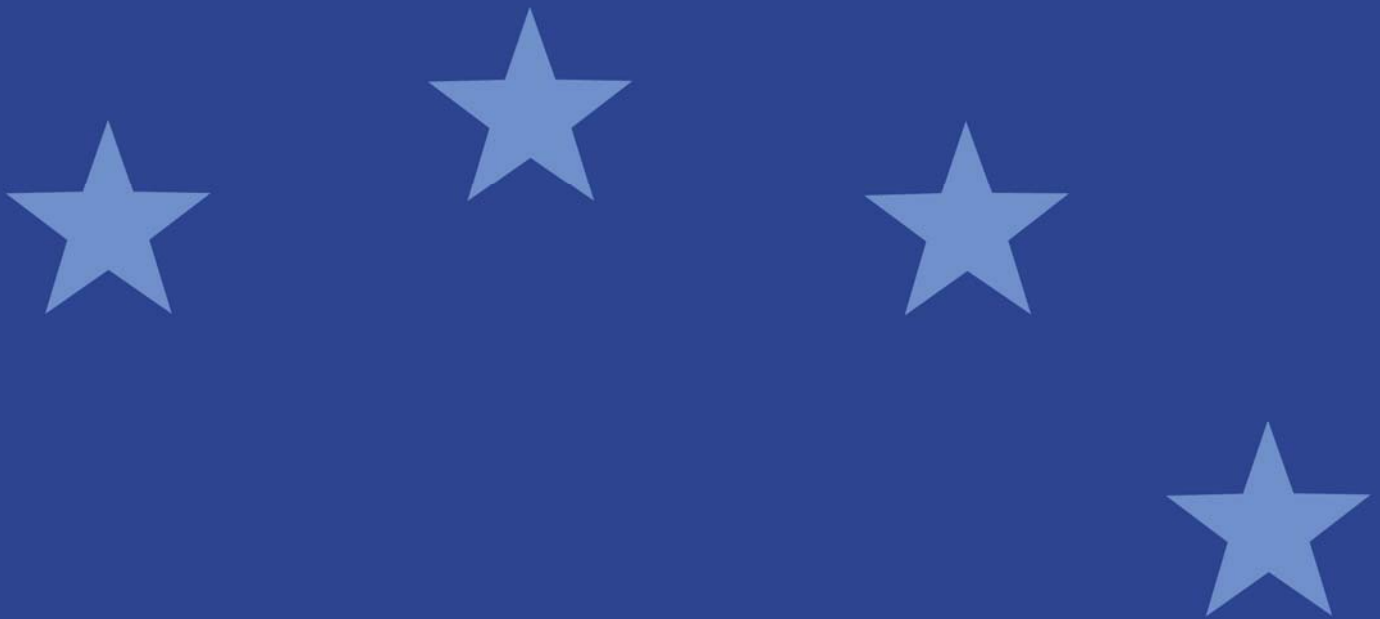


Response to the Consultation of the European Commission

**Non-binding Guidelines for reporting of non-financial information by
companies**





Response to the consultation of the European Commission Non-binding Guidelines for reporting of non-financial information by companies

Purpose of the consultation

In January 2016, the European Commission decided to hold a public consultation to seek views from stakeholders on non-binding guidance on the methodology for reporting of non-financial information by certain large companies across all sectors following article 2 of Directive 2014/95/EU on disclosure of non-financial and diversity information by certain large undertakings and groups.

The upcoming non-binding guidelines will set out how large public-interest entities could disclose social and environmental information. They will assist companies in the reporting process and provide them with a methodology that will facilitate the disclosure of relevant, useful and comparable non-financial information.

ESMA response

This consolidated answer was prepared by ESMA on the basis of a pre-consultation of European competent authorities.

In its answer, ESMA focused on issues which relate to its remit, such as the disclosure of key performance indicators and the scope of the Directive 2014/95/EU.

