



Ms Isabelle Grauer-Gaynor
Head of Unit, Corporate Finance and Reporting
ESMA
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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 objective¹ 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 paper² 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 detailed 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,

A handwritten signature in dark ink that reads 'Gilly Lord'.

Gilly Lord
Global Leader for Public Policy and Regulation

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

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 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 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 under the heading '[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	PwC IL
Activity	Audit/Legal/Individual
Are you representing an association?	<input type="checkbox"/>
Country / region	International

Questions

Q1 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>

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 Guidelines on Enforcement of Sustainability Information ("GLESI") cover issuers who have securities listed on a regulated market; the Corporate Sustainability Reporting Directive ("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 mention their 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.

<ESMA_QUESTION_GLESI_1>

Q2 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>

Q3 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>

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.

<ESMA_QUESTION_GLESI_4>

We recommend the inclusion of ‘double materiality’ in the definitions provided in section 2.3 of the GLESI. The definition should refer to the European Sustainability Reporting Standards (ESRS) description of double materiality (specifically section 3.3 of ESRS 1), in order to avoid any misunderstanding among users of the GLESI. Please see further our response to Question 7 with regards to double materiality.

We note that infringement is defined as ‘A material omission or a material misstatement in an issuer’s sustainability information’ (draft GLESI, section 2.3, Definitions). It would be helpful to provide further guidance around how ‘material omission’ or ‘material misstatement’ should be interpreted for the purpose of enforcement activity and to better understand the enforcement approach with regards to materiality (Guideline 13). We recommend further consideration around materiality for the purposes of enforcement and suggest the involvement of preparers, users and assurance providers in this discussion. See further our response to Question 19 below.

<ESMA_QUESTION_GLESI_4>

Q5 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>

We note that the GLESI relate to the provisions of Article 28d of the Transparency Directive and Article 16 of the ESMA regulation. Article 16(1) describes the issuance of guidelines to ensure ‘the common, uniform, and consistent application of Union law’, thereby facilitating the establishment of efficient supervisory practices.

The GLESI consultation paper¹ explicitly 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 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

¹ ESMA Consultation paper: Draft Guidelines on Enforcement of Sustainability Information, page 7 paragraph 8.

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'² 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.

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 detailed 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.

In parallel with confidential reporting to preparers, we recommend that NCAs and ESMA work together (via the SRWG) to publish an annual thematic report, with aggregated and anonymised results, 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

² Published 29 March 2023.

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.

<ESMA_QUESTION_GLESI_5>

Q6 Do you have any remarks on the compliance and reporting obligations?

<ESMA_QUESTION_GLESI_6>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GLESI_6>

Q7 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>

The GLESI's stated objective is to "help make the status of sustainability information comparable to that of financial information" (draft Guideline 1 paragraph 13). While the GLEFI serve as a valuable foundation from which to develop the GLESI, we do not believe they are entirely practical as a direct basis for the GLESI as explained in our response to Question 5 above.

Enforcement activity in line with the GLESI will play an important role in building trust in issuers' new sustainability reports. 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). For example we note that double materiality (referenced in paragraph 70 of the draft GLESI) is a new concept encompassing both financial and impact materiality and requiring

companies to consider not only investors' interests but also those of other stakeholders when disclosing relevant information. There is a realistic possibility that what one preparer deems "material" may differ significantly from the materiality assessments made by other preparers. Similarly, a judgement regarding materiality or data points made by an NCA may differ significantly from the opinion of a preparer or of another NCA in a similar scenario. 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_QUESTION_GLESI_7>

Q8 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>

We agree with guideline 2. As referenced in our answer to Question 5 above, our view is that the GLESI should prioritise the promotion of effective and consistent enforcement of sustainability reporting across all member states.

Regarding the allocation of adequate human resources, we recommend the GLESI acknowledge that there is likely to be a shortage of suitably skilled staff in the market place given that the sustainability reporting framework is new. NCAs may not be able to recruit sufficient numbers of professionals to carry out enforcement activity, particularly during the early years.

We also recommend that the GLESI highlight the ongoing learning process that will be necessary for issuers, assurance providers, and enforcers in relation to sustainability reporting. We suggest that the GLESI should also include a recommendation for enforcers to regularly enhance the skills of their staff, with support, where applicable, from ESMA. Ongoing training and collaboration would help to enable consistency in enforcement activity across member states.

In addition, we suggest that regular interactions between NCAs and assurance providers would be helpful. This would provide assurance providers with a better understanding of the enforcement examination process and would allow an exchange of views on what would qualify as material departures.

<ESMA_QUESTION_GLESI_8>

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.

<ESMA_QUESTION_GLESI_9>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GLESI_9>

Q10 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>

Q11 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>

We agree with draft Guideline 5 and a mixed selection model that combines a risk-based approach with random sampling and rotation.

In order to avoid any misinterpretation, it will be helpful for ESMA's enforcement reporting to explicitly state that findings are derived from a sample selection and cannot be extrapolated to encompass all sustainability reports falling under GLESI's scope.

<ESMA_QUESTION_GLESI_11>

Q12 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>

Q13 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>

We agree with the proposed Guideline 7. See further our response to Question 1 regarding scope.

<ESMA_QUESTION_GLESI_13>

Q14 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>

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.

<ESMA_QUESTION_GLESI_15>

As mentioned in our response to Question 5 above, it is important for enforcers to acknowledge the maturity of sustainability reporting under the CSRD and the ESRS and the fact that this is a new requirement for preparers.

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. 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 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.

