European Securities and Markets Authority

Response to public consultation

ESMA response to the European Commission consultation on the Fitness Check on the EU Framework for public reporting by companies

17 July 2018 | ESMA32-51-522

Fitness check on public reporting by companies: public consultation

Scope of ESMA's response

This answer was prepared by ESMA taking into account the views of its members. These questions are therefore addressed from the viewpoint of securities regulators. The scope of our answers is restricted to listed companies and deals primarily with financial information prepared according to IFRS Standards.

ESMA tried to gather a single European response to the questions. However, when the comments received reflected specific particularities, they were included in the questionnaire in the part related to 'Comments'.

I. ASSESSING THE FITNESS OF THE EU PUBLIC REPORTING FRAMEWORK OVERALL

Question 1

Do you think that the EU public reporting requirements for companies, taken as a whole, have been effective in achieving the intended objectives?

	1	**2**	**3**	**4**	**5**	**Don't know**
Ensuring stakeholder protection				x		
Developing the internal market				x		
Promoting integrated EU capital markets				x		
Ensuring financial stability				x		
Promoting sustainability			x			

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5 = totally agree)

Please explain your response and substantiate it with evidence or concrete examples.

1. ESMA believes that the EU public reporting framework for listed companies contributed to greater comparability at national, EU and global level through the use, among other things, of IFRS as common accounting standards. We believe that the existing framework for listed companies continues to ensure a high level of transparency of the financial information published by listed companies and a high level of comparability across and within sectors, thus ensuring investors' protection, and contributing to the development of the internal market and the promotion of an integrated EU capital market.
2. ESMA also notes that transparency is an important element to achieve financial stability but it is not enough on its own. Important new IFRS standards entered into force recently, introducing new recognition and measurement criteria (such as IFRS 9 *Financial Instruments*, IFRS 15 *Revenue from Contracts with Customers* and IFRS 16 *Leases*). Introduction of the new standards aims at enhancement of investors protection and increase of transparency thus contributing to financial stability.
3. ESMA believes that it is too early to fully assess whether EU reporting requirements for companies sufficiently promoted sustainability but welcomes the Commission's initiative and the entry into force of the new non-financial information Directive and of the related non-binding Guidelines, whose effectiveness ESMA will be monitoring. As further explained in responses to Q41 and 42, ESMA's preliminary view is that the EU requirements for listed companies, albeit relevant and necessary, risk falling short of promoting sustainability because of the persisting lack of a common reporting framework on good corporate governance and sustainable finance. Furthermore, we are of the view that EU reporting requirements cannot, by themselves, achieve the above-mentioned objectives.

Question 2

Do you think that the EU public reporting requirements for companies, taken as a whole, are relevant (necessary and appropriate) for achieving the intended objectives?

	1	2	3	4	5	Don't know
Ensuring stakeholder protection				x		
Developing the internal market					x	
Promoting integrated EU capital markets					x	
Ensuring financial stability				x		
Promoting sustainability				x		

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5 = totally agree)

Please explain your response and substantiate it with evidence or concrete examples of any requirement that you think is not relevant.

4. In line with the answer to question 1, ESMA believes EU public reporting requirements for listed companies are relevant (necessary and appropriate) for achieving the intended objectives. In particular, they have facilitated free movement of capital, as one of the basic freedoms underpinning the EU single market, and helped companies in the EU compete on a level playing field to attract financial resources in the EU and other capital markets.

5. However, it is too early to assess reporting requirements on sustainability for companies at this stage, but as a preliminary assessment based on expected impact of the non-financial information Directive and the associated non binding guidelines, ESMA thinks the reporting requirements are necessary but risk being insufficient to achieve the intended objectives (for more details please see answers from Question 40 to Question 50).

Question 3

Companies would normally maintain and prepare a level of information that is fit for their own purposes, in a "business as usual situation". Legislation and standards tend to frame this information up to a more demanding level.

	1	2	3	4	5	Don't know
With regards to the objectives pursued, do you think that the EU legislation and standards on public reporting are efficient (i.e. costs are proportionate to the benefits generated)				x		

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5 = totally agree)

6. In line with the view expressed in response to Q20 of the EC consultation on the IAS Regulation (2014/ESMA/1344/Annex 1), ESMA is of the opinion that the burden of the IFRS in the EU is generally proportionate to the benefits generated, even though costs are higher in the years following entrance into force of a new standard and whenever significant modifications to the existing standards arise.

7. EU legislation and standards are essential in requiring companies to disclose relevant information and in ESMA's experience the benefits outweigh the costs.

Question 5

Do you agree that the intrinsic coherence of the EU public reporting framework is fine, having regard to each component of that reporting?

	1	2	3	4	5	Don't know
Financial statements (preparation, audit and publication)				x		
Management report (preparation, consistency check by a statutory auditor, publication)			x			
Non-financial information (preparation, auditor's check and publication)			x			
Country-by-country reporting by extractive/ logging industries (preparation, publication)				x		

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5 = totally agree)

8. ESMA believes that the single components of the EU public reporting framework are intrinsically sufficiently coherent. However, ESMA believes that the coherence of the EU public reporting framework might be negatively impacted by the fact that, for listed companies, the management report and non financial information are governed on the basis of a minimum harmonisation based on implementation of Directives, whilst the consolidated financial statements are governed by a single Regulation at EU level.

9. Going beyond the intrinsic coherence of each component, however, it is important to note that there are several examples of overlaps and repetitions which may contribute to the so-called "disclosure overload" *between* those components. For instance, disclosures related to financial risks in the management report (MD) and financial statements (IFRS 7), disclosures related to acquisition of own shares in the management report (AD) and financial statements (IAS 1.79), key management personnel compensation in the financial statements (IAS 24) and the future remuneration report, related-party transactions in the financial statements (IAS 24) and interim management report (Art. 5.4 TD). ESMA suggests the Commission to consider trying to reduce theses duplications although this should not imply removing any IFRS requirements.