Information about the respondent

In what capacity are you completing this questionnaire?

-
1. Answer: public authority or an international organisation

Where is your organisation/company registered, or where are you are located if you do not represent an organisation/company?

-
2. Answer: International or European organization

What is the name of the organisation or authority you represent?

-
3. Answer: European Securities and Markets Authority (ESMA), providing a consolidated response on behalf of national securities regulators, thereafter ESMA

In the interests of transparency, your contribution will be published on the Commission's website. How do you want it to appear?

-
4. Answer: Under the name of ESMA and ESMA's members
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Question 1

What aspects of disclosure of non-financial information do you think that should be addressed by the GUIDELINES?

5. Answer: Accounting and Reporting/Communication

Please, order in terms of importance (1 least important, 9 most important)

	1 (least important)	2	3	4	5	6	7	8	9 (most important)
*Materiality/Relevance	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Usefulness	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Comparability	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Avoiding undue administrative burden	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Comprehensiveness	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Fairness and balance	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Understandability	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Reliability	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 2

Who should be considered in your opinion the main audience of the non-financial statement?

6. All users of information (including consumers, local communities, NGOs, etc.)

Question 6

How do you think that the GUIDELINES should approach the disclosure of key performance indicators (KPIs)?

	1 (best option)	2 (second preferred option)
The GUIDELINES should highlight key principles on how to disclose relevant KPIs and complementariness with narrative and/or financial information as applicable	<input type="checkbox"/>	<input type="checkbox"/>
The GUIDELINES should make reference to KPIs proposed by other frameworks where addressing concrete matters or issues	<input type="checkbox"/>	<input type="checkbox"/>
The GUIDELINES should include a comprehensive list of KPIs, general and sectoral	<input type="checkbox"/>	<input type="checkbox"/>
The GUIDELINES should provide flexibility for companies to exercise judgement in deciding what KPIs should be included in their disclosures	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>

Question 6.1

Could you please provide a brief explanation on your answer regarding how you think the GUIDELINES should approach the disclosure of key performance indicators (KPIs)?

7. The Transparency Directive (TD) and the Accounting Directive refer to “a fair review of the development and performance of the business and position of the issuer”, without providing a definition of a “fair review”. In this respect, Article 19 of the Accounting Directive allows the use of KPIs in the management report, to the extent that it is necessary for an understanding of the undertaking’s development, performance or position of a particular business. As such, a KPI should ensure that the information included in relation to its use provides a balanced and comprehensive analysis of the development and performance of the undertaking’s business and of its position.
8. In this respect, ESMA believes that KPIs are very useful for the reporting of non-financial information by companies and that adequate disclosure principles should be encouraged to improve the transparency and comparability of this information.
9. ESMA published in 2015 a Public Statement on improving the quality of disclosures in the financial statements (2015/ESMA/1609), in order to address the tendency of some issuers to provide boilerplate disclosures. As such, ESMA would suggest that the approach for the disclosure of KPIs follows the five disclosure principles explained in the ESMA Public Statement:
 - Telling the entity’s own story
 - Providing relevant information in the financial statements in an easily accessible way
 - Thinking about materiality

- Promoting readability of the financial statements
 - Providing consistent information within annual reports.
10. ESMA also published in 2015 Guidelines on Alternative Performance Measures (APMs)(2015/ESMA/1415) which are applicable for financial measures. Its principles may constitute a relevant basis for the establishment of principles related to non-financial information KPIs in order to reduce information asymmetry, build confidence in the information provided and improve investor protection.
11. On the basis of its expertise in the development of Guidelines on the APMs, ESMA would suggest that companies provide for each KPI:
- a definition of the components and basis of calculation that it is clear, readable and consistent over time;
 - a meaningful label reflecting the methodology and eventual basis of calculation in order to avoid conveying misleading messages;
 - an explanation of its use in order to allow users to understand their relevance and reliability;
 - a link to the most relevant amount presented in the financial statements, whenever the KPI has an interrelation with financial information;
 - a comparative for the corresponding previous periods;
 - an explanation of the reason for considering that a particular KPI no longer provides relevant information.

