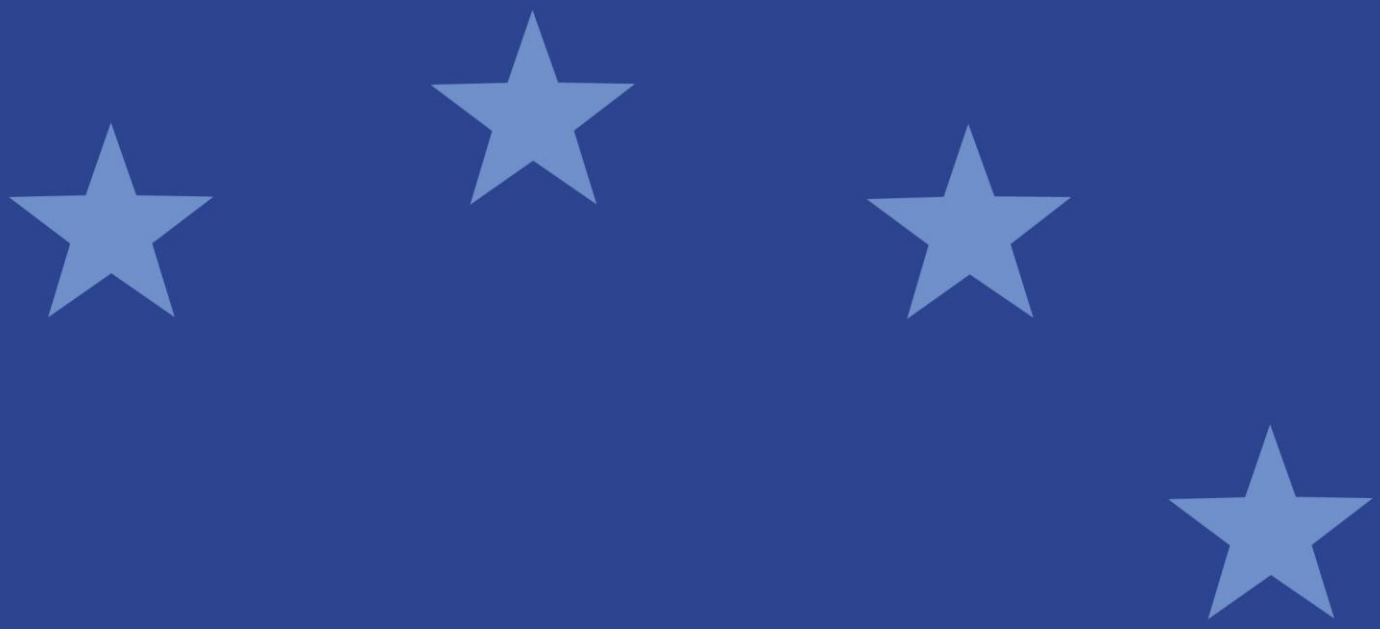
esma European Securities and Markets Authority

PEER REVIEW ON GUIDELINES ON ENFORCEMENT OF FINANCIAL INFORMATION

Peer Review Report



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List of acronyms and terms used

AG	Assessment Group
CESR	Committee of European Securities Regulators
EC	European Commission
ECEP	European Common Enforcement Priorities
EECS	European Enforcers Coordination Session
EFI	Enforcement of Financial Information
FTE	Full Time Equivalent
MAR	Market Abuse Regulation
MS	Member State
NCA	National Competent Authority
TD	Transparency Directive 2004/109/EC as amended
IFRS	International Financial Reporting Standards

1 – Introduction

1. The ESMA Supervisory Convergence Work Programme 2016 set out that a peer review would be carried out to assess the compliance by NCAs with certain of the ESMA Guidelines on Enforcement of Financial Information (ESMA/2014/1293) (**EFI Guidelines**).

2. This peer review was conducted in accordance with Article 30 of Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 (**ESMA Regulation**) and the revised ESMA Peer Review Methodology (ESMA/2013/1709) (**Methodology**).

