated Regulation (EU) 2021/2178 of 6 July 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the

<sup>1</sup> OJ L 390, 31.12.2004, p. 38–57.

<sup>2</sup> OJ L 182, 29.6.2013, p. 19–76.

<sup>3</sup> OJ L 198, 22.6.2020, p. 13–43.



	methodology to comply with that disclosure obligation <sup>4</sup>
<i>Markets in Financial Instruments Directive II</i>	Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU <sup>5</sup>
<i>ESMA Regulation</i>	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC <sup>6</sup>
<i>Corporate Sustainability Reporting Directive</i>	Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting <sup>7</sup>
<i>Non-Financial Reporting Directive</i>	Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups <sup>8</sup>
<b>2.2. Abbreviations</b>	
<i>ESMA</i>	European Securities and Markets Authority
<i>SRWG</i>	Sustainability Reporting Working Group
<i>EU</i>	European Union
<b>2.3. Definitions</b>	
<i>Enforcement of sustainability information</i>	Supervision of sustainability information, including sustainability reporting as referred to in Article 28d of the Transparency Directive. In particular, enforcement of sustainability information consists of examining whether sustainability information is prepared in accordance with the sustainability

<sup>4</sup> OJ L 443, 10.12.2021, p. 9–67.

<sup>5</sup> OJ L 173, 12.6.2014, p. 349–496.

<sup>6</sup> OJ L 331, 15.12.2010, p. 84–119.

<sup>7</sup> OJ L 322, 16.12.2022, p. 15–80.

<sup>8</sup> OJ L 330, 15.11.2014, p. 1–9.

	<p>information framework, taking appropriate measures where infringements are discovered during the enforcement process, in accordance with the rules applicable under the Transparency Directive, and taking other measures relevant for the purpose of enforcement.</p> <p>These guidelines refer to ‘enforcement’ instead of ‘supervision’, as referenced in Article 28d of the Transparency Directive, to ensure consistency with the wording used in ESMA’s Guidelines on Enforcement of Financial Information<sup>9</sup>.</p>
<i>Sustainability information</i>	Information required by the sustainability information framework
<i>Issuer</i>	An issuer as defined in Article 2(1)(d) of the Transparency Directive with the exclusion of ‘natural persons’
<i>Regulated market</i>	A regulated market as defined in Article 4(1), point (21) of the Markets in Financial Instruments Directive II
<i>Enforcer</i>	National competent authority
<i>Sustainability information framework</i>	Articles 19a, 29a and 29d of the Accounting Directive along with the European Sustainability Reporting Standards and Article 8 of the Taxonomy Regulation along with the Disclosures Delegated Act
<i>Infringement</i>	A material omission or a material misstatement in an issuer’s sustainability information
<i>Greenwashing</i>	Practice where sustainability-related statements, declarations, actions, or communications do not clearly and fairly reflect the underlying sustainability profile of an entity, a financial product, or financial services. This practice may be misleading to consumers, investors, or other market participants <sup>10</sup>

<sup>9</sup> [ESMA32-50-218](#) Guidelines on enforcement of financial information, 4 February 2020.

<sup>10</sup> Common definition by the European Supervisory Authorities as published in [ESMA30-1668416927-2498](#) Progress Report on Greenwashing – Response to the European Commission’s request for input on “greenwashing risks and the supervision of sustainable finance policies”, 31 May 2023, paragraph 13 with core characteristics of greenwashing listed in paragraph 14. See also [ESMA36-287652198-2699](#) – Final Report on Greenwashing.

<i>Home Member State</i>	The home Member State as defined in Article 2(1)(i) of the Transparency Directive
<i>Market operator</i>	A market operator as defined in Article 4(1), point (18) of the Markets in Financial Instruments Directive II
<i>Immaterial departure</i>	An immaterial omission or an immaterial misstatement in an issuer's sustainability information
<i>Corrective note</i>	Issuance by an enforcer or an issuer, as initiated or required by an enforcer, of a note making public an infringement with respect to particular item(s) included in already published sustainability information and, unless impracticable, the corrected information
<i>Double materiality</i>	Double materiality has two dimensions: impact materiality and financial materiality. A sustainability matter meets the criterion of double materiality if it is material from the impact perspective or the financial perspective or both. The definitions of "Financial materiality", "Impact materiality" and "Sustainability matters" are set out in the <i>European Sustainability Reporting Standards</i> .
<b>Types of selection</b>	
<i>Risk-based selection</i>	When an enforcer identifies issuers whose sustainability information meets certain risk criteria and subjects the sustainability information of all or some of those issuers to examination
<i>Rotation-based selection</i>	When an enforcer selects an issuer's sustainability information for examination once within a specific period
<i>Randomised selection</i>	When an enforcer selects an issuer's sustainability information for examination from a wider group of issuers without reference to the risk profile of the sustainability information or to when the issuer's sustainability information was last examined, so that all issuers have an equal chance of being selected

## Types of examination

### *Interactive unlimited examination of sustainability information*

An enforcer's evaluation of the entire content of an issuer's sustainability information in order to identify issues / areas that, in the enforcer's opinion, need further analysis, and the enforcer's subsequent assessment of whether the sustainability information regarding those issues / areas is in accordance with the sustainability information framework. The interactive unlimited examination entails an interaction between the enforcer and the issuer. Based on the examination procedures it has undertaken and the information it has received from the issuer, the enforcer concludes whether it has discovered infringements in relation to the issues / areas it has analysed.