10. Furthermore, as further discussed in answer to question 60, ESMA also notes that in relation to the ESEF requirements, the disclosure of electronic information from 2020 will only concern annual financial statements and not, for example half-year reports. This risks creating an incoherence in the consumption of financial information.

11. Please note that only few EU national accounting enforcers supervise issuers belonging to the extractive/ logging industry and their country-by-country reporting. Those to whom this is relevant mostly agree that the existing reporting framework is coherent.

Question 7

Do you think that, for each respective objective, the EU is the right level to design policies in order to obtain valuable results, compared to unilateral and non-coordinated action by each Member State?

	1	2	3	4	5	Don't know
Ensuring stakeholder protection				x		
Developing the internal market					x	
Promoting integrated EU capital markets					x	
Ensuring financial stability				x		
Promoting sustainability				x		

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5 = totally agree)

Please explain your response and substantiate it with evidence or concrete examples

12. ESMA believes that for all the above-mentioned objectives, and in particular in order to achieve the benefits of a fully integrated capital market, the EU is the right level to design policies in order to obtain valuable results. Indeed ESMA welcomes the harmonised legal basis and tools created at the EU level in the area of securities markets for Prospectuses (Prospectus Regulation (EU) 2017/1129).

13. Unilateral actions by Member States would endanger comparability of the information disclosed by listed entities. Specifically relating to IFRS, endorsing financial reporting standards issued by IASB at EU level is the most cost-efficient solution in terms of rule-making effort and for the achievement of a level playing-field for preparers and investors.

II. THE FINANCIAL REPORTING FRAMEWORK APPLICABLE TO ALL EU COMPANIES

Question 8

In your view, to what extent do the addition of, and differences in, national reporting rules hinder the ability of companies to do cross border business within the EU single market?

- Differences seriously hinder the ability to do business within the EU
- Differences hinder to some extent
- Differences do not hinder the ability to do business within the EU / are not significant
- Don't know

Proposed answer:

- Differences hinder to some extent

Please explain your response and substantiate it with evidence or concrete examples.

14. ESMA believes that differences in national reporting requirements may arise due to Member State options in implementing the various Directives of the EU reporting framework (e.g. measurement rules, whether all entities within a group must or are allowed to use IFRS, or whether a cash flow

statement is required under local law etc). Differences in the language of publication of financial information may also hinder comparability.

15. Differences in financial reporting are not however the most important hindrance to cross-border business at the moment for listed companies. Divergence in some provisions of fiscal and company laws, such as dividend's requirements, needs to be addressed as a matter of priority in order to ensure a level playing field between businesses operating cross-border.

Question 9

To what extent do you think that the following differences, because they affect public reporting by companies, are significant impediments to cross-border establishment in the EU?

	1	**2**	**3**	**4**	**5**	**Don't know**
Areas covered by EU requirements						
Differences and lacunas in accounting standards or principles				x		
Differences in corporate governance standards			x			
Differences and overlaps arising from the presentation of the financial statements (balance sheet, etc.)		x				
Differences arising from publication rules / filing with business registers (publication deadlines, publication channels, specifications)		x				
Differences arising from audit requirements		x				
Differences arising from dividends distribution rules or capital maintenance rules				x		
Areas not covered by EU requirements						
Differences arising from specific bookkeeping requirements such as charts of accounts, audit trail requirements, data storage and accessibility			x			
Differences arising from language requirements (Bookkeeping documentation, publication of financial statements)				x		
Differences arising from the determination of taxable profit				x		
Differences arising from digital filing requirements (for instance taxonomies used)			x			

	1	2	3	4	5	Don't know
Differences arising from software specifications			x			
Other (please specify)…………..						

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5 = totally agree)

Please explain your response and substantiate it with evidence or concrete examples

16. ESMA notes that for the areas covered by EU requirements, no major hindrances to cross-border establishment in the EU exist for entities listed on a regulated market. We consider however that initiatives aimed at homogenizing reporting frameworks of corporate governance would be beneficial to investors, who are increasingly more interested in entities' corporate governance structure, and to preparers, for whom it is at times problematic and burdensome to comply or explain different corporate governance standards when conducting cross-border business.
17. ESMA is of the view that the differences in accounting standards for non-consolidated listed issuers and lacunas in the Accounting Directive (such as accounting for derivatives, cash flow statements and lease contracts) may impact to some extent cross-border activity. However, this is less relevant for all issuers listed on a regulated market preparing consolidated financial statements since these have to be prepared under IFRS as adopted by the EU.
18. ESMA also wishes to strongly highlight the need to carry on harmonisation in term of audit standards and audit supervision within Europe in order to foster a single set of auditing standards and practices applicable within the EU in the near future. In this respect, ESMA emphasises the need for endorsement of the the International Standards on Auditing, in accordance with the provisions of the Audit Directive and further strenghthen European coordination of the audit supervision.
19. As for areas not covered by EU requirements, differences in bookkeeping may be considered by companies in decisions such as the establishment of new subsidiaries, although it is not expected to be a determinant factor. Furthermore, ESMA notes that harmonisation of the determination of taxable profit, although a key issue, is not in its scope of activity.

<u>Question 12</u>

As regards the preparation of consolidated and individual financial statements how do you assess the ability of the following approaches to reduce barriers to doing business cross-borders?

	1	**2**	**3**	**4**	**5**	**Don't know**
The EU should reduce the variability of standards from one Member State to another through more converged national GAAPs, possibly by removing options currently available in the EU accounting legislation				x		
The EU should reduce the variability of standards from one Member State to		x				

another by converging national GAAPs on the basis of a European Conceptual Framework						
The EU should reduce the variability of standards from one Member State to another by converging national GAAPs and in addition by addressing current lacunas in the Accounting Directive (leases, deferred taxes, etc.)				x		

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5 = totally agree)

Please explain your response and substantiate it with evidence or concrete examples.