3. In accordance with the Methodology, the peer review was carried out by an Assessment Group (**AG**), which reported its findings to the ESMA Board of Supervisors, for its approval, after having consulted the Supervisory Convergence Standing Committee (**SCSC**).

4. The peer review is of Guidelines 2, 5 and 6 of the EFI Guidelines.

5. The objectives of this peer review were:

6. *In the context of Guideline 2:* to assess the sufficiency of human and financial resources of NCAs taking into account the number and characteristics of issuers subject to enforcement of financial information; and to assess the adequacy of the professional experience and background of enforcers considering the nature of the issues that need to be dealt with under the applicable rules.

7. *In the context of Guideline 5:* to assess whether selection methods in place within an NCA are based on a mixed approach whereby a risk based approach is combined with a sampling and/or rotation approach; to assess whether the risk based approach considers the combination of the probability of infringements by an issuer and their potential impact on the financial markets. When performing this assessment, the peer review will consider whether the risk approach takes into consideration all the relevant criteria as defined in the Guidelines; to assess whether the sampling and/or rotation approach ensures that issuers not captured in the risk criteria may be selected for review; and to assess whether the selection model takes into account the common enforcement priorities identified by enforcers together with ESMA.

8. *In the context of Guideline 6:* to assess whether the examination procedures in place within an NCA ensure that the enforcement of financial information performed either by unlimited scope examinations, or a combination of unlimited scope and focused examinations, is effective; notably, whether the examinations carried out by enforcers ensured that material errors were likely identified; to assess whether the examination

procedures following the risk based selection model are adequate; and to assess whether the examination techniques used and the related conclusions of the review of the financial information of issuers selected as part of the enforcement process are appropriately documented.

9. In line with the ESMA Regulation and the Methodology, peer reviews can also include a review of the independence of the NCAs and their capacity to achieve high quality supervisory outcomes, including the adequacy of resources and governance and the effective application of the Guidelines, the capacity of the NCAs to respond to market developments, the degree of convergence in the application of law and supervisory practices, and the extent to which the practices achieve the objectives. The mandate was approved by the Board of Supervisors in September 2016 (and is attached in Annex 1).

10. The first stage of the peer review involved a targeted self-assessment Questionnaire (**Questionnaire**) (reproduced in Annex 2), which was completed by NCAs, followed by on-site visits at seven NCAs.

11. Under review was the enforcement work done by NCAs on the annual financial statements of issuers for the financial year end 31 December 2014, the interim financial statements from 2015, and the work completed at the time of the review on the annual financial statements for the year end 31 December 2015.

12. The following NCAs were selected by the Assessment Group to be visited onsite (together with the date and location of the onsite visits that took place):

    i. Financial Reporting Council (FRC) (London, 30 January -2 February, 2017)
    ii. Finanstilsynet/Norwegian Financial Supervisory Authority (NFSA) (Oslo, 7-8 February, 2017)
    iii. Comissão do Mercado de Valores Mobiliários (CMVM) (Lisbon, 14 – 15 February, 2017)
    iv. Commissione Nazionale per le Società e la Borsa (Consob) (Rome, 28 February – 1 March, 2017)
    v. Maltese Financial Services Authority (MFSA) (Attard, 9-10 March, 2017)
    vi. Die Deutsche Prüfstelle für Rechnungslegung/Financial Reporting Enforcement Panel (FREP) and Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) (Berlin, 14-16 March, 2017)
    vii. Autoritatea de Supraveghere Financiară (ASF) (Bucharest, 21-22 March, 2017)

13. Each visit took place over two, and sometimes three, days.

14. The visiting teams were composed of 5 or 6 persons. In all cases the team included

    - the Co-Ordinator, Lars Østergaard (DFSA, DK)
    - the ESMA expert, Eduardo Damasio,

- the Rapporteur, Michael Hennigan (ESMA),

and two or three of the following members of the Assessment Group:

- Florence Tiberini (AMF, FR),
- Tine Svae (NFSA, NO)
- Nusret Calo (FMA, AT),
- Jérôme Tourscher (CSSF, LU),
- Lee Piller (FCA, UK),
- Thomas Hoeppner (BaFin, DE)
- Gianluca Vittorioso (Consob, IT)
- José María Fernández Ortega (CNMV, ES)

15. The composition of the visiting teams for the on-site visits was decided taking into account the need to avoid any conflicts of interest.