### *Interactive focused examination of sustainability information*

An enforcer's assessment of whether pre-defined issues / areas in an issuer's sustainability information are in accordance with the sustainability information framework. The interactive focused examination entails an interaction between the enforcer and the issuer. Based on the examination procedures it has undertaken and the information it has received from the issuer, the enforcer concludes whether it has discovered infringements in relation to the pre-defined issues / areas it has analysed.

### *Desktop unlimited examination of sustainability information*

An enforcer's evaluation of the entire content of an issuer's sustainability information in order to identify issues / areas that, in the enforcer's opinion, need further analysis, and the enforcer's subsequent assessment of whether the sustainability information regarding those issues / areas is in accordance with the sustainability information framework. The desktop unlimited examination does not entail any interaction between the enforcer and the issuer. Based on the examination procedures it has undertaken, the enforcer concludes whether there are indications that infringements exist in relation to the sustainability information it has analysed.

*Desktop focused examination of sustainability information*

An enforcer's assessment of whether pre-defined issues / areas in an issuer's sustainability information are in accordance with the sustainability information framework. The desktop focused examination does not entail any interaction between the enforcer and the issuer. Based on the examination procedures it has undertaken, the enforcer concludes whether there are indications that infringements exist in relation to the pre-defined issues / areas it has analysed.

### **3. Purpose**

7. These guidelines are based on Article 28d of the Transparency Directive and on Article 16 of the ESMA Regulation. The objectives of the guidelines are to establish consistent, efficient and effective supervisory practices in relation to, and ensuring the common, uniform and consistent application of, Article 24(4) of the Transparency Directive in relation to the inclusion of a sustainability statement within the management report (Article 4(1) and 4(2), point b of the Transparency Directive) of issuers who have securities admitted to trading on a regulated market and are required to publish sustainability information under the Accounting Directive. In particular, the guidelines aim to ensure that enforcers carry out the enforcement of sustainability information in a converged manner and to make sure that this enforcement also closely resembles the enforcement which is undertaken in relation to financial information. The guidelines also assist enforcers in discovering potential infringements within issuers' sustainability information, for example in relation to greenwashing. While the sustainability information framework applies to a larger scope of undertakings than undertakings listed on regulated markets, these guidelines only apply to the supervision of listed undertakings.

### **4. Compliance and reporting obligations**

#### **4.1. Status of the guidelines**

8. In accordance with Article 16(3) of the ESMA Regulation, competent authorities must make every effort to comply with these guidelines.
9. Competent authorities to which these guidelines apply should comply by incorporating them into their national legal and / or supervisory frameworks, as appropriate.

## 4.2. Reporting requirements

10. Within two months of the date of publication of the guidelines on ESMA's website in all EU official languages, competent authorities to which these guidelines apply must notify ESMA whether they (i) comply, (ii) do not comply, but intend to comply, or (iii) do not comply and do not intend to comply with the guidelines.
11. In case of non-compliance, competent authorities must also notify ESMA within two months of the date of publication of the guidelines on ESMA's website in all EU official languages of their reasons for not complying with the guidelines.
12. A template for notifications is available on ESMA's website. Once the template has been filled in, it shall be transmitted to ESMA.

## 5. Guidelines on Enforcement of Sustainability Information

### 5.1. Basic concepts

#### **Guideline 1: Objective of enforcement**

13. **The objective of enforcement of sustainability information is to contribute to a consistent application of the sustainability information framework and, thereby, to the transparency of sustainability information. This will help make the status of sustainability information comparable to that of financial information. Through enforcement of sustainability information, enforcers contribute to the protection of investors and the promotion of market confidence as well as to the avoidance of regulatory arbitrage.**
14. To enable a comparison of the sustainability information of different issuers, it is important that this information is based on a consistent application of the sustainability information framework, in the sense that if facts and circumstances are similar, the disclosures will be similar to the extent required by the sustainability information framework.
15. To ensure that enforcement of sustainability information throughout the Union is carried out in a similar way, enforcers should share the same understanding of the principles set out in these guidelines and of the sustainability information framework.
16. Enforcement of sustainability information implies the examination of sustainability information to assess whether it is in accordance with the sustainability information framework. An enforcer's work differs from assurance on scope as the enforcer performs a priority-based examination in which, based on screening the sustainability information and monitoring issuers and markets, it chooses certain topics for further examination. An enforcer's work also differs from assurance on

objective as the enforcer does not issue an opinion with a positive or negative assurance on the sustainability information. Instead, the enforcer should, based on the information gathered and the examination procedures undertaken in accordance with Guidelines 8 and 9, be able to conclude whether infringements of the sustainability information framework were discovered in relation to the issues / areas which it has assessed. Furthermore, the enforcer largely examines information that has already been subject to (limited or reasonable) assurance and published, while the auditor / independent assurance services provider examines the sustainability information when it is prepared for publication.

