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 | AFEP |
| Activity | Business association |
| Are you representing an association? |[x]
| Country / region | France |

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>

AFEP suggests adding a reference to the Prospectus Regulation (Regulation (EU) 2017/1129 of 14 June 2017) since the Annual Financial Report and hence the Sustainability Report can be included in universal registration documents defined by this regulation.

<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>

AFEP considers that the reference to ‘greenwashing’ is not appropriate. A more factual and neutral language should be used to qualify departures from sustainability disclosure requirements. AFEP members insist on the complexity of the ESRS and of the topics addressed by these standards which raises many interpretation issues. It seems very difficult to draw the line between misinterpretation of existing rules that would result in non-compliance with requirements and greenwashing. As regards the enforcement of the CSRD and the ESRS, supervisors should adopt a pragmatic and step-wise approach. This approach should be reflected in the GLESI.

<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>

Comparability between companies can only be ensured for companies operating in a same economic sector otherwise sectoral standards would not be necessary. Even in such a case, there could still be differences because sustainability information is intrinsically linked to the company's business model. Additionally, in regards to the volume of qualitative data points, it is unlikely that the disclosures will be similar from one issuer to another. The sustainability information cannot be summarized as easily as a table explaining the variation of tangible assets for instance. Therefore in paragraph 14, AFEP suggests a more nuanced approach regarding “comparability” and to delete the last part of the paragraph as follows : « To enable a comparison of the sustainability information of different issuers, it is important that this information is based on a consistent application of the sustainability information framework~~, in the sense that if facts and circumstances are similar, the disclosures will be similar to the extent required by the sustainability information framework~~. ».

As a matter of fact these guidelines are addressed to supervisors and companies are concerned that the proposed wording could encourage a one-size-fits-all approach by National Competent Authorities.

<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>

TYPE YOUR TEXT HERE

<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 criteria proposed in paragraph 37 to determine the sample of companies to examine seem very subjective and difficult to implement. How can supervisors assess the probability of infringement, considering in particular the first application of the ESRS and the absence of any historical statistics. The same comment applies to the assessment of the potential impact of an infringement on financial markets and to the criteria set forth in sub-paragraphs a) regarding ethical standards and b) relating to the willingness to apply. Once again, AFEP recommends a pragmatic and progressive approach. The risk-based selection should mainly focus on the economic sectors and exposures of companies to sustainability-related risks. AFEP also considers that – at this stage – observations from sustainability auditors are not relevant since there is no harmonised European standards for auditing sustainability reports. Furthermore, it should be clarified that “grounded complaints” are complaints officially filed with an Authority or a court and not any statement made by a third party. Finally, ESMA should recommend to Authorities to make public their methodology for selecting companies to be reviewed. <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>

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>

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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>

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>

As regards enforcement actions, we invite ESMA to include the materiality concept in paragraph 12 as follows : “Whenever **a material** infringement is detected…”. As a consequence, we don’t see the purpose of paragraph 64 and why action should be taken when the departure is not material. This paragraph should de removed.

<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>

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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>

These guidelines do not clearly acknowledge the progressiveness necessary to implement sustainability reporting, recognized by the Co-legislators and laid down in the CSRD and the ESRS through phasing-in provisions. Neither do they sufficiently take into account the complexity of sustainability information which is less mature than financial information. AFEP considers that these key points should be mentionned for instance in the introduction of the GLESI (paragraph 7).<ESMA\_QUESTION\_GLESI\_25>