Table 1: Country codes and acronyms of Competent Authorities participating in this peer review:

Country Code	Country	Competent Authority	Acronym
AT	Austria	Finanzmarktaufsicht The Austrian Financial Review Panel/Österreichische Prüfstelle für Rechnungslegung).	FMA AFREP
BE	Belgium	Financial Services and Markets Authority	FSMA
BU	Bulgaria	Financial Supervision Commission	FSC
CY	Cyprus	Cyprus Securities and Exchange Commission	CySEC
CZ	Czech Republic	Czech National Bank	CNB
DE	Germany	Bundesanstalt für Finanzdienstleistungsaufsicht Financial Reporting Enforcement Panel	BaFin FREP
DK	Denmark	Finanstilsynet/Danish Financial Services Authority	DFSA
EE	Estonia	Estonian Financial Supervision Authority	EFSA
EL	Greece	Hellenic Capital Market Commission	HCMC
ES	Spain	Comisión Nacional del Mercado de Valores	CNMV
FI	Finland	Finanssivalvonta	FIN-FSA

Country Code	Country	Competent Authority	Acronym
FR	France	Autorité des Marchés Financiers	AMF
HR	Croatia	Hrvatska Agencija za Nadzor Financijskih Usluga	HANFA
HU	Hungary	Magyar Nemzeti Bank	MNB
IE	Ireland	Central Bank of Ireland Irish Auditing and Accounting Supervisory Authority	CBoI IAASA
IS	Iceland	Financial Supervisory Authority Register of Annual Accounts	FME RAA
IT	Italy	Commissione Nazionale per le Società e la Borsa	Consob
LT	Lithuania	Lietuvos Bankas	LB
LI	Liechtenstein	Finanzmarktaufsicht	FMA
LU	Luxembourg	Commission de Surveillance du Secteur Financier	CSSF
LV	Latvia	Financial and Capital Markets Commission	FCMC
MT	Malta	Malta Financial Services Authority	MFSA
NL	Netherlands	Autoriteit Financiële Markten/Dutch Authority for the Financial Markets	AFM
NO	Norway	Finanstilsynet/Financial Supervisory Authority of Norway	NFSA
PL	Poland	Polish Financial Supervision Authority	KNF
PT	Portugal	Comissão do Mercado de Valores Mobiliários	CMVM
RO	Romania	Financial Supervision Authority	FSA
SE	Sweden	Finansinspektionen	Finansin-spektionen
SI	Slovenia	Securities Market Agency	SMA
SK	Slovakia	National Bank of Slovakia	NBS
UK	United Kingdom	Financial Conduct Authority Financial Reporting Council	FCA FRC

2 – Executive Summary

16. This peer review was completed in accordance with the mandate of the ESMA Board of Supervisors (Annex 1). This report is presented for the ESMA Board of Supervisors (Board) by the Assessment Group (**AG**) appointed in accordance with that mandate.

17. The scope of the peer review is a review of Guidelines 2, 5 and 6 of the Guidelines on Enforcement of Financial Information (**EFI**). However, the mandate also requires the AG to provide the Board with, among other things, an assessment of (1) the effectiveness and degree of convergence in the enforcement of the provisions under review, (2) an assessment of the application of law and supervisory practices, and (3) the extent to which the practices achieve the objectives of the Guidelines. These latter, more general, objectives required the AG to look at other aspects of the work done on enforcement of financial information.