17. In order for enforcement of sustainability information to be effective, enforcers should take appropriate actions in accordance with these guidelines, where infringements of the sustainability information framework are detected, to ensure that, whenever necessary, information prepared in accordance with the sustainability information framework is provided. Enforcers should react in a consistent manner if infringements of the sustainability information framework are detected.
18. This is intended not only to promote consistent application of the sustainability information framework, contributing to the efficient functioning of the internal market, which is also important for financial stability, but also to avoid regulatory arbitrage.
19. Enforcers may also seek to encourage compliance by issuing alerts and other publications to assist issuers in preparing their sustainability statement in accordance with the sustainability information framework as well as by engaging in regular dialogue, as appropriate, with issuers, auditors / independent assurance services providers or users of the sustainability information. Such dialogue enables enforcers to receive relevant information on market developments, current or prospective issues relating to the application of the sustainability information framework, as well as to share informal views and recommendations. Unless otherwise specified by the enforcers, such dialogue does not constitute part of a pre-clearance process (see Guideline 10).

## **5.2. Enforcers' internal organisation**

### **Guideline 2: Ensuring an effective enforcement process**

20. **Enforcers should ensure the effectiveness of the enforcement of sustainability information. In order to do so, they should have sufficient human and financial resources to carry out their activities in an effective manner as well as the necessary powers in accordance with Article 24(4) of the Transparency Directive. The human resources should be professionally skilled, experienced with the sustainability information framework, able to**



**assess interactions between sustainability and financial information and sufficient in number, taking into account the number of issuers subject to enforcement of sustainability information, their characteristics, the complexity of their sustainability statements and their ability to apply the sustainability information framework. When enforcers delegate tasks relating to the enforcement of sustainability information in accordance with Article 24(2) of the Transparency Directive, the delegated entity should be supervised by the enforcer and responsible to it.**

21. To ensure effective enforcement of sustainability information, enforcers should have sufficient resources. When considering the level of human resources required, the number of issuers within the scope of enforcement, the complexity of the sustainability information as well as the ability of those who prepare the sustainability information and of the auditors / independent assurance services providers to apply the sustainability information framework play important roles.<sup>11</sup> The probability of being selected for examination and the degree to which this examination is performed should be such that it is not restricted because of lack of resources, creating the conditions for regulatory arbitrage.
22. There should be sufficient financial resources to ensure that the necessary amount of human resources and services can be used in enforcement of sustainability information. The financial resources should also be sufficient to ensure that the human resources are professionally skilled and experienced.
23. Enforcers should have the necessary powers to effectively carry out their enforcement tasks, as required by Article 24(4) of the Transparency Directive.
24. When enforcers delegate tasks related to the enforcement of sustainability information in accordance with Article 24(2) of the Transparency Directive, the final responsibility for enforcement, including the responsibility for the establishment and maintenance of an appropriate process for enforcement, remains with the enforcer.

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<sup>11</sup> Due to the phase-in provisions in the Corporate Sustainability Reporting Directive and the European Sustainability Reporting Standards, enforcers will likely need less human resources (most notably, skills and number of staff) in 2025 compared to subsequent years. The need for human resources will gradually increase as more issuers are required to publish sustainability information under the Accounting Directive and as all disclosure requirements of the European Sustainability Reporting Standards become applicable. Enforcers will also have limited experience with the ESRS at first, however, this experience will grow from 2025 onwards. Particularly, the first year of enforcing sustainability information under the Corporate Sustainability Reporting Directive and the European Sustainability Reporting Standards may improve enforcers' ability to assess the resources they need to fulfil their enforcement mandate. This may lead to changes to the adequacy assessments which enforcers made prior to the first application of the guidelines, resulting in adjustments to the teams responsible for enforcement of sustainability information. A notable example of this situation may be enforcers who did not have powers to enforce the content of the non-financial information under the Non-Financial Reporting Directive who have new powers to enforce sustainability information under the Corporate Sustainability Reporting Directive.

**Guideline 3: Sustainability information prepared under equivalent third country sustainability reporting requirements**

25. **When enforcing sustainability information prepared under equivalent third country sustainability reporting requirements in accordance with the provisions applicable under the Transparency Directive, enforcers should ensure that they have access to appropriately skilled resources or otherwise should coordinate the enforcement of sustainability information with ESMA and other enforcers to ensure that they have the appropriate resources and expertise. Enforcers should discuss enforcement of sustainability information prepared under equivalent third country sustainability reporting requirements with ESMA in order to ensure consistency of treatment of such sustainability information.**
26. In accordance with the Transparency Directive, sustainability information of issuers from third countries is subject to enforcement by the enforcer in the home Member State. In such cases, provided that the conditions set out in Article 23 of the Transparency Directive are met, the issuer's sustainability information may be prepared under third country sustainability reporting requirements which have been declared equivalent to the sustainability information framework. These guidelines apply also to the enforcement of sustainability information of third country issuers that use sustainability reporting requirements which have been declared equivalent in this way.
27. In such cases, if the enforcer determines that it is not efficient or possible to carry out the enforcement of sustainability information itself, the enforcer may by agreement refer the task of examining whether the sustainability information is prepared in accordance with the equivalent third country sustainability reporting requirements to another enforcer or to a centralised team to be organised by ESMA at the request of the enforcer. Without prejudice to Article 28(3) of the ESMA Regulation, the responsibility for the enforcement decision always remains with the enforcer of the home Member State.
28. According to the Transparency Directive, Member States may conclude cooperation agreements providing for the exchange of information with the competent authorities of third countries enabled by their respective legislation to carry out any of the tasks assigned by the Directive.