20. ESMA notes that the Accounting Directive is very high level and contains a number of options which create a high variability in the standards from one Member State to another. Removal of at least some of such options, especially those which are not widely used by Member States, could facilitate the analysis of financial statements by investors.
21. ESMA believes that further convergence of national GAAPs, removing options currently available in the Accounting Directive and addressing current lacunas in the Accounting Directive are the preferable route to be considered. ESMA believes that a European Conceptual framework would have no added value as it would largely overlap with the requirements of the Accounting Directive.

<u>Question 16</u>

How do you think that the current EU framework as regards the content of financial reporting is relevant (necessary and appropriate), having regards to the following information:

	1	**2**	**3**	**4**	**5**	**Don't know**
A company's or group's strategy, business model, value creation			x			
A company's or group's intangible assets, including goodwill, irrespective of whether these appear on the balance sheet or not				x		
A company's or group's policies and risks on dividends, including amounts available for distribution			x			
A company's or group's cash flows			x			

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5 = totally agree)

Please explain, including if in your view additional financial information should be provided:

22. ESMA believes that the current EU framework regarding a company's strategy, business model and value creation is relevant and covered by the non-financial information Directive, but would benefit from a more solid reporting framework and from strengthening, in the long term, the existing requirements.
23. Furthermore ESMA wishes to highlight that are no requirements for companies to disclose their distributable profits within the EU Framework, and that this could be a useful requirement for stakeholders.
24. Relating to IFRS, ESMA also highlights that any amendments to the current requirements, regarding intangible assets, cash flow statements or others, should be dealt with, as much as possible, within the IFRS standard-setting process. Finally, information on cash flow is relevant but the EU framework could be improved by explicitly requiring a cash flow statement.

<u>Question 17</u>

Is there any other information that you would find useful but which is not currently published by companies?

- o Yes
- o No
- o Don't know

Proposed answer:

- o Yes

If you answered yes, please explain what additional information you would find useful

25. Depending on the experiences that will arise from the implementation of the non-financial information Directive, ESMA believes that requirements on disclosures of non-financial information could be strengthened and a common reporting framework for non-financial information be identified. For example, climate related information (along the lines of the FSB TCFD recommendations) are currently not mandatory disclosures although they constitute very relevant information.
26. As further discussed in answer to Q42, ESMA also wishes to highlight that the current framework on non-financial information leaves excessive leeway for companies not to include relevant information (for ex. the extension of payment terms to creditors, climate-related disclosures etc). The existing requirements do not allow all regulators to challenge companies on their disclosures.

<u>Question 18</u>

	1	**2**	**3**	**4**	**5**	**Don't know**
Do you think that the EU framework should define and require the disclosure of the			x			

most commonly used alternative performance measures?						

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5 = totally agree)

Please explain your response and substantiate it with evidence or concrete examples

27. ESMA believes that it would be helpful if the IASB provided guidance and definitions of subtotals and most commonly used Alternative Performance Measures (APMs) to be used in the IFRS financial statements. Indeed, the IASB already started to work on that topic under the Primary Financial Statements project and ESMA believes an IASB-driven solution would be preferrable if the project is indeed completed. Similar efforts could be envisaged as part of the revisions to the Accounting Directive.
28. ESMA's APM Guidelines already assist in closing the gap in the presentation and definition of APMs and improve conformity and consistency. The Commission may wish to consider any lessons learnt once the new Prospectus regime comes into force, given the difficulties faced in defining what are the historical measures of performance most useful to investors which should be presented in the prospectus summary.

III. THE EU FINANCIAL REPORTING FRAMEWORK FOR LISTED COMPANIES

Question 19

Given the different levels of commitment to require IFRS as issued by the IASB around the globe, is it still appropriate that the IAS Regulation prevents the Commission from modifying the content of IFRS?

- Yes
- No, due to the risk of uneven level playing field for EU companies vis-à-vis companies established in third countries that do not require the use of IFRS as issued by the IASB.
- No, due to the risk that specific EU needs may not properly be addressed during the IASB standard setting process.
- No, due to other reasons.
- Don't know

Proposed answer:

- Yes

If you answered "No, due to other reasons ", please specify.

29. ESMA strongly believes that the IAS Regulation, on which the Commission already carried out extensive consultation and evaluation in 2015, should not be put into question again, as the underlying situation has not changed since then and the results of the assessment remain valid.
30. Any European-specific adjustments to IFRS would defy one of the key objectives of the IAS Regulation, namely that financial reporting standards applied by listed issuers are accepted internationally and are truly global standards. In addition, we believe that modifications to IFRS at

the European level would hinder the capacity of European companies to compete for financial resources on equal terms in the global capital markets.

31. In our view, the different level of commitment to require IFRS as issued by the IASB around the globe is not a justification for introducing carve-ins. On the contrary, Europe should show leadership in reaffirming its commitment to IFRS. This in turn increases its ability to influence the development of IFRS, which the EU should continue to actively do through the IASB's due process.

Question 20

Since the adoption of IFRS by the EU in 2005, topics such as sustainability and long-term investment have come to the forefront of the regulatory agenda. Is the EU endorsement process appropriate to ensure that IFRS do not pose an obstacle to broader EU policy objectives such as sustainability and long-term investments?

- Yes
- No
- Don't know

Proposed answer

- Yes

If you answered "No, due to other reasons ", please specify.

32. ESMA strongly believes that the EU endorsement process is appropriate and can accommodate further developments related to other EU policy objectives such as sustainability and long-term investment. ESMA would also like to highlight that the primary objective of the IAS Regulation is transparency of financial information, which should not be compromised to meet other policy objectives.
33. Sustainability and long-term investment policy objectives, albeit important, could be addressed via the existing endorsement process not as a separate criterion, but for example by better articulating the concept of 'European public good' criterion, which already exists in the endorsement process, including therein consideration to long-term and sustainability aspects.