18. In addition to providing an opportunity to assess the level of convergence, the experience of the AG is that the peer review process itself also contributes to supervisory convergence. That is, the very act of bringing together experts in a specific field from the NCAs (in this case a significant number – nine jurisdictions and ESMA represented) resulted in a large amount of sharing of experience and knowledge. Furthermore, the practice in a peer review whereby these experts are required to meet with the experts in seven more jurisdictions (the onsite visits) also served as an opportunity to share information with, and challenge, each other.

19. The opportunities for experts from various NCAs to interact is a valuable one. Indeed, the European Enforcers Coordination Session (**EECS**) is regarded by the enforcement community as an important occasion to share and learn, and is an important driver towards supervisory convergence. The AG recommends the EECS, i.e. a network and a forum for experts to congregate and work together, as a model for the promotion of supervisory convergence in other areas of ESMA's competence.

2.1 Main Findings of the Peer Review

20. Promotion of harmonisation of enforcement activities related to EECS has been an important axis of development for NCAs in recent years. The Guidelines published in December 2014 at ESMA's initiative have contributed to strengthen supervisory convergence. Through the alignment of supervisory approaches and procedures, the formalisation of yearly common enforcement priorities and discussion of enforcement cases related to financial information in the EECS, NCAs have contributed to increasing consistent application and enforcement of financial information in Europe. Currently, the Guidelines set the European common framework to be used by NCAs, against which the AG can evaluate the procedures in place in each jurisdiction, identify good practices, as well as areas for improvement.

21. The Guidelines on Enforcement of Financial Information are principles-based. That is, they do not detail precisely what NCAs must do in order to comply with the principles

that are contained in the Guidelines and convergence can be expected to vary across the various Guidelines. ESMA's convergence work has strongly focused on achieving a common view on the consistent application of IFRS (Guidelines 10 to 14). To maximise the value of this peer review, Guidelines 2, 5 and 6 were chosen for review, as it was here that ESMA expected there would be lower levels of convergence amongst NCAs. The AG has confirmed this expectation and has found that, in the application of these Guidelines, NCAs have many various ways of approaching and carrying out the enforcement of financial information, and to different standards.

Guideline 2

22. Guideline 2 requires resources to be "sufficient" so that effectiveness is not undermined. Human resources should be sufficiently skilled and experienced. The number of human resources required should take into account the number of issuers subject to enforcement of financial information, their characteristics, the complexity of their financial statements and their ability to apply the relevant financial reporting framework. The financial resources must be sufficient to ensure that the necessary amount of manpower and resources can be mobilised in enforcement of financial information.

23. In the opinion of the AG, it is difficult to make an assessment of compliance or non-compliance with Guideline 2 without looking at the way in which the whole organisation of an NCA works, and also at factors such as, for example, the culture, conditions or motivations. The AG has, however, reviewed and assessed the resources available to the participating NCAs and, without concluding that there has been non-compliance with the Guidelines, has opined that in a number of Member States the resources may not be sufficient, or sufficiently organised or allocated, to permit enforcement of financial operation to operate effectively.

24. In some cases, for example HU, LV, SE, UK, the number of staff in the opinion of the AG may not be sufficient to be able to carry out the full role of enforcer. In other cases, for example EL, MT, PT, RO, staff is available but not used effectively in the enforcement of financial information, their time being taken up by other demands from their organisation.

25. Across the EU, the AG notes a good level of experience and qualification. In respect of training, the AG emphasises that this is an important aspect of maintaining staff skills, and also can be used as an incentive to supplement less competitive remuneration levels. In particular, the AG recommends ESMA to further promote the circulation of the 'live' knowledge and debate emanating from the EECS as a good source of training for staff of NCAs.

Guideline 5

26. Guideline 5 states that the selection model should be based on a mixed model whereby a risk-based approach is combined a sampling and/or rotation approach, and there should always be a possibility of an issuer being selected for review.