**Guideline 4: Independence**

29. **Enforcers should ensure adequate independence from government, issuers, holders of securities, auditors / independent assurance services providers, other market participants, regulated market operators and other stakeholders. Independence from government implies that government cannot unduly influence the decisions taken by enforcers. Independence**

**from issuers, holders of securities, auditors / independent assurance services providers, other market participants and other stakeholders should, amongst other things, be achieved through codes of ethics and through the composition of the Board of the enforcer.**

30. In order to ensure appropriate investor protection and avoid regulatory arbitrage, it is important that the enforcer is not unduly influenced either by members of the political system or by issuers and their auditors / independent assurance services providers, holders of securities, other market participants and other stakeholders. Enforcement responsibilities should not be delegated to market operators as this would create conflict of interest issues because the issuers subject to enforcement are at the same time customers of the market operators.
31. Enforcers should not be unduly influenced by government when taking decisions as part of the enforcement process, be it in relation to ex-ante or ex-post enforcement of sustainability information. In addition, it should not be possible to change the composition of the board or other decision-making bodies of the enforcer through government intervention before the end of the period for which its members have been appointed, unless there are exceptional circumstances which require such actions, as this may make the enforcement process less independent.
32. In relation to the independence from issuers, holders of securities, auditors / independent assurance services providers, other market participants and other stakeholders, enforcers should avoid conflicts of interest, whether real, potential or perceived, by taking the required actions to ensure adequate independence, including, but not limited to:
  - a. the establishment of codes of ethics for those involved in the enforcement process,
  - b. cooling off periods,
  - c. requiring assurance that staff involved in the enforcement of sustainability information do not breach any independence requirements because of relationships with either the issuer or the audit firm / independent assurance services provider involved, and
  - d. ensuring that representatives of issuers and auditors / independent assurance services providers are not able, together or individually, to have a majority of votes in the decision-making bodies of enforcers.

### 5.3. Selection

#### **Guideline 5: A mixed selection model**

33. **Enforcement normally uses selection. The selection model should be based on a mixed model whereby a risk-based approach is combined with a sampling and a rotation approach. A risk-based approach should consider the risk of an infringement as well as the impact of an infringement on the financial markets.**
34. Selection models should be formalised and should be based on a combination of a risk-based approach, random sampling and rotation. A pure risk-based approach would mean that those issuers not fulfilling the risk criteria determined by the enforcer would never be subject to examination. There should always be a possibility of an issuer being selected for examination. A pure random system could mean that issuers with high risk were not selected on a timely basis. The same would apply to a pure rotation system and, in addition, there would be a possibility that an issuer would be able to estimate when its sustainability statement was likely to be selected.
35. Risk-based selection takes account of the issuer's specific situation and characteristics, including, for example, aspects relating to the sector and geographies in which issuers operate. It is generally expected that detection of infringements in sustainability information is more likely when using risk-based selection than when using rotation-based and randomised selection. Therefore, enforcers should on average use risk to select at least 50% of the issuers whose sustainability information they examine. Conversely, the proportion of issuers selected based on rotation and randomisation should on average be no more than 50%, with rotation-based selection accounting for the largest portion and randomised selection permitted to account for even a small percentage of the selection.
36. If the enforcer decides to integrate its risk-based selection of issuers whose sustainability information will be examined with the risk-based selection of issuers whose financial information will be examined, the enforcer should ensure that the selection model is balanced so the issuers selected for the purpose of risk-based examinations of sustainability information ultimately possess a risk of infringement in the sustainability information.
37. Determination of risk should be based on the combination of the probability of infringements in the issuer's sustainability information and the potential impact of an infringement on the financial markets. In determining the risk of infringements, selection models take into account, as appropriate, the sustainability information framework and the principle of materiality in accordance with Guideline 13. The

complexity of the sustainability statement should be taken into account. The enforcer should also take account of the risk profile of the issuer, including its management, and, as far as possible, of:

