Ms Isabelle Grauer-Gaynor
Head of Unit, Corporate Finance and Reporting
ESMA
201-203 rue de Bercy
CS 80910
75589 Paris Cedex 12
France

15 March 2024

Subject: Response to Consultation on Draft Guidelines on Enforcement of Sustainability Information

Dear Isabelle,

PwC International Ltd (PwC), on behalf of the PwC network, welcomes the opportunity to provide feedback on the draft Guidelines on Enforcement of Sustainability Information (GLESI).

We commend ESMA for acting on its mandate to develop guidelines on the supervision of sustainability reporting by national competent authorities (NCAs) and we fully support the GLESI's objective[1] to establish consistent, efficient and effective enforcement of sustainability information. However, we suggest caution in relation to the stated aim of ensuring this enforcement also closely resembles the enforcement undertaken in relation to financial information, for the reasons set out below.

Adjusting to and embedding new reporting requirements

While the Guidelines on Enforcement of Financial Information ("GLEFI") serve as a valuable foundation from which to develop the GLESI, we do not believe they are entirely suitable as a direct basis for the GLESI. The nature and quantity of information to be provided under the Corporate Sustainability Reporting Directive (CSRD) and European Sustainability Reporting Standards (ESRS) and the speed of implementation are very ambitious. Preparers face a significant challenge in developing and implementing the governance structures, processes and controls to be able to meet these new reporting requirements within a short time frame.

The GLESI consultation paper[2] acknowledges the challenges preparers face during the early years of implementing these requirements. It is important to recognise that we face a journey in relation to sustainability reporting; the quality of reported sustainability information is likely to improve over time as preparers gain experience and new structures and systems become

[1] GLESI, section 3 paragraph 7.
[2] ESMA Consultation paper: Draft Guidelines on Enforcement of Sustainability Information, page 7 paragraph 8.

embedded. Providing an explanation of this in the GLESI themselves would help to provide NCAs with a realistic understanding of the challenges preparers are faced with and help set appropriate expectations from the outset. Similarly, acknowledging the learning curve within published NCA and ESMA enforcement reports will be important for managing users' expectations.

In addition to the steep learning curve associated with new sustainability reporting standards, we observe that sustainability reporting under ESRS, and specifically the identification of material topics and data points, is much more judgmental than financial reporting (this will particularly be the case in the early years as common practice emerges). There is a realistic possibility that an enforcer could take an alternative view of a company's assessment, for example in relation to materiality, and in addition, that NCAs may each have different opinions on similar scenarios. It would be unhelpful if NCAs identify such challenging interpretations as material omissions/ failures in entities' sustainability reporting.

We therefore recommend that stakeholders in the ecosystem (enforcers, preparers, users, assurance providers) should work together to develop a robust view on how to approach this. It would also be helpful for ESMA to acknowledge that sustainability reporting will develop and evolve over time.

ESMA's 'Report: 2022 Corporate reporting enforcement and regulatory activities'[3] states that 38% of the 600 ex-post examinations of financial statements undertaken during the period gave rise to enforcement action. This is despite preparers having gained many years of experience in IFRS reporting. Given the learning curve, and the amount of judgement involved, our concern is that with a similar approach for sustainability reporting, it is very possible that 90-100% of sustainability reports examined could be assessed as having departures from ESRS in the early years of implementation.

If the headline of an annual corporate reporting enforcement programme indicates that the vast majority of examinations identified concerns and could be subject to enforcement action, this would be unhelpful and potentially confusing for users of sustainability information. It would also undermine trust in the reporting ecosystem at a time when preparers are developing their disclosures to provide a fuller picture of a company's impact on society and the environment.

We therefore suggest that in the initial years of sustainability reporting, ESMA shares its <u>detailed</u> comments and findings confidentially with preparers, and their assurance providers, rather than making them public. This approach would allow time for preparers to fully embed their systems and governance and enable sustainability reporting to evolve and mature. Preparers will be able to address all areas of concern and have time to develop and consolidate their sustainability reporting appropriately. We recommend this approach as the best way to build public trust in this important new reporting.

[3] Published 29 March 2023.

In parallel with confidential reporting to preparers, we recommend that NCAs and ESMA work together (via the SRWG) to publish an annual thematic report based on an overview of findings of their enforcement reviews. We believe that the focus of the published report should be on departures that undermine the reported sustainability information as a whole. Enforcement reporting should focus on those omissions and misstatements that are inarguably material and misleading, rather than minor infringements. It would be helpful for stakeholders in the ecosystem (enforcers, preparers, users, assurance providers) to work together to consider how to approach this. In the early years in particular (and rather than highlighting statistics relating to numerous departures), we recommend that the annual thematic report identifies key areas of concern, where enforcers consider improvement in sustainability reporting is needed across the issuer population as a whole.

Once defined, we believe that focusing on significant departures will support the learning curve and should provide a more positive, encouraging approach in the early years of sustainability reporting. The aim should be to achieve a balanced approach to enforcement that supports fairly presented and decision-useful sustainability reporting in Europe.

Scope

While not specifically within ESMA's remit, we observe that there is a supervisory gap for the reporting of sustainability information at a European level. The proposed GLESI cover issuers who have securities listed on a regulated market; the CSRD additionally encompasses larger private undertakings. As a result, the GLESI and ESMA's subsequent sustainability enforcement reports will not cover all companies subject to sustainability reporting under the CSRD or whose auditors are subject to oversight.

We note that the GLESI mentions its applicability to listed companies and recommend clarifying in both the GLESI and ESMA's enforcement reports that the companies falling within GLESI's scope and under ESMA's remit are issuers subject to the Transparency Directive, while the scope of the CSRD additionally includes large private undertakings. This clarification will help avoid any confusion and enable a comprehensive understanding of the GLESI's scope and ESMA's enforcement reports.

Ongoing assessment

After the first year of reporting, and at regular intervals thereafter, a formal review of the guidelines themselves and findings from enforcement examinations and activity will be important. We recommend this happens on a timely basis (for example annually in the first few years and then every two to three years as enforcement practice becomes more established) and in consultation with key stakeholders. Such post-implementation reviews should consider how effective and appropriate enforcement processes are, whether consistency between NCAs is evident, whether the focus is at an appropriate level (for example, as above, on departures that undermine the sustainability report as a whole), and achieving the original objectives. The conclusions of these reviews should be published and shared with enforcers throughout EU member states. This iterative approach would promote continuous improvement and alignment of enforcement practices across the EU.

In accordance with the provisions set out in section 5.6, European coordination of the draft GLESI, and notably in relation to guidelines relating to the Sustainability Reporting Working Group (SRWG), we recommend that all NCAs are actively encouraged to engage in regular discussions and exchange experiences regarding the implementation and enforcement of the sustainability information framework. This would foster collaboration and knowledge sharing among NCAs and should enhance the overall effectiveness of the system.

In highlighting these points, we advocate for a supervisory approach that takes into consideration the practical realities and challenges that preparers will encounter, ensuring fair and effective implementation of the GLESI and allowing trust to build in reporting under CSRD and ESRS requirements.

Our responses to the specific consultation questions relating to the draft GLESI are attached to this letter. If you would like to discuss any points that we have raised in this letter or attachment, please do not hesitate to contact me (gillian.lord@pwc.com) or Jacomien van den Hurk (jacomien.van.den.hurk@pwc.com).

Yours sincerely,

Glord.

Gilly Lord
Global Leader for Public Policy and Regulation

PwC IL is registered under number 60402754518-05 in the EU Transparency Register.