



The Chairman

ESMA 15 March 2024  
European Securities and Markets Authority  
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**Comments on the Consultation Paper “Draft Guidelines on Enforcement of Sustainability Information”**

Assirevi is the association of the Italian audit firms. Its members represent the vast majority of the audit firms licensed to audit companies listed on the Italian stock exchange and other public interest entities in Italy, under the supervision of CONSOB (the Italian Commission for listed companies and the stock exchange).

Assirevi promotes and carries out technical research in the field of auditing, assurance and accounting and publishes technical guidelines for the benefit of its members. Assirevi is a founding member of OIC (Organismo Italiano di Contabilità – the Italian accounting standard setter) and collaborates with CONSOB, the Italian accounting profession and other bodies in developing auditing, assurance and accounting standards.

Assirevi commends the decision taken by ESMA to provide consistent enforcement guidelines in such an important area as the reporting of sustainability information and is pleased to submit its comments – which are detailed in the enclosed document – to selected questions of the Consultation Paper “Draft Guidelines on Enforcement of Sustainability Information” issued by ESMA in December 2023.

Should you wish to discuss our comments please do not hesitate to contact us.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Gianmario Crescentino".

Gianmario Crescentino  
Chairman

(Enclosure)

## COMMENTS ON THE ESMA CONSULTATION PAPER Draft Guidelines on Enforcement of Sustainability Information

(December 2023)

### Answers to the Consultation questions:

**Q4) Do you agree with the definitions ESMA proposes for inclusion in section 2.3 of the GLESI? Has ESMA covered all the concepts that need to be defined? If not, please explain your concerns and propose how to address them**

We partially agree, based on the reasons reported below.

Indeed, we note that the definitions of “infringement” and “immaterial departure” included in Section 2.3 are not coordinated with those reflected in the reporting standard ESRS 1 (namely: Section 7.5 - “Reporting errors in prior period”; paragraph 48 relating to Financial materiality; Appendix B - Qualitative characteristic of information with reference to “Faithful Representation”). Also, neither these definitions are aligned with those reflected in the international assurance standards (ISAE 3000(R)), currently used for assurance engagements on sustainability reporting, nor with the proposed standard ISSA 5000 ED, which use the term “**misstatement**”. This could have an impact on the application of Guideline 5, as more fully described in our response to Question n. 11.

Furthermore, in consideration of the choice made by the Authority, which intends to propose a similar approach to the one adopted for GLEFIs (see paragraph 7 of Chapter 3 “Purpose” that states (emphasis added): “*In particular, the guidelines aim [...] to make sure that this enforcement also closely resembles the enforcement which is undertaken in relation to financial information*”), we believe it is desirable that the guidelines include a reference to the specific requirements set out in the ESRS principles regarding the correction of errors. This could also facilitate the identification of specific assurance activities to be conducted on the corrective note, in line with the applicable assurance standards.

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

Yes, we agree.

In particular, Assirevi is very supportive of the approach suggested in paragraph 2.3 “Drafting approach”, with respect to the significantly innovative scope of the requirements relating to sustainability information and the need for issuers to

develop, in the first years of application, a gradual learning in the areas covered by the new legislation. In this period, actions by enforcers aimed at accompanying issuers in the process of transposing and implementing the rules relating to sustainability disclosures as a first priority, ahead of moving directly to enforcement measures, will be therefore particularly important. The critical relevance of this aspect is also evident having in mind the inherent differences between the financial reporting and sustainability reporting frameworks and users, as well as the different levels of maturity of collecting, processing and assessing sustainability data, compared to financial data.

In this context, we also wish to underline that paragraph 14 of Section 5.1 “Basic concepts” states that a “*consistent application of the sustainability information framework*” can be achieved through the disclosure of “similar” information where the facts and circumstances of the context are “similar” as follows (emphasis added): “*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.*” In our opinion, this statement should be better specified, considering that the information to be provided in the sustainability reporting disclosure is very often “entity specific”, and therefore the reported statement, although acceptable in theory, may not necessarily be measurable at an application level.

**Q9) Do you agree with the draft Guideline 3 on enforcement of sustainability information prepared under equivalent third country sustainability reporting requirements? If not, please explain why and provide suggestions for amendments.**

Yes, we agree.

We suggest that the policies adopted by ESMA regarding conflicts of interest and ethics (specifically ESMA 40-134-2458 – “Conflict of interest policy ESMA staff”) should be extended to enforcement activities on sustainability disclosures in those cases provided for in Guideline 3 paragraphs 26-27, or in those situations in which the national enforcer deems it more efficient to assign the examination of sustainability information prepared according to criteria equivalent to those provided for by Art. 23 of the Transparency Directive to another enforcer or to a centralized team to be organized at their request by ESMA.

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

Yes, we agree. However, we believe that the GLESI could be further implemented by referring to the applicability in the *enforcement* phase of the principles of adversarial proceedings and “equality of arms”, also widely recognized by the ECHR Court.

It would be appropriate to underline: (i) the importance that preparers are guaranteed the possibility to fully carrying out their defenses in all phases of the sanctioning process and (ii) that the supervisory authorities have an internal organization capable of ensuring that the body responsible for imposing the sanction is third and independent with respect to the office responsible for the investigative activity. This approach, indeed, contributes to strengthening the quality, transparency, and reliability of the supervision system and, consequently, the trust of the supervised entities and interested stakeholders.