- a. management's ethical standards,
  - b. management's experience with applying, and their ability or willingness to apply, the sustainability information framework correctly,
  - c. the level of experience of the issuer's auditors / independent assurance services providers with the sustainability information framework.
38. While larger issuers are typically faced with more complex reporting issues, fewer resources and less experience with preparing sustainability information could be more prevalent among smaller and / or new issuers.
39. Indications of infringements from the auditors / the independent assurance services providers, whether in their reports or otherwise, and from regulatory bodies should normally trigger a selection of the sustainability information in question for examination. On the other hand, when the auditor / independent assurance services provider has expressed an unmodified <sup>12</sup> (limited or reasonable) assurance conclusion, this should not be considered as proving the absence of risk of an infringement. Grounded complaints which, after preliminary scrutiny, contain concrete indications of infringements and appear reliable, should normally trigger a selection of the sustainability information in question for examination.
40. In order to ensure European supervisory convergence, when applying the relevant criteria for selection, enforcers should take into account the common enforcement priorities identified by enforcers together with ESMA.
41. Selection models should comply with ESMA's guidance on sustainability information. Enforcers should discuss factors used as part of their national selection method in the SRWG and thus contribute to the convergence of selection methods.

#### **Guideline 6: Timing of selection model**

42. **Enforcers should select issuers for examination sufficiently often (i.e., annually). The selection model should ensure that each issuer is examined**

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<sup>12</sup> [Proposed International Standard on Sustainability Assurance 5000 – General Requirements for Sustainability Assurance Engagements](#), International Auditing and Assurance Standards Board, 2 August 2023.

at least once during a period selected by the enforcer in line with ESMA's guidance on sustainability information.

#### **Guideline 7: Selection universe**

43. **Enforcers should undertake risk-based and randomised selection from the full universe of issuers who are required to publish sustainability information under the Accounting Directive. Enforcers should undertake rotation-based selection from a universe which excludes the issuers that were examined within the period selected by the enforcer.**
44. For the purpose of selection, enforcers should keep a list of the issuers within their enforcement remit who are required to publish sustainability information under the Accounting Directive.
45. The goal of risk-based selection is to select the issuers whose sustainability information is most likely to contain an infringement and for whom an infringement would have the largest impact on the financial markets. Therefore, risk-based selection should always be done from the full universe of issuers who are required to publish sustainability information under the Accounting Directive, including issuers who were examined in recent previous years.
46. The goal of randomised selection is to ensure that it is not possible for issuers to calculate when they will next be examined. Therefore, randomised selection should always be done from the full universe of issuers who have securities admitted to trading on a regulated market and are required to publish sustainability information under the Accounting Directive, including issuers who were examined in recent previous years.
47. The goal of rotation-based selection is to guarantee that all issuers who have securities admitted to trading on a regulated market and are required to publish sustainability information under the Accounting Directive are examined at least once within a defined period. Therefore, once an issuer has been examined, the enforcer should not include that issuer in the universe from which rotation-based selection is done until the period within which the enforcer examines all issuers in accordance with Guideline 6 has passed.

#### **5.4. Examination**

##### **Guideline 8: Types of examination**

48. **Enforcers should identify the most effective way to enforce sustainability information. As part of the ex-post activities regarding enforcement of**

**sustainability information of issuers selected for examination, enforcers can use:**

- a. **interactive unlimited examinations,**
  - b. **interactive focused examinations,**
  - c. **desktop unlimited examinations, and**
  - d. **desktop focused examinations.**
49. **Interactive unlimited examinations should generally constitute at least 33% of all examinations undertaken within any given year or cover at least 10% of the total amount of issuers under the enforcer's supervision at the beginning of the year.**
50. Interactive examinations entail an exchange of information between the issuer and the enforcer regarding the sustainability information under examination. The interaction between the issuer and the enforcer may occur, for example, when the enforcer poses questions to the issuer, requires supporting documents or carries out on-site inspections. Enforcers should require necessary information irrespective of whether an indication exists in relation to the non-compliance of sustainability information with the sustainability information framework. The enforcer may also contact the issuer's auditor / independent assurance services provider.
51. Interactive examinations should be the primary procedure used for enforcement of sustainability information, therefore the use of desktop examinations should be limited. Furthermore, the sole use of interactive focused examinations should not be considered as satisfactory for enforcement purposes.
52. Where an enforcer meets neither of the thresholds set out in paragraph 49 within a given year, it should be able to explain why it was unable to meet these thresholds.

**Guideline 9: The examination process**

53. **An enforcer's examination process should aim at assessing whether sustainability information of issuers is in accordance with the sustainability information framework. In addition, enforcers should examine if the sustainability information contained in the sustainability statement is consistent with the information included elsewhere in the annual financial report, where relevant.**



Assessing whether sustainability information is in accordance with the sustainability information framework does not result in the enforcer giving a positive or negative assurance to the issuer that the sustainability information complies with the sustainability information framework, as explained under Guideline 1. However, if, in the course of its examination, the enforcer concludes that it has encountered an infringement or an immaterial departure as set out in paragraph 64 of Guideline 12<sup>13</sup>, the enforcer should apply the enforcement actions set out in paragraph 63 of Guideline 12<sup>14</sup>.