27. In respect of compliance with Guideline 5, the AG has made a number of findings:

28. Based on the information received through the Questionnaire and the onsite visits, the AG is of the view that the MT, PT, RO, SE, UK do not comply with Guideline 5 for the following reasons:

29. In the case of PT, the AG considers paramount that NCAs follow the risk model in place. The reported figures on the examinations concluded in 2015 and 2016 by CMVM indicate that the selection model in place is not being used in practice. The execution rate (issuers examined/issuers selected) is only 30% which gives an indication that the model in place is not being followed and that insufficient time is allocated by the EFI team to the examination of financial statements.

30. In the cases of MT and RO, the AG believes that the risk model in place does not capture the intrinsic risk profile of an issuer as most of the risks indicators used are identified based on external factors/sources such as referrals from other departments/authorities, complaints, media or auditors. The AG is of the view that although external sources should always be taken into account, specific factors relating to the intrinsic risk profile of an issuer should also be considered.

31. With regards to SE, it was stated in its response to the Questionnaire that the risk model does not take into account the potential impact of misstatements on the financial markets which contradicts the principle included in Guideline 5.

32. The Guideline requires that the selection model in place ensures that there is a possibility that all TD issuers may be selected for examination. The AG considers that the selection model in place in the UK does not sufficiently take into account small equity issuers, pure bond issuers or UK issuers listed outside the country. The UK selection model focuses on issuers included in the FTSE 350, hence issuers outside this index are only captured for examination in case of news in the media, referrals by other authorities, grounded complaints received from stakeholders or random sampling. While it is acknowledged that small issuers are not subject to the same level of attention from media or from other external parties to submit referrals or grounded complaints, issuers captured in the random sample in the last two years were very few. Although issuers outside the FTSE 350 amounted to approximately 1,900 (approximately 80% of UK issuers), only 9% (34 examinations) of the total number of issuers selected for examination in the two years under review derived from random sampling.

33. In respect of selection models, there are some basic commonalities to be found amongst all NCAs, reflecting fundamental requirements in the Guidelines. Beyond these fundamentals, the approach by each NCA to selection varies widely in terms of the number of issuers selected for examination and the manner in which these issuers are selected.

34. Some of the commonalities present are included in the following examples:

34.1. There is always a component of risk – although this too often is represented only by NCAs reacting to specific risk triggers (such as market transactions or referrals) rather than a more general assessment being made by the NCAs of the risks that apply to issuers. The Guideline requires that risk assessments should be carried out on the basis of, among other things, a risk profile of the issuer and its management. Too often there is little or no assessment of economic risk factors to determine which issuers may be subject to stresses, or other forms of risk indicators that may give rise to the identification of a class of issuers (for instance industry) that might be more prone to the risk of misstatement. Ad hoc triggers should be only one component of a proper risk assessment.

34.2. All NCAs include a qualification by an auditor of its opinion on financial statements as a trigger for selection.

34.3. All NCAs include a form of quantitative selection through rotation or random selection, or both.

35. There are, however, many practices which the AG would like to see improved, and where common practices could be adopted across the EU. The AG is recommending to ESMA to consider using some form of supervisory convergence tool to improve the divergence observed in practice (for example, an amendment to the Guidelines, or a Supervisory Briefing). The possible improvements identified by the AG could be used as a starting point for the work that ESMA could do in conjunction with the NCAs.

36. For example, the AG sees the possibility for ESMA to formulate a common approach for the selection model that permits individual NCAs to make selections based on the particular information available to them, but within a consistent framework in use by all NCAs.

37. Such a framework would include common risk factors. The factors that increase the risk of misstatement or risk of impact for issuers should be the same regardless of geography or market. Therefore, there could be a list of common risk factors in use amongst NCAs. This list should be limited in order to be manageable, and should include only those risks where NCAs can reasonably and practically gather, in an efficient manner, information relevant to those risks.