Question 9

Do you think that when preparing the GUIDELINES only the companies included in the scope of the DIRECTIVE should be considered, or that the interests, characteristics and/or requirements of other companies that prepare management reports should be taken into account as well?

Please, check the box of the alternative that you consider most appropriate.

- Specific to the requirements of the companies under scope of the DIRECTIVE
- Consider all large companies
- Consider all companies
- Focus on the requirements of the companies under the scope of the DIRECTIVE, but also propose best practice for other companies that prepare management reports

Question 9.1

Accordingly, do you think that the content of the guidelines should be different according to the targeted companies? Could you please provide a brief explanation?

-
12. The provisions of Directive 2014/95/EU (NFD) are only applicable to large EU public interest entities¹ with more than 500 employees. As these companies might operate in

¹ As defined in Article 2 (1) of Directive 2013/34/EU (Accounting Directive)

different economic sectors, ESMA considers that the disclosure on a large variety of non-financial information should focus on issues related to their own activity, in order to avoid general statements in the form of boilerplate language. As such, relevant disclosures could focus on two key principles – the reduction or removal of immaterial or unnecessary information and the inclusion of more information which is of specific relevance to the individual company. In order to reduce unnecessary clutter, an opportune suggestion could be to include a mention “not relevant” in the statement for specific issues in which the company might not have any involvement.

13. In addition, ESMA believes that the principles of the EC Guidelines for reporting of non-financial information could be used on a voluntary basis by companies not covered in the scope of the Directive if they have a desire to inform stakeholders about their actions on non-financial issues.

Question Additional Information

Please, upload, as needed, any relevant document or information that you consider useful for the purposes of this consultation.

14. ESMA strongly supports the issuance of guidance setting out key principles related to disclosure of non-financial information in order to avoid boilerplate disclosures and promote the publication of relevant and entity-specific information on a large variety of issues.
15. However, ESMA would like to point out that the NFD involves different actors in the ‘verification’ of this information, and that, as such, it would be useful to clarify the specific responsibilities of these actors, namely (i) the auditors, (ii) the ‘independent assurance services providers’ and (iii) the competent authorities. Providing this clarification will ensure that they identify whether the companies under the scope of the NFD fulfil the requirements of the NFD and provide relevant information to stakeholders.
16. In this respect, ESMA considers that a specification of the mission of the auditor could be provided, notably whether the auditor is expected to perform a simple check of the existence of non-financial information or whether it should undertake a consistency check in which it will ‘read and consider’ non-financial information, in line with the requirements of ISA 720 *The Auditor’s Responsibilities Relating to Other Information*. With respect to ‘other information’, this standard considers that the auditor should undertake an ‘intelligent read’ of an annual report, in the context of the knowledge obtained in the audit and perform certain procedures to ensure that the annual report is not materially inconsistent with the audited financial statements.
17. Finally, ESMA takes note that Article 4 of the TD lists the content of the Annual Financial Report to be supervised by Competent Authorities in order to ensure its compliance with the provisions of the TD. However, Article 4 does not seem to explicitly address the publication of a separate report containing non-financial information as allowed under Article 19a (4) of the NFD, so that the applicable European legislation appears to have no explicit reference to the role of enforcers when non-financial information is published in a separate report such as a non-financial statement. In this respect, ESMA considers that the objective of the TD and the scope of the work of Competent Authorities should not be influenced by the

choice of a particular type or location of the report. As such, even though outside of the remit of the guidelines, the EC might consider the opportunity to clarify the legal basis of the work of the enforcers in relation to non-financial statements, because this lack of clarity might prevent an adequate protection of investors and encourage regulatory arbitrage among issuers when they prepare non-financial statements.