54. The conclusions of an enforcer following an examination can take one of the following forms:

a. Following a desktop examination

- i. A decision that there are no indications of infringements in the sustainability information, or in relation to the issues / areas of the sustainability information which the enforcer analysed, and that no further examination is therefore needed.
- ii. On rare occasions when infringements are obvious without interaction with the issuer, a decision that the enforcer has discovered infringements in the sustainability information and which enforcement action is required to address those infringements.

b. Following an interactive examination:

- i. A decision that the enforcer has not discovered infringements in relation to the issues / areas of the sustainability information it has analysed and that no enforcement action is required.
- ii. A decision that the enforcer has discovered infringements in the sustainability information and which enforcement action is required to address those infringements.

55. Enforcers should ensure that the examination procedures undertaken are sufficient in order to achieve an effective enforcement process and that the examination and its conclusion are documented appropriately.

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<sup>13</sup> Guideline 12, paragraph 64: “Where an immaterial departure from the sustainability information framework is left intentionally uncorrected to achieve a particular presentation of the issuer, the enforcer should take appropriate action as if it was material.”

<sup>14</sup> Guideline 12, paragraph 63: “An enforcer should use the actions indicated below, at the enforcer’s initiative. Whenever an infringement is detected, the enforcer should in a timely manner take at least one of the following actions in accordance with the considerations described in paragraph 67: a) require a reissuance of the sustainability statement, b) require a corrective note, or c) require a correction in the future sustainability statement with restatement of comparatives, where relevant.”

56. Without prejudice to the application of paragraph 55.a, should an enforcer detect potential infringements during a desktop examination which are not considered to be obvious, it is expected to investigate those further by contacting the issuer and, as appropriate, its auditors with questions. This would then re-categorise the examination as an interactive examination. The enforcer may also contact the issuer's auditor / independent assurance services provider.

#### **Guideline 10: Pre-clearance**

57. **Where pre-clearance is permitted, it should be part of a formal process, and provided only after the issuer and its auditor / independent assurance services provider have finalised their position on the sustainability information concerned.**
58. Enforcement of sustainability information normally takes published sustainability information as its starting point. Hence, by nature, it is an ex-post activity which is carried out in accordance with the examination procedures indicated in Guidelines 8 and 9 and applied to the sustainability information selected based on the criteria set out in the selection methods indicated in Guidelines 5, 6 and 7.
59. However, some enforcers have a well-developed pre-clearance system where issuers are able to secure an enforcement decision ex-ante, i.e., before they publish the relevant sustainability information. Certain conditions should be in place when enforcers are using pre-clearance. In particular, the issuer and its auditor / independent assurance services provider should have a firm final position on the issues / areas of the sustainability information in relation to which pre-clearance is sought as this will enable a pre-clearance decision to be based on the same level of information as an ex-post decision. This will avoid pre-clearance decisions becoming general interpretations.
60. Pre-clearance should be part of a formal process, meaning that a proper decision is taken by the enforcer in a way similar to that in which ex-post decisions are taken. This implies that the enforcer should not reverse its position after the sustainability information has been published unless facts and circumstances have changed between the date the enforcer expressed its position and the date the sustainability information is issued, or there are other substantial grounds for doing so. This does not preclude other discussions between enforcers and issuers and their auditors / independent assurance services providers on the sustainability information as long as the outcome does not constitute a decision.

#### **Guideline 11: Quality review**

61. **In order to ensure that the examination procedures used and the related conclusions are robust, enforcers should put in place quality reviews of the examinations performed.**
62. Quality reviews should be performed by staff that has relevant experience and expertise in the sustainability information framework and in the reporting issues which are being examined. Discussions on the results of quality reviews should also be conducted amongst staff with such experience and expertise.

## **5.5. Enforcement actions**

### **Guideline 12: Choice of enforcement action**

63. **An enforcer should use the actions indicated below, at the enforcer's initiative. Whenever an infringement is detected, the enforcer should in a timely manner take at least one of the following actions in accordance with the considerations described in paragraph 67:**
  - a. **require a reissuance of the sustainability statement,**
  - b. **require a corrective note, or**
  - c. **require a correction in the future sustainability statement with restatement of comparatives, where relevant.**
64. **Where an immaterial departure from the sustainability information framework is left intentionally uncorrected to achieve a particular presentation of the issuer, the enforcer should take appropriate action as if it was material.**
65. **Where an immaterial departure from the sustainability information framework is detected but there is a significant risk that it might become material in the future, the enforcer should inform the issuer about the departure.**
66. **Similar actions should be used where similar infringements are detected, after consideration has been taken of materiality.**
67. When deciding between the types of action to be applied, enforcers should take into account the following considerations:
  - a. Subject to the existing powers of the enforcer and consistent with Guideline 1, when deciding between requiring a reissuance of the sustainability statement or a corrective note, the final objective is that the best possible information is provided, and an assessment should be made

of whether the original sustainability statement and a corrective note provide sufficient clarity or whether a reissuance of the sustainability statement is the best solution.

- b. When deciding whether to require either a correction in the future sustainability statement or the publication of a corrective note / reissuance of the sustainability statement at an earlier moment, different factors should be considered, namely:
  - i. the timing of the decision: for instance, where the decision is very close to the date of the publication of the next sustainability statement, a correction in the future sustainability statement might be appropriate;
  - ii. the nature of the decision and the surrounding circumstances: for instance, where the correct information has made it to the public sphere at the moment the decision is taken, the enforcer could opt for a correction in the future sustainability statement.

