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 | Frank Bold Society |
| Activity | Audit/Legal/Individual |
| Are you representing an association? |[ ]
| Country / region | Czech Republic |

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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_GLESI\_5>

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

<ESMA\_QUESTION\_GLESI\_6>

TYPE YOUR TEXT HERE

<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>

Frank Bold agrees with the overall objective of the enforcement. Nevertheless, where it is stated “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” we urge ESMA to develop clear and concrete guidance on priorities for each topical standard, as well as interpretation explanations, which can follow previous enforcement priorities in light of reporting under the NFRD.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

Frank Bold agrees with the suggested general principles on independence of enforcers. We believe the guidelines should foresee the existence of a channel for third parties with a legitimate interest, mainly users of sustainability information, to guide enforcers on cases they consider relevant. This would ensure that implementation and interpretation of the CSRD is successful in one of its main goals: meeting the need of users of information, including financial market participants and NGOs. Third parties should be informed of the decision over such cases.

<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>

The risk-based selection criteria are appropriate as regards general risks, but they do not reflect risks derived from sustainability factors. Therefore, in addition, risk-based selection should be based on the actual risk of sustainability impacts, starting with high risk/high impact sectors as main indicators. Further, the relative position / dominance of the company in the market should play a role. The bigger the company, the bigger the risk should be, as impacts are likely to be more relevant. We also suggest that an element of past infringements or/ and wrong reporting in the past should weight.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

In order not to contribute to situations where there are different legal instructions for preparers, or where the preparer’s decision can be used in bad faith, the scope of topics which preclearance can address should be limited. We suggest excluding questions related to Double Materiality Assessment, as such legal clarity is to be provided by legislators and/or guidance/clarifications developed by EFRAG.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

Frank Bold believes it is of utmost importance to have the highest number possible of decisions publicly available, in order to ensure transparency and legal predictability for preparers. As such, we recommend having all decisions available on an anonymous basis as per general rule.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_GLESI\_25>