38. The Guideline requires that there should always be a possibility of an issuer being selected for review. However, the Guideline only requires that selection models combine either risk with rotation, or risk with random selection, as the basis for approaching selection. In a number of cases, this requirement leads to the possibility of an issuer being selected being very low, and thus it does not influence its behaviour. The AG is of the view that the selection model could provide for the use of rotation as well as of random selection to ensure that on the one hand there is no significant portion of the market not reviewed, and on the other that issuers are not able to predict when they are likely to be selected for examination. Half of the NCAs already use both, and the

AG suggests that ESMA gives further consideration to amending the Guideline to ensure that both of these components become features of selection.

39. The Guideline does not prescribe that all issuers have to be examined within a certain timeframe, nor that this needs to be a feature. There are some Member States where there is no guarantee that all issuers will be subject to review over a period of time; in others there is an objective that all issuers be examined with periods ranging from 3 to 8 years. The AG believes that this should be a feature of all selection models. For this purpose, the AG is of the view that consideration should be given by ESMA to models that seek to cover the whole population of issuers in a given jurisdiction within at least 10-15 years.

Guideline 6

40. Guideline 6 states that as part of the enforcement process, European enforcers should identify the most effective way for enforcement of financial information. In addition, this Guideline provides a list of examples of examination procedures that enforcers may follow when performing an examination. It also notes that the examination techniques as well as the related conclusions should be documented appropriately.

41. The procedures for examination in the NCAs that the AG had the opportunity of assessing were varied. While the AG acknowledges that part of this divergence may be explained by the different legal frameworks, the AG encourages aspects of EFI work to be discussed amongst the EFI community as there can be much cross-learning.

42. The Guideline expects that principles of recognition, measurement, presentation and disclosures are reviewed and assessed by NCAs. The enforcement process is effective if the procedures undertaken are sufficient to cover all these main areas of the applicable financial reporting framework. However, experience has shown that this is not the case in all jurisdictions. The AG believes that the unlimited scope examination procedures should be sufficiently comprehensive to assess and conclude whether issuers comply with the recognition, measurement, presentation and disclosure principles, thereby minimising the risk that financial statements contain material misstatements.

43. The AG found that in some NCAs there is a tendency not to seek to carry out in-depth inquiries into financial statements or issues relevant to the issuer, but instead to limit themselves to correcting disclosure or presentation issues. While the AG acknowledges the extra workload and resources it entails to challenge, for example, issuers' judgements or assumptions used in recognition and measurement, it also believes that judgements and assumptions should be enforced when they seem, to the enforcer, not to be reasonable or correct. Issuers should be requested to change their assumptions with a consequent impact on recognition and/or measurement of assets, liabilities, revenue or expenses if needed. In most situations, it is not enough to require further disclosures. Transparency of disclosures is not a substitute for proper accounting.

44. Enforcers should not, at the same time, disregard the importance of contributing to the quality of the disclosures provided to the market and ensure that the financial statements are presented in accordance with the principles included in the relevant reporting framework. By ensuring a correct presentation of financial statements, European enforcers are contributing to improve the comparability of financial statements. When reviewing disclosures, enforcers should consider the relevance and materiality of this information to avoid disclosure overload by issuers.

45. Taking into account that the AG believes that unlimited scope examinations should cover all relevant areas, it would be important also that enforcers should be encouraged to ask questions of issuers even without a suspicion of misstatement. It should suffice that an issuer has been selected for examination.

Other findings/conclusions

46. While the AG notes that the Guidelines already set out the actions expected from enforcement of financial information, the AG also observed that there is no consistency on the timing and extent of these actions.

2.2 Recommendations

Guideline 2

47. In addition to the assessments/recommendations made to specific NCAs on compliance with Guideline 2, the AG believes that overall, NCAs should where possible consider having at least one staff fully dedicated to the EFI function. Depending on the market size, this number would need to be increased to ensure that the selection model is followed and implemented effectively.