68. When the enforcer decides to require a correction in the future sustainability statement, the reason for selecting this enforcement action should be stated clearly in the enforcer's conclusion.

#### **Guideline 13: Materiality**

69. **When determining materiality, where applicable, of an omission or misstatement for the purpose of enforcement of sustainability information, this should be assessed taking into account the part of the sustainability information framework used for the preparation of the sustainability information.**
70. When the sustainability information framework relies on a double materiality perspective, this should be the basis for the enforcer's materiality assessment of an omission or misstatement.

#### **Guideline 14: Follow-ups**

71. **Enforcers should ensure that actions are appropriately acted on by the issuers against which the actions were taken.**
72. As infringements could, by definition, have an impact on the decisions made on the basis of sustainability information, it is important that the corrected information is published, unless impracticable, on a timely basis. Therefore, when actions a) or b) mentioned in Guideline 12 are taken, the relevant sustainability information

and the action taken should be made available, unless impracticable, directly by the issuer and/or by the enforcer.

## 5.6. European coordination

### **Guideline 15: European common enforcement priorities**

73. **In order to achieve a high level of harmonisation in enforcement, enforcers should discuss and share experience on the application and enforcement of the sustainability information framework during meetings of the Sustainability Reporting Working Group (SRWG). On that basis, enforcers under ESMA coordination should identify common enforcement priorities on a yearly basis.**
74. In order to achieve a high level of harmonisation in enforcement, ESMA has set up the SRWG in which all enforcers should be members and should participate.
75. To promote supervisory convergence, enforcers under ESMA coordination should identify common reporting matters for enforcement of sustainability information in the Union which should be made public sufficiently in advance of the end of the reporting period. While most of the areas should be common, some of them might not be relevant for all Member States or might be specific to some industries. Definition of areas should be done sufficiently in advance in order to allow enforcers to include these in their enforcement programme as areas for examination.

### **Guideline 16: Coordination in SRWG**

76. **Although the responsibility for enforcement rests with enforcers, in order to promote harmonisation of enforcement practices and to ensure a consistent approach among enforcers to the application of the sustainability information framework, coordination of ex-ante and ex-post decisions should take place in the SRWG. Enforcers, under ESMA's coordination, should also identify reporting matters and provide technical input for the preparation of ESMA statements and/or opinions.**
77. Although actions are taken at national level, the creation of a single securities market implies the existence of similar investor protection in all Member States. Consistent enforcement of sustainability information in the Union requires coordination and a high level of harmonisation of actions among enforcers. In order to ensure proper and rigorous enforcement of sustainability information and avoid regulatory arbitrage, ESMA will promote harmonisation of enforcement approaches through coordination of ex-ante and ex-post decisions taken by enforcers.

78. The adoption of the sustainability information framework and interpretations of its application are reserved for standard setters. Therefore, ESMA and enforcers do not issue any general application guidance to issuers on the sustainability information framework. Nevertheless, as part of the enforcement activities, enforcers apply their judgement in order to determine whether reporting practices are considered as being within the accepted range as permitted by the sustainability information framework.
79. When the sustainability information framework is applied, ESMA will convey material controversial reporting issues, as well as ambiguities and any lack of specific guidance, discovered during the enforcement process, as appropriate, to the body responsible for standard setting and interpretation (namely, the European Commission) or its advisory body (namely, EFRAG). This is also the case for any other issues identified which create enforceability constraints during the enforcement process.

#### **Guideline 17: Emerging issues**

80. **Discussion of cases at the SRWG can take place either before the enforcer draws a conclusion to its examination (emerging issues) or after the enforcer draws a conclusion to its examination (decisions). Except in rare circumstances where the deadline imposed on an enforcer makes it impossible to prepare, present and discuss with the SRWG before a decision is taken, a reporting issue should be submitted as an emerging issue in any of the following situations:**
- a. **Where no decision has yet been taken by an enforcer on the reporting issue at hand or where the SRWG has had no prior discussion of the issue. This does not apply to matters presenting little technical merit or where the sustainability information framework is clear and where the infringement is obvious;**
  - b. **Where the reporting issue at hand is identified by enforcers or ESMA as of significant importance for the internal market;**
  - c. **Where the enforcer disagrees, or intends to take a decision that appears not to be in accordance, with:**
    - i. **An earlier decision on the same or a similar reporting issue;**  
or
    - ii. **The outcome of a discussion of an emerging issue on the same or a similar reporting issue.**

**Submitting the case as an emerging issue in these situations has the goal of establishing whether differences in facts and circumstances justify a decision which is different from the precedent.**

**d. Where the enforcer identifies a risk of significantly different reporting practices by issuers across Europe.**

**81. Enforcement decisions taken on the basis of an emerging issue should take into account the outcome of the discussion in the SRWG.**

82. Reporting issues encountered by an enforcer, other than those when the sustainability information framework is clear, the infringement obvious and a decision has already been taken, should be brought to the attention of ESMA and discussed in the SRWG to ensure that a consistent enforcement approach is taken. In order to do so, enforcers should present such issues for discussion before they take a decision and take into account the outcome of the discussion in the SRWG. The outcome should also be taken into account by other enforcers. ESMA may also bring emerging issues to the SRWG in case reporting issues are of significant importance to the internal market.