As set out in our response to Question 5 above, we suggest that in the initial years of sustainability reporting, ESMA shares its detailed 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.

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.

<ESMA_QUESTION_GLESI_15>

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.

<ESMA_QUESTION_GLESI_16>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GLESI_16>

Q17 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>

We agree with the inclusion of draft Guideline 11, to conduct quality reviews of examinations performed in accordance with the GLESI. We note, however, that no guidance is provided around the frequency and timing of such reviews. We suggest that it would be helpful for a number of quality reviews to take place in line with each NCA's enforcement period (and normally annually).

NCAs should be encouraged to share the results of their reviews with ESMA's Sustainability Reporting Working Group ("SRWG"). We believe sharing the learning from each NCA's quality reviews would be helpful in promoting further harmonisation.

<ESMA_QUESTION_GLESI_17>

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.

<ESMA_QUESTION_GLESI_18>

We agree with the enforcement actions proposed in draft Guideline 12.

Consistent with our response to Question 5 above, 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 detailed 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.

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 a published enforcement 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.

<ESMA_QUESTION_GLESI_18>

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.

<ESMA_QUESTION_GLESI_19>

We note that draft Guideline 13, paragraph 70 refers to double materiality being the basis for the enforcer's materiality assessment of an omission or misstatement. Further guidance on how to approach a materiality assessment for the purposes of enforcement would be helpful here, given that ESMA's current focus is on investors, rather than the broader users referred to by ESRS. We note, for example, ESMA's mission is to 'enhance investor protection, promote orderly financial markets and safeguard financial stability'. We suggest that a robust discussion between enforcers, preparers, users and assurance providers would be a helpful way to consider this and determine an appropriate way forward.

Please see further our response to Question 5 above.

<ESMA_QUESTION_GLESI_19>

Q20 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>

We agree with draft Guideline 14; enforcers should follow up to confirm that any necessary action identified during their review is taken on a timely basis. This is essential for achieving a harmonised approach to enforcement among Europe's NCAs and resulting consistent, comparable and transparent corporate sustainability reporting.

With reference to our response to Question 5 above, and the provisions of the Transparency Directive and ESMA regulation that the GLESI are based on, we emphasise again that the GLESI's primary objective should be to ensure consistent and effective enforcement by NCAs, thereby facilitating the establishment of harmonised supervisory practices of sustainability reporting in Europe.

<ESMA_QUESTION_GLESI_20>

Q21 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>

We agree with the proposed guidelines for coordinating the enforcement of sustainability information at a European level.

We agree that it is important for all enforcers to participate in the work of ESMA's SRWG; to engage in discussion and exchange experiences as they implement and then continue to apply the GLESI. This should help to promote the enforcement of sustainability information in Europe.

Please see further our responses to Question 5 and Question 17 above. Similar to our suggestion in Question 25, we recommend that the effectiveness of the enforcement of sustainability information be reviewed by ESMA (via the SRWG) as part of post-implementation reviews of the GLESI.

<ESMA_QUESTION_GLESI_21>

Q22 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>

We appreciate the objective of achieving harmonisation, consistency and transparency by NCAs reporting on their enforcement activity at a national level and also providing ESMA with appropriate information for European coordination of enforcement activity.

We suggest that reference to reporting 'periodically' in draft Guideline 22 could be clarified as 'normally annually', given that this reporting is for the purpose of inclusion in ESMA's yearly corporate reporting enforcement and regulatory activities report (and as referenced in paragraph 81 of the consultation paper) and to assist with identifying common enforcement priorities on a yearly basis (draft Guideline 15, paragraph 73).

This practice would enable us to gain a timely and detailed understanding of how NCAs and ESMA evaluate sustainability reports, identify infringements, and consider the interests of both investors and wider stakeholders. We would like to emphasise the importance of enforcers disclosing as much information as possible, while adhering to EU and national legal obligations such as privacy laws.

<ESMA_QUESTION_GLESI_22>

Q23 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>

Overall, we agree that developing the GLESI based closely on the GLEFI is a more cost efficient approach. However, as described in our cover letter and in our responses above, we do have reservations (and have made related suggestions) about a number of aspects of the proposed GLESI and the implications these will have with regards to enforcement of sustainability information. These include:

- The need to acknowledge the steep learning curve that preparers face in the early years of reporting under the CSRD and ESRS.
- The nature of enforcement reporting (in the initial years at least, we recommend private reporting to preparers and their assurance providers, and an annual thematic report focussing on key/ significant themes arising rather than highlighting numerous departures/ infringements identified during examinations).
- A recommendation for stakeholders across the ecosystem (enforcers, preparers, users, assurance providers) to work together to consider how to

approach enforcement reporting and challenging areas such as materiality and data points.

- The need to acknowledge that not all companies reporting under CSRD will fall under ESMA's remit.
- A process of ongoing assessment and review to drive continuous improvement and alignment.

<ESMA_QUESTION_GLESI_23>

Q24 If you advocate for a different policy option, how would it impact the benefits and costs? Please provide details.

<ESMA_QUESTION_GLESI_24>

Please refer to our answer to Question 23 above.

<ESMA_QUESTION_GLESI_24>

Q25 Do you wish to raise any other points which ESMA should consider as it finalises the guidelines?

<ESMA_QUESTION_GLESI_25>

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.

Cover letter

Our cover letter of 15 March 2024 highlights those areas we believe to be of highest priority in developing guidelines for the enforcement of sustainability information. We provide our responses to the above questions in addition to our cover letter.

<ESMA_QUESTION_GLESI_25>