Question 21

How could the EU ensure that IFRS do not pose an obstacle to sustainability and long-term investments:

- By retaining the power to modify the IFRS standards in well-defined circumstances;
- By making explicit in the EU regulatory framework that in order to endorse IFRS that are conducive to the European public good, sustainability and long term investment must be considered;

- Other, please specify
- Don't know

Proposed answer

- Other, please specify

34. ESMA believes that the EU should ensure that IFRS do not pose an obstacle to sustainability and long-term investments by actively participating in the IASB due-process and promoting any common European position at an early stage of the standard setting process. Additionally, as mentioned in answer to Q20, rather than introducing an additional endorsement criterion, it would be important to better articulate the concept of 'European public good'- one of the criteria already assessed in the endorsement process- including consideration to long-term and sustainability aspects..
35. Whilst we fully support the Commission's ambition to develop an overarching and comprehensive EU roadmap on sustainable finance, we recommend the highest caution as we believe that sustainability considerations fall well beyond the purpose of accounting. As stated in our recent comment letter[1], we believe that "the primary objective of endorsed accounting standards remains to promote transparency and better decision-making in financial markets and, therefore, they should be considered as neutral with respect to other public policy objectives. We believe that this approach is ultimately the most beneficial for the performance of capital markets, including their capacity to support long-term investments". We strongly believe that the current endorsement process already provides the necessary safeguards to the European public good, by providing the possibility for the non-endorsement of a standard which runs contrary to it and to the EU policy objectives as a whole.

Question 22

Do you think that an EU conceptual framework should underpin the IFRS endorsement process?

- Yes
- No
- Don't know

Proposed answer:

- No

If you answered "No", please explain your position:

36. ESMA is strongly opposed to the EU having a conceptual framework for IFRS endorsement purposes. It would be very problematic to enforce financial statements if there were more than one conceptual frameworks underpinning the IFRS reporting for listed companies.

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[1] ESMA32-61-259, ESMA response to the European Financial Reporting Advisory Group (EFRAG) on the Discussion Paper Equity Instruments: Impairment and Recycling , 23 May 2018

37. ESMA notes that the IAS Regulation already provides in article 3(2) a set of criteria for adoption and use of IFRS, namely the principle of true and fair view as outlined in the Accounting Directive, the criteria of conduciveness to European public good, and the criteria of relevance, reliability, understandability and comparability required of the financial information needed for making economic decisions and assessing the stewardship of management.

38. EFRAG already makes detailed assessments for the endorsement of IFRS on the basis of these criteria, which further reinforces the conviction that the development of an EU conceptual framework is not required.

Question 23

	1	**2**	**3**	**4**	**5**	**Don't know**
Should the EU endorse the IASB Conceptual Framework for Financial Reporting?			x			

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5 = totally agree)

39. ESMA believes that the EU should explore the possibility to give to the IASB Conceptual Framework a stronger legal status than it is the case today, as this might be helpful in the enforcement of financial information in the very few circumstances in which no specific IFRS is applicable (whereby issuers today usually make use of the provisions set out by IAS 8.10) However, it should not be given the same legal status as a Standard because that risks creating conflict of law. Further enhancement of its current status should be explored.

40. Indeed the IASB Conceptual Framework underpins all the Standards, but it is not an IFRS standard and cannot be given the same legal weight as IFRS most notably because in some circumstances it might contradict IFRS Standards and thereby give rise to legal uncertainty. A clear distinction needs to be made between the legal status of the IFRS Standards (fully applicable law) and that of the Conceptual Framework (a useful reference for preparers and regulators that can provide guidance on accounting policies whenever no specific standard applies to particular transactions/ circumstances).

Question 24

Do you agree with the following statement?

	1	**2**	**3**	**4**	**5**	**Don't know**
Prescribed (minimum) layouts enhance comparability of financial statements for users and should therefore be introduced for companies using IFRS.				x		

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5 = totally agree)

41. ESMA believes that a prescribed minimum layout would enhance comparability of Financial Statements across Europe. The IASB is currently undertaking a project on precisely this subject, and the European Commission should consider advocating for this project to achieve completion because an IASB-driven solution would be, in our opinion, preferable.

42. Furthermore ESMA points out that a minimum prescribed layout will be beneficial in the implementation of the RTS on the European Single Electronic Format (ESEF) as a prescribed minimum layout will simplify data production and consumption.

Question 25

Do you agree that the Transparency Directive requirements are effective in meeting the following objectives, notably in light of increased integration of EU securities markets?

	1	2	3	4	5	Don't know
Protect investors			x			
Contribute to integrated EU capital markets			x			
Facilitate cross border investments				x		

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5 = totally agree)

Please explain your response and substantiate it with evidence or concrete examples

43. ESMA holds that the Transparency Directive (TD) has increased harmonisation across the EU and allowed significant steps forward in achieving the objectives mentioned above. However, the TD only sets minimum harmonisation requirements and ESMA believes there are arguments for further harmonisation.

44. Indeed, the effectiveness of a Directive mainly depends on national transposition. For instance, differences in the transposition of TD are the root causes of differences in the procedures and powers of the various National Competent Authorities (NCAs). In absence of further harmonisation of the requirements in the TD, ESMA has contributed to harmonisation across Europe by coordinating NCAs' work in the field of accounting enforcement, but its initiatives cannot address all the differences that arise from different transpositions of Level 1 legislation. Without having the intention to question or express a view on the institutional set-up of enforcement of financial information of individual Member States, , ESMA notes that discussion fora such as the EECS or measures such as the Guidelines on the Enforcement of Financial Information (EFI GL) cannot harmonise structural differences arising from different national transpositions of Level 1 legislation.

45. ESMA also highlights that some national law requirements prevent national authorities to fully comply with the ESMA Guidelines. Deeper harmonisation in terms of enforcement of financial information would be beneficial to all stakeholders involved. Consequently, ESMA encourages the EC to consider ways to work towards further harmonising the supervisory regimes in order to enhance investor protection and the smooth functioning of the Capital Markets Union. As part of the work on enforcement, we also believe that a more formal link could be established between the

work of ESMA coordinating enforcement of financial information at European level and the work of the CEAOB, coordinating supervision of audit activities at European level.

