Response Form to the Consultation Paper

Draft Guidelines on Enforcement of Sustainability Information (GLESI)

Responding to this paper

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

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

ESMA will consider all comments received by 15 March 2024.

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

**Instructions**

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

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

**Publication of responses**

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

**Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘[Data protection](https://www.esma.europa.eu/about-esma/data-protection)’.

**Who should read this paper?**

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

General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | European Environment Agency |
| Activity | Government, Regulatory and Enforcement |
| Are you representing an association? |  |
| Country / region | Europe |

Questions

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

<ESMA\_QUESTION\_GLESI\_1>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_GLESI\_1>

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

<ESMA\_QUESTION\_GLESI\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_GLESI\_2>

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

<ESMA\_QUESTION\_GLESI\_3>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_GLESI\_3>

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

<ESMA\_QUESTION\_GLESI\_4>

We fully support the upcoming role of **independent assurance services providers** and agree that they should be subject to high standards.

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”.

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.

<ESMA\_QUESTION\_GLESI\_4>

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

<ESMA\_QUESTION\_GLESI\_5>

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:

“GLESI can guide non-mandatory supervision of sustainability information byfinancial institutions of entities under their supervision that are not subject to the GLESI.”

This would be fully in line with what ESMA has already stated in the explanatory part on page 9, paragraphs 18 and 19.

<ESMA\_QUESTION\_GLESI\_5>

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

<ESMA\_QUESTION\_GLESI\_6>

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<ESMA\_QUESTION\_GLESI\_6>

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

<ESMA\_QUESTION\_GLESI\_7>

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.

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 tosustainability 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.

<ESMA\_QUESTION\_GLESI\_7>

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

<ESMA\_QUESTION\_GLESI\_8>

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.

For EEA, it is crucial that those experts that assess 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.

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 supervision.

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.”

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.

<ESMA\_QUESTION\_GLESI\_8>

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

<ESMA\_QUESTION\_GLESI\_9>

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<ESMA\_QUESTION\_GLESI\_9>

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

<ESMA\_QUESTION\_GLESI\_10>

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<ESMA\_QUESTION\_GLESI\_10>

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

<ESMA\_QUESTION\_GLESI\_11>

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<ESMA\_QUESTION\_GLESI\_11>

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

<ESMA\_QUESTION\_GLESI\_12>

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<ESMA\_QUESTION\_GLESI\_12>

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

<ESMA\_QUESTION\_GLESI\_13>

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<ESMA\_QUESTION\_GLESI\_13>

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

<ESMA\_QUESTION\_GLESI\_14>

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<ESMA\_QUESTION\_GLESI\_14>

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

<ESMA\_QUESTION\_GLESI\_15>

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<ESMA\_QUESTION\_GLESI\_15>

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

<ESMA\_QUESTION\_GLESI\_16>

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<ESMA\_QUESTION\_GLESI\_16>

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

<ESMA\_QUESTION\_GLESI\_17>

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.

<ESMA\_QUESTION\_GLESI\_17>

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

<ESMA\_QUESTION\_GLESI\_18>

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<ESMA\_QUESTION\_GLESI\_18>

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

<ESMA\_QUESTION\_GLESI\_19>

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.

<ESMA\_QUESTION\_GLESI\_19>

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

<ESMA\_QUESTION\_GLESI\_20>

See response on Q19.

<ESMA\_QUESTION\_GLESI\_20>

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

<ESMA\_QUESTION\_GLESI\_21>

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<ESMA\_QUESTION\_GLESI\_21>

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

<ESMA\_QUESTION\_GLESI\_22>

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<ESMA\_QUESTION\_GLESI\_22>

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

<ESMA\_QUESTION\_GLESI\_23>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_GLESI\_23>

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

<ESMA\_QUESTION\_GLESI\_24>

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<ESMA\_QUESTION\_GLESI\_24>

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

<ESMA\_QUESTION\_GLESI\_25>

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