**Q11) Do you agree with the draft Guideline 5 on the mixed selection model? If not, please explain why and provide suggestions for amendments.**

We partially agree, based on the reasons reported below.

The wording reported in Guideline 5, paragraph 39): “*indications of infringements from the auditors / the independent assurance services providers*” makes a reference that is difficult to reconcile with the auditor’s or independent assurance provider’s report, since, as highlighted in our response to Question n. 4 above, the definitions contained in the currently applicable assurance standards, as well as those reflected in the proposed ISSA 5000 ED, do not provide for the use of the term “infringement”, but rather use the notion of “misstatement”.

From another perspective, paragraph 39) of Guideline 5 provides that (emphasis added) “*Indications of infringements from the auditors / the independent assurance services providers, whether in their reports or otherwise, and from regulatory bodies should normally trigger a selection of the sustainability information in question for examination*”. The GLESI therefore recognize that an information channel through which the enforcer can acquire useful information to perform its activity is constituted by the auditors of the sustainability reporting of the supervised entities. In this regard, it must be taken into consideration that the only document that summarizes the auditor’s conclusions on the sustainability report is the report issued at the end of the assurance activity. It would therefore be appropriate, in our view, to integrate the reference by clarifying in greater detail what is meant by “indications of infringements” which the auditor could provide “otherwise” than through the assurance report on sustainability reporting. Furthermore, it must be taken in consideration that any communication or document preceding the issue of the assurance report on sustainability reporting may not be exhaustive or could be subject to subsequent modifications.

Lastly, in Assirevi's opinion it would be highly desirable for the dialogue between the authorities and the sustainability reporting auditors or independent assurance services providers to be bidirectional. In fact, this would align with Article n. 12, paragraph 2 of Regulation (EU) 537/2014, which provides a framework for the dialogue between auditors and the relevant authorities in the banking and insurance sectors. The importance of establishing a mutual dialogue is also reiterated in the guidelines issued by EBA and EIOPA in the implementation of the provision of the aforementioned EU Regulation. As a matter of fact, a regular, timely and mutual communication of information regarding the supervised entity can improve both the effectiveness of enforcement and the quality of assurance. On this point, it would also be appropriate for the GLESI to clearly identify the type of information to be exchanged, as well as the timing and methods of communication.

**Q15) Do you agree with the draft Guideline 9 which addresses the enforcer's examination process? If not, please explain why and provide suggestions for amendments.**

Overall, we agree.

However, in connection with paragraph 53 of Guideline 9 which states, among other things, the following (emphasis added): *"In addition, enforcers should examine if the sustainability information contained in the sustainability statement is consistent with the information included elsewhere in the annual financial report, where relevant"*, we do hope that the guidelines will articulate better the concept of "consistency" between sustainability information and other information included in the annual financial report, explaining the reference principles (e.g.: IFRS, ESRS, EFRAG IG) and the applicable materiality approach. It would also be appropriate to clarify that a possible "misstatement" in the sustainability information does not automatically generate a "misstatement" of financial information.

Finally, we believe that the guidelines could better clarify that: i) the consistency assessment between sustainability information and the other information included in the annual financial report should be conducted in a homogeneous manner between the various NCAs and ii) the enforcer's examination process should also include informing the auditors / independent assurance providers about any issues identified, ahead of applying any enforcement action.

**Q16) Do you agree with the draft Guideline 10 which presents the conditions which enforcers should apply when they offer their issuers pre-clearance of sustainability information? If not, please explain why and provide suggestions for amendments.**

Yes, we agree.

However, we believe that some statements of Guideline 10 could be better clarified with reference to the role of the auditor in the pre-clearance process. In particular, the provisions included: (i) in point 57, which provide that pre-clearance must intervene *“only after the issuer and its auditor / independent assurance services provider have finalized their position on the sustainability information concerned”* and (ii) in point 59, which specifies that *“[the] auditor / independent assurance services provider should have a firm position on the issues / areas of the sustainability information in relation to which pre-clearance is sought as this will enable a pre-clearance decision to be based on the same level of information as an ex-post decision”* are not entirely clear.

**Q18) Do you agree with the draft Guideline 12 which presents the considerations enforcers should apply when they identify an infringement in the sustainability information and have to determine which enforcement action to use? If not, please explain why and provide suggestions for amendments.**

We partially agree, for the reasons set out in the answers to Questions n. 4 and n. 11 above. In particular, consideration should be given to the fact that the notion of “infringement” is not coordinated with either the provisions of the ESRS reporting principles or the assurance standards.

**Q19) Do you agree with the draft Guideline 13 which clarifies the approach to materiality in the enforcement of sustainability information? If not, please explain why and provide suggestions for amendments.**

We partially agree, based on the reasons reported below.

We highlight that paragraph 65 (Explanations), relating to materiality, reintroduces the terms of “omission or misstatement” linked to the assessment of materiality. As more broadly explained in our response to Questions n. 4 and n. 11 above, we suggest to maintain an element of consistency and coordination among the terms used in various parts of the GLESI, as well as with the provisions of both the ESRS reporting principles and the assurance standards.