46. Deeper harmonisation would be beneficial also in terms of language requirements. ESMA's draft RTS on ESEF, which in itself aims to foster the integration of EU capital markets and facilitate cross-border investments, might also contribute to overcome language barriers because tagged financial statements will be automatically translatable in all EU languages. Language barriers however will remain as the Transparency Directive does not allow to fulfill its requirements through a language which is customary in the sphere of international finance (which is instead the case in the Prospectus Regulation).

47. ESMA thinks that it would be beneficial to further deepen harmonisation. Only in this way the EU will reap the full benefits of an integrated capital market.

Question 26

Do you agree that abolishing the quarterly reporting requirement in 2013 by issuers contributed to the following?

	1	**2**	**3**	**4**	**5**	**Don't know**
Reducing administrative burden, notably for SMEs				x		
Promoting long-term investment (i.e. discouraging the culture of short-termism on financial markets).		x				
Promoting long-term and sustainable value creation and corporate strategies		x				
Maintaining an adequate level of transparency in the market and investors' protection			x			

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5 = totally agree)

Please explain your response and substantiate it with evidence or concrete examples

48. ESMA agrees that abolishing quarterly reporting lowered administrative costs. The Market Abuse Regulation already sets out requirements that ensure the prompt publication of price-sensitive information. Therefore overall, despite the fact that the abolishment of quarterly reporting came at the cost of delaying disclosure of some relevant updates from listed issuers, ESMA believes that an adequate level of transparency in the market and investors' protection have been maintained.

49. Furthermore, ESMA disagrees with the idea that quarterly reporting could per se encourage short-termism and notes that there are no evidences that abolishing of quarterly reporting mechanically contributed to the promotion of long term investment.

Question 27

Do you consider that the notifications of major holdings of voting rights in their current form is effective in achieving the following?

	1	2	3	4	5	Don't know
Strengthening investor protection				X		
Preventing possible market abuse situations				X		

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5 = totally agree)

Please explain your response and substantiate it with evidence or concrete examples

50. ESMA considers that notifications of major holdings of voting rights in their current form is mainly effective and is a valuable tool for investors to make their investment decisions. ESMA however wishes to point to the following three outstanding issues :

    (1) ESMA has developed a standard form for the notification of major holding. While its use is recommended by securities regulators, it is not mandated by the Transparency Directive. The lack of a mandatory standard form, makes it difficult for notifiers to comply with notification requirements and for investors to compare notifications; this stems from different options allowed for by the Transparency Directive.

    (2) Member States have implemented Art. 21(1) and (3) of the TD differently and a clarification would be needed as otherwise access to information would be differently regulated, which goes against investors' interests.

    (3) Home Member State-regime established by TD is not efficient and it remains complicated for investors to have a clear understanding of which NCA is supervising an issuer. To assist issuers and competent authorities, ESMA has published a standard form for issuers to disclose who their Home Member State is. The use of this form is not mandated by the Transparency Directive but recommended by securities regulators.

<u>Question 29</u>

As regards the following areas, did you identify a lack of coherence of legislation from one Member State to another that could jeopardize to some extent the objectives of investor protection, integrated capital markets and cross-border investment?

- Yearly and half-yearly financial information
- On-going information on major holdings of voting rights
- Ad hoc information disclosed pursuant to the Market Abuse Directive
- Administrative sanctions and measures in case of breaches of the Transparency Directive requirements

Proposed answer

- On-going information on major holdings of voting rights

Please explain your response and substantiate it with evidence or concrete examples

51. ESMA notes that a lack of coherence of legislation exists in relation to mandatory minimum thresholds applicable to shareholders communications, to administrative sanctions and to measures deriving from breaches of the TD requirements that could result from the intrinsic capital markets dimensions.
52. The European Commission could also refer to ESMA Practical Guide (ESMA31-67-535) on the subject of ad hoc information disclosed pursuant to the Transparency Directive, which already identifies the main differences in national law.

<u>Question 30</u>

Should anything be done to improve public reporting by listed companies (documents, information, frequency, access, harmonisation, simplification)?

53. ESMA suggests that Guidelines on financial forecasts prepared and published by issuers as part of their management report could be useful. The technical advice on prospectus (Level 2) includes disclosure requirements in relation to profit forecasts setting out that profit forecasts should comply with specific principles. Such regime could for example be extended to the management report.
54. Furthermore the Commission could consider whether public reporting for listed entities on regulated markets should be extended, with modifications if considered necessary, to entities that raise funds on non-regulated markets and from the public in order to create a level playing field with public reporting by listed companies.
55. Furthermore, ESMA wishes to highlight that while the accounting standards of the consolidated financial statements of public companies are harmonised, there is only minimal harmonisation on the other parts of the annual financial report, such as MD&A. It would be beneficial if the Commission took the initiative to further harmonise other parts of the Annual Financial Report. This may require Guidelines on format and content.

IV. THE EU FINANCIAL REPORTING FRAMEWORK FOR BANKS AND INSURANCE COMPANIES

<u>Questions 31-39</u>

56. Whilst ESMA will not provide a detailed answer on these questions, we would like to point out that both the Banking Accounting Directive (BAD) and on the Insurance Accounting Directive (IAD) need to be updated and revised in order to align them with the accounting framework applicable by listed banks and listed insurance companies when producing their consolidated financial statements.
57. This could mean that EU legislation should either allow listed banks and insurance companies to adopt IFRS in their separate financial statements, or amend the BAD and the IAD so that these reflect recent developments in major accounting concepts in IFRSs (e.g. the existence of expected credit loss model, recognition of operating leases or insurance accounting). In our view, reflecting these developments in the BAD and IAD is important to enhance investor protection and contribute to financial stability.

V. NON-FINANCIAL REPORTING FRAMEWORK

Question 40

The impact assessment for the NFI Directive identified the quality and quantity of non-financial information disclosed by companies as relevant issues, and pointed at the insufficient diversity of boards leading to insufficient challenging of senior management decisions. Do you think that these issues are still relevant?