83. In addition to the situations presented in paragraph 80, a reporting issue may be presented as an emerging issue where the enforcer is looking for further guidance from other enforcers, for example because of the complex nature of the reporting issue or where the enforcer is looking for further guidance because the issue might raise an enforceability issue.

#### **Guideline 18: Decisions**

**84. A decision should be submitted to the SRWG if the decision fulfils one or more of the following criteria:**

- a. The decision refers to reporting matters with technical merit;**
- b. The decision has been discussed as an emerging issue, unless it was decided otherwise during the discussion in the SRWG meeting;**
- c. The decision will be of interest for other reasons to other enforcers (this judgement is likely to be informed by SRWG discussions);**
- d. The decision indicates to an enforcer that there is a risk of significantly different reporting practices being applied by issuers;**
- e. The decision is likely to have a significant impact on other issuers;**



- f. **The decision is taken on an issue not directly addressed by a specific provision in the sustainability information framework;**
- g. **The decision has been overruled by an appeals committee or Court;  
or**
- h. **The decision appears to be in contradiction with an earlier decision on the same or a similar reporting issue.**

85. Emerging issues and decisions discussed in the SRWG normally refer to sustainability information prepared under the sustainability information framework but could also cover sustainability information prepared under equivalent third country sustainability reporting requirements.

**Guideline 19: Taking earlier decisions into account**

86. **Enforcement decisions by enforcers should take into account earlier decisions on the same reporting issue where similar facts and circumstances apply. Enforcement decisions include both ex-ante and ex-post decisions, as well as the outcome of discussions at the SRWG on a decision on whether or not a piece of sustainability information is in accordance with the sustainability information framework and the action related to it. Irrespective of the outcome of the SRWG discussion, the final decision is the responsibility of the enforcer.**

87. In order to ensure a consistent enforcement regime throughout the Union, enforcers should, before taking an enforcement decision, look for decisions taken by other enforcers in the relevant database mentioned in Guideline 20 and take them into account, as they should take into account the enforcer's own earlier decisions on the same reporting issue. This is the case irrespective of whether the decision is taken as pre-clearance or as a decision based on a published sustainability statement.

**Guideline 20: Submission of emerging issues and decisions**

88. **All emerging issues that meet any of the submission criteria as mentioned in Guideline 17 should be submitted to ESMA with the relevant details normally within two weeks before the SRWG meeting in which they are going to be discussed. All enforcement decisions that meet any of the submission criteria as mentioned in Guideline 18 should be submitted to ESMA with the relevant details normally within three months of the decision being taken.**

89. To ensure effective and efficient discussions, emerging issues and decisions should be clear and concise yet include all relevant facts, the issuer's arguments, the basis for the enforcer's rationale and the conclusion.

90. Coordination in the SRWG should be facilitated by the existence of an enforcement database. The objective of the database is to constitute a platform for sharing information on a continuous basis. The time frame for submission of decisions is set to avoid too many situations where already taken decisions that should have been taken into account in relation to later decisions are not known to other enforcers. ESMA will review all submissions for internal consistency, sufficiency of information and use of correct terminology and may require resubmission or the provision of additional information. After a completed review, ESMA will log the enforcement decision into the database. The enforcement database contains the outcome of the discussion that took place during the meeting. ESMA is responsible for the technical maintenance of the database.

**Guideline 21: Publication of decisions**

91. **In order to promote consistency of application of the sustainability information framework, enforcers should decide which decisions included in the database can be subject to publication on an anonymous basis.**
92. A selection of decisions to be published should be made by enforcers under ESMA coordination. The decisions selected for publication should fulfil one or more of the following criteria:
- a. The decision refers to a complex reporting issue or an issue that has led or could lead to different applications of the sustainability information framework; or
  - b. The decision relates to a relatively widespread issue among issuers or in a certain type of business and, thereby, may be of interest to other enforcers or third parties; or
  - c. The decision relates to an issue on which there is no experience or on which enforcers have inconsistent experiences; or
  - d. The decision has been taken on an issue not directly addressed by a specific provision in the sustainability information framework.

**Guideline 22: Reporting on enforcement activities**

93. **Enforcers should report periodically on their enforcement activities at national level and provide ESMA with the necessary information for the reporting and coordination of the enforcement activities carried out at Union level.**

94. Enforcers should periodically report to the public on the enforcement policies and decisions taken in individual cases. It is up to the enforcer whether to report on an anonymous or a non-anonymous basis on these matters.
95. Enforcers should report to ESMA findings and enforcement decisions relating to the common enforcement priorities, as identified in accordance with Guideline 15. These, together with other activities relevant to European coordination, are published by ESMA in its report on corporate reporting enforcement and regulatory activities.