	1	**2**	**3**	**4**	**5**	**Don't know**
The quality and quantity of non-financial information disclosed by companies remain relevant issues.				x		
The diversity of boards, and boards' willingness and ability to challenge to senior management decisions, remain relevant issues.				x		

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5 = totally agree)

Please explain your response and substantiate it with evidence or concrete examples

58. ESMA believes that the quality and quantity of non-financial information disclosed by companies remain relevant issues, although ESMA is not in a position to properly assess the impact of the new disclosure requirements on non-financial information introduced by Directive 2014/95/EU and which became effective only for 2017 annual reports that are only started being reviewed in the current year.

59. However, ESMA's Public Statement on the European Common Enforcement Priorities for 2017 IFRS financial statements[2] included a specific reference to the importance of the disclosure of non-financial and diversity information by issuers in the 2017 year-end in light of the increasing relevance of this topic for all the stakeholders and the entry into force of the new disclosure requirements. ESMA encouraged issuers to meet those requirements in a way that provides useful information to users, because such information is of paramount importance in helping investors integrating non-financial information into their investment decisions.

Question 41

[2] ESMA32-63-340, https://www.esma.europa.eu/sites/default/files/library/esma32-63-340_esma_european_common_enforcement_priorities_2017.pdf

Do you think that the NFI Directive's disclosure framework is effective in achieving the following objectives?

	1	**2**	**3**	**4**	**5**	**Don't know**
Enhancing companies' performance through better assessment and greater integration of non-financial risks and opportunities into their business strategies and operations.			x			
Enhancing companies' accountability, for example with respect to the social and environmental impact of their operations.				x		
Enhancing the efficiency of capital markets by helping investors to integrate material non-financial information into their investment decisions.				x		
Increasing diversity on companies' boards and countering insufficient challenge to senior management decisions			x			
Improving the gender balance of company boards			x			

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5 = totally agree)

Please explain your response and substantiate it with evidence or concrete examples

60. ESMA believes that the non-financial information Directive has been a very relevant first step in the right direction. It sets out requirements to achieve some degree of harmonisation in the disclosure of non-financial information.

61. However, ESMA also thinks it is too early at this stage to fully assess whether its disclosure framework is effective in absolute terms. ESMA preliminarily thinks at this stage that probably the effectiveness of the disclosure framework would have been greater had the non-financial information Directive set up or indicated a specific framework and accepted a single set of standards to report this type of information. The diversity of frameworks allowed by the Directive will most probably affect the comparability of disclosures and the usefulness of this information for all stakeholders.

__Question 42__

Do you think that the NFI Directive's current disclosure framework is effective in providing non-financial information that is:

	1	**2**	**3**	**4**	**5**	**Don't know**
Material			x			

Balanced			x			
Accurate				x		
Timely			x			
Comparable between companies		x				
Comparable over time		x				

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5 = totally agree)

Please explain your response and substantiate it with evidence or concrete examples

62. As mentioned in the answer to question 41, since the non-financial information Directive does not provide a common framework for reporting, ESMA preliminarily believes at this stage that comparability between companies and over time risks being negatively affected. Furtermore, ESMA preliminary believes that it might prove difficult for regulators to challenge companies on their disclosures.
63. It is important to note that companies who will also apply the EC's non-binding Guidelines should produce more effective non-financial information disclosures as the Guidelines add to the Directive and introduce the principle of comparability (for example with reference to Key Performance Indicators). However, the Guidelines are not enforceable and ESMA believes that it would be helpful if such principles were explicitly included in the Directive as well. A more prescriptive – albeit still principles-based – approach in the Directive itself should be considered if an assessment of implementation confirms ESMA's preliminary thoughts.

<u>Question 43</u>

Do you agree with the following statement?

	1	**2**	**3**	**4**	**5**	**Don't know**
The current EU non-financial reporting framework is sufficiently coherent (consistent across the different EU and national requirements)?			x			

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5 = totally agree)

Please explain your response and substantiate it with evidence or concrete examples

64. ESMA does not yet dispose of sufficient evidence to perform a thorough analysis of the coherence of the non-financial reporting framework adopted by Member States in their transposition of the Directive. However, preliminarily, ESMA thinks that since the Directive itself does not provide one single framework for reporting and the Guidelines are non-binding, it is unlikely that reporting will

be consistent across or even within different Member States. In addition, we note that the different transposition measures of the non-financial information Directive contribute to making convergence of supervisory approaches in relation to non-financial information a challenging task.

Question 45

Do you agree with the following statement?

	1	**2**	**3**	**4**	**5**	**Don't know**
The scope of application of the NFI Directive (i.e. limited to large public interest entities) is appropriate			x			

(1= Far too narrow, 2= Too narrow, 3= about right, 4= too broad, 5 = way too broad))

Please explain your response and substantiate it with evidence or concrete examples

65. ESMA mainly agrees with the current scope of application especially in this first phase of application. At this stage, extending requirements to smaller companies would seem disproportionate and unduly burdensome. However, following a thorough assessment of the costs and benefits of application of the Directive and of the non-binding Guidelines, if deemed appropriate, the European Commission could consider extending the requirements to other smaller companies. From the perspective of ensuring investor protection and promoting the orderly functioning of financial markets, as sustainable investing becomes "mainstream", non-financial information should be progressively regarded as part of the ordinary set of disclosures provided by all issuers irrespective of their size and business activity.

66. The European Commission could also consider whether additional entities should be included within the scope of the non-financial information Directive such as listed entities on non-regulated markets, regulated financial service providers that raise funds from the public and any entity that cannot avail itself of the audit exemption and reduced disclosure provisions of the Accounting Directive.

Question 47

Do you agree with the following statement?

	1	**2**	**3**	**4**	**5**	**Don't know**
The non-binding Guidelines on Non-Financial Reporting issued by the Commission in 2017 help to improve the quality of disclosure				x		

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5 = totally agree)

Please explain your response and substantiate it with evidence or concrete examples

67. It is ESMA's expectation that the Guidelines will help improving the quality of disclosures since they aim to help companies draw up relevant, useful concise non-financial statements according to the requirements of the Directive. However, it is also feared that their non-binding nature will hinder their effectiveness. This expectation however will need to be further corroborated by the outcome of the reviews of the 2017 Annual Reports.

<u>Question 48</u>

Which other sustainability factors should be considered for amended guidance as a priority?

	1	**2**	**3**	**4**	**5**	**Don't know**
Environment (in addition to climate change already included in the Action Plan)					x	
Social and Employee matters				x		
Respect for human rights				x		
Anti-corruption and bribery					x	

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5 = totally agree)

Please explain your response and substantiate it with evidence or concrete examples

68. ESMA believes that improving harmonisation on the disclosures relating to the above-mentioned factors is in the interest of investor protection as these factors have an impact on the risk profile of issuers (for example, in terms of reputational as well as operatioonal risk) which may ultimately result in financial risks, thus affecting an issuer's financial position, performance and cash flows.
69. In ESMA's view, information on these non-financial factors is important to complement financial information and to enable investors getting a better understanding of the prospects of the business in light of key environemental, social and governance aspects.
70. Therefore, ESMA believes that more detailed guidance on disclosures relating to the environment and to anti-corruption and bribery could be especially appropriate given the high level of interest users of financial statements hold on these issues.

<u>Question 51</u>

Do you think that the public reporting requirements on payments to governments ("country -by-country reporting") by extractive and logging industries are:

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5 = totally agree)

	1	2	3	4	5	Don't know
Effective (successful in achieving its objectives)				x		
Efficient (costs are proportionate to the benefits it has generated)				x		
Relevant (necessary and appropriate)				x		
Coherent (with other EU requirements)			x			
Designed at the appropriate level (EU level) in order to add the highest value (as compared to actions at Member State level)					x	

Please explain your response and substantiate it with evidence or concrete examples.

71. Whilst ESMA notes that only few national enforcers have experience with the supervision of such requirements, those who do agree that public reporting requirements on payments to governements are mostly effective, efficient and relevant. However it is worth pointing about that the Transparency Directive and the Accounting Directive do not appear to be perfectly coordinated and it is not clear whether the obligation introduced by the Transparency Directive concerns only the publication of the report required by the Accounting Directive, or the preparation of a separate report.

VI. THE DIGITALISATION CHALLENGE

Question 57

Do you consider the existing EU legislation to be an obstacle to the development and free use by companies of digital technologies in the field of public reporting?

- Yes
- No
- Don't know

Proposed answer:

- No

If you answered "yes", please explain your response and substantiate it with evidence or concrete examples

72. ESMA is of the opinion that existing EU legislation is not an obstacle to the development and free use by companies of digital technology. If anything, EU legislation tries to facilitate digital technology and reporting. Indeed, the Transparency Directive was amended in 2013 to introduce a European Single Electronic Format (ESEF) for annual financial reports which will become effective in 2020. While other major financial markets world-wide, including the US, have already embarked in efforts to digitalise the financial information made available to investors, the European Union is still in the process of adopting the RTS on ESEF. ESMA calls for a quick adoption of this RTS in the interest of both issuers and investors, and for the European capital market as a whole. As the digitalisation of financial information on a EU-wide scale is a process which will bring increasing benefits year after year of implementation, it is of paramount importance to start this process as soon as possible to be able to catch up with the degree of maturity of other major financial markets in this respect.

Question 58

Do you consider that increased digitalisation taking place in the field diminishes the relevance of the EU laws on public reporting by companies (for instance, by making paper based formats or certain provisions contained in the law irrelevant)

- Yes
- No
- Don't know

Proposed answer:

- No

If you answered "yes", please explain your response and substantiate it with evidence or concrete examples

73. ESMA would like to highlight that EU law requires the disclosure of information by companies, and whether this information is disclosed in a paper format or in an electronic format does not at all diminish the relevance of EU requirements on public reporting. In our view, digitalisation may enhance the degree of investor protection of some existing reporting requirements, by minimizing human errors in the production of financial data thanks to automation and by increasing the accessibility of financial information, and therefore the comparability of data, search capabilities and possibility for cross-country comparisons.

74. In this respect, ESMA notes the experience of the European Single Electronic Format (ESEF) whose ambition in the Transparency Directive is indeed the improvement of comparability, accessibility and analysis of financial information, thereby enhancing the relevance of the related reporting requirements.

Question 59

Do you think that, as regards public reporting by listed companies, the use of electronic structured reporting based on a defined taxonomy (ESEF) and a single access point (EEAP) will meet the following intended objectives:

	1	2	3	4	5	Don't know
Improve transparency for investors and the public				x		
Improve the relevance of company reporting				x		
Reduce preparation and filing costs for companies			x			
Reduce costs of access for investors and the public				x		
Reduce other reporting costs through the re-use of companies' public reporting of electronic structured data for other reporting purposes (e.g. tax authorities, national statistics, other public authorities)				x		

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5 = totally agree)

Please provide an estimated order of magnitude or qualitative comments for such cost reductions (e.g. % of preparation costs or % of costs of accessing and analysing data...):

75. ESMA wishes to highlight that the ESEF and EEAP by themselves will not change the relevance of reporting but will increase accessibility and comparability of financial information.
76. On the ESEF in particular, the Cost Benefit Analysis and the Field Tests carried out by ESMA have demonstrated that costs of implementation for issuers are expected to be limited and mainly related to first time implementation[3]. ESMA believes that whether issuers stand to benefit from preparation and filing cost depends on how structured electronic reporting is implemented at the level of the issuer. As for investors, the development of specialized software to consume XBRL data is expected to lower the costs of accessing and consuming large amount of financial information. It is important to highlight that costs for issuers and reliability of data for investors will be somehow impacted by the Commission's decision on the nature and scope of audit / assurance of ESEF data.
77. On the subject of the EEAP, ESMA believes that the creation of a single access point should provide significant savings to investors and for the public at large in accessing regulated information.

Question 60

[3] Please see ESMA's Feedback statement on the Consultation Paper on the Regulatory Technical Standard on the European Single Electronic Format (ESEF) published on 21 December 2016 and available here. In relation to EEAP, please see ESMA's final report on the Draft Regulatory Technical Standard published on 25 September 2015 and available here.

In your opinion, on top of the financial statements, do you think that the following documents prepared by listed companies should contain electronic structured data?

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5 = totally agree)

	1	**2**	**3**	**4**	**5**	**Don't know**
Financial reporting						
Half-yearly interim financial statements					x	
Management report			x			
Corporate governance statement				x		
Other disclosure or statements requirements under the Transparency Directive such as information about major holdings				x		
Non-financial reporting and other reports						
Non-financial information			x			
Country-by-country report on payments to governments				x		
Other, please specify: **MAR Article 19 information and Results announcements**				x		

<u>Question 61</u>

Once the ESEF is fully developed and in place for listed companies, would this EU language add value as a basis to structure the financial statements, management reports etc. published by any limited liability company in the EU?

- o Yes
- o No
- o Don't know

Proposed answer:

- o Yes

Please explain your response and substantiate it with evidence or concrete example

78. ESMA believes that full digitalisation of financial reporting could bring significant benefits to European issuers and investors. However, as the ESEF has not yet come into force, ESMA believes it is too early to extend the current requirements to firms other than those under the scope

of the Transparency Directive and that the European Commission should first carry out an evaluation of the ESEF after its implementation in 2020.

79. Furthermore, ESMA would also like to point out that the draft RTS on ESEF allows for the extension of the tagging to parts of the Annual Financial Report other than the Financial Statements and of individual financial statements prepared according to National GAAP on a voluntary basis, provided that the home Member State has made a national taxonomy available to preparers. Indeed in several European countries non-consolidated financial statements are already required to be filed in structured format. The Commission should also take into account such experiences, and the costs and benefits associated, both from the point of view of the issuers and from the point of view of the investors, when considering extension of the current requirements.

Question 62

As regards the non-financial information that listed companies, banks and insurance companies must publish, do you think that digitalisation of this information could bring about the following benefits?

	1	**2**	**3**	**4**	**5**	**Don't know**
Facilitate access to information by users				x		
Increase the granularity of information disclosed				x		
Reduce the reporting costs of preparers			x			

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5 = totally agree)

Please explain your response and substantiate it with evidence or concrete examples.

80. ESMA thinks that digital reporting, and especially structured data, generally has the potential to facilitate access of information by user, increase the granularity of information, and possibly reduce the cost of preparers in the long run. This also applies to non-financial information.

81. However, we note that the preparation of structured reporting for non-financial information would not achieve its full potential unless a more harmonised framework of reporting than that currently established by the non-financial information Directive is established.

Question 63

In a digitalised economy, do you consider that electronic reporting should be secured by the reporting company with electronic signatures, electronic seals and/or other trust services?

- Yes
- No
- Don't know

Proposed answer:

- Yes

Please explain your response and substantiate it with evidence or concrete examples

82. ESMA considers that security of information is an essential dimension of the digitalisation challenge and that electronic signatures of electronic reporting would contribute to create trust in the information disclosed by companies in digital format.

Question 64

Today, the self-standing national databases maintained by each Officially Appointed Mechanisms (OAMs) are not interconnected to each other, or to a central platform. The European Financial Transparency Gateway (EFTG)[25] is a pilot project funded by the European Parliament that aims to virtually connect the databases using the distributed ledger technology in order to provide a single European point of access to investors searching for investment opportunities on a pan-EU basis. The European Financial Transparency Gateway could be used as a basis for achieving a single European Electronic Access Point (EEAP).

Considering the modern technologies at hand to interconnect databases on information filed by listed companies with the OAMs, do you agree with the following statements?

	1	**2**	**3**	**4**	**5**	**Don't know**
A pan-EU digital access to databases based on modern technologies would improve investor protection				x		
A pan-EU digital access to databases based on modern technologies would promote cross border investments and efficient capital markets				x		
The EU should take advantage of a pan-EU digital access to make information available for free to any user				x		

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5 = totally agree)

Question 65

In your opinion, should the EU foster the re-use of data and the "file only once" principle?

- Yes
- No
- Don't know

Proposed answer:

- Yes

Please explain your response and substantiate it with evidence or concrete examples.

In general, ESMA agrees with the overarching objective of optimizing regulators' resources and minimizing issuers' efforts related to the production and submission of regulated information. However, as there is no clear model being proposed for the implementation of the "file only once" principle, at this stage, ESMA cannot properly assess the practical implications of applying this principle. currently.

Question 66

	1	**2**	**3**	**4**	**5**	**Don't know**
Should the EU strive to ensure that labels and concepts contained in public reporting by companies are standardized and aligned with those used for supervisory purposes?					x	

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5 = totally agree)

83. ESMA strongly supports the Commission initiative with regards to the Financial Data Standardisation (FDS) project and its ambition for a common financial data language across supervisory reporting data. ESMA considers that it is crucial that the EU strives to optimise reporting requirements, hence reducing compliance costs to the minimum possible.
84. Furthermore, ESMA believes the EU stands to benefit from an alignment of public corporate reporting and supervisory reporting data as long as this alignment does not go to the detriment of the ability of different sets of reports to achieve their respective purposes, which may be different in several respects. Indeed ESMA expects that data standardisation and concepts alignment would have the potential to significantly reduce costs and effort for listed companies.

Question 67

Do you have any other comments or suggestions?

85. In relation to the table reported in Question 60, ESMA would like to highlight that, apart from half yearly interim financial statements and for results announcements, the ratings assigned by ESMA in its response refer to block tagging only. ESMA believes that detailed tagging of the other documents listed would be unduly burdensome for issuers, at least at the current stage of the development of electronic reporting in Europe. On the other hand, the Commission should consider replicating the regime proposed in the RTS on ESEF (i.e. detailed tagging of primary financial

statements and block tagging of the notes) also for the interim reports and for results announcements.