48. The AG strongly believes that an effective enforcement of financial information contributes to market confidence and financial stability. As such, NCAs should not disregard and underestimate its importance when compared with other areas under their remit. The EFI unit should not only have the skilled human resources available but also the necessary time allocation in order to ensure that the manpower is committed and motivated for the job of enforcement of financial information. Enforcement of financial information should not be an ancillary function.

49. The AG also believes that it is paramount that enforcers are able to discuss accounting issues with issuers and auditors on equal footing in terms of knowledge of the relevant financial reporting framework. As such, NCAs (especially in larger markets) should also consider having within the EFI function experts in recognition and measurement issues. In some cases, depending on the composition of the market, industries experts may be recommendable as well.

50. Finally, the AG recommends that NCAs ensure that EFI staff is duly updated in terms of the knowledge of the applicable financial reporting framework. In this respect, the

AG recommends that all NCAs participate in training events organised by ESMA and actively share the benefits of participating in EECS within the EFI team.

Guidelines 5 and 6

51. The AG believes that, in the cases of Guidelines 5 and 6, ESMA could consider taking further steps in establishing methodologies and principles to guide NCAs towards a more convergent approach. The AG is recommending to ESMA to consider using some form of supervisory convergence tool to improve the divergence observed in practice (for example, an amendment to the Guidelines, or a Supervisory Briefing). These recommendations are set out in more detail in this report.

52. These recommended improvements are, the AG believes, steps towards a more consistent and better approach to selection and examination. The proposed improvements to the Guidelines reflect the AG's view based on the findings of the peer review. The AG identified these elements as key to achieve a higher level of convergence and therefore proposes to ESMA to consider them.

Selection

53. Selection models need to be in a written form and to be kept under review and updated regularly.

54. The selection of issuers for examination should be done as early in the planning cycle as possible, and examinations should commence once issuers are identified for examination without waiting for the selection to be final.

55. The selection models, though, should be flexible to permit substitution or additional issuers as may be necessary.

56. There should be for all NCAs a finite list of common risk factors relevant to the risk of misstatement or the risk of impact. The AG has identified some that are common examples, but the work should be done by ESMA working with the NCAs in the CRSC.

57. ESMA could also work on showing NCAs the way to construct the "risk-profile" of an issuer to be factored into the risk-based assessment required by the Guidelines. NCAs should be assessing risk in advance and selecting on the basis of industry or economic risks.

58. The weighting between the risk of misstatement and the risk of impact should not be unbalanced.

59. The AG believes that in order for a selection model to be effective it should ensure a yearly selection of issuers representing at least 10% of the total number of issuers. On this basis, a selection model can be designed for common application across the EU that includes as its objective that all issuers listed in a given jurisdiction should be

reviewed, at least, once every 10 to 15 years. The AG suggests that ESMA should seek to amend the Guidelines to achieve this outcome.

60. To make sure that "there should always be a possibility of an issuer being selected for review", the Guidelines would need to be amended to include the requirement that all selection models include, in addition to a risk-based selection, both a sample selected by rotation, and a sample selected randomly. At the moment the Guidelines only require one of these two features.

Examination

61. Examination procedures cannot be fully harmonised at the European level as they depend on the facts and circumstances: type of examination, issues raised, powers at the disposal of the authorities, time constraints and resources available, etc. The Guidelines can, though, be enhanced to promote a common approach.

62. The enforcement system in place should ensure that issues of recognition, measurement, presentation and disclosure are reviewed, assessed and pursued by NCAs.

63. Unlimited scope examinations should be by default the examination procedure enforcers undertake when carrying out the enforcement of financial statements.

64. ESMA could develop further guidance proposing criteria/factors that could be considered by European enforcers when deciding to use focused examination.

65. ESMA could review the Guidelines in order to incorporate some form of minimum mandatory procedures for examinations. These procedures should encourage examiners to put questions to issuers in areas of key risk even if in the financial statements there is no obvious error observed.

66. The examination procedures in place should cover all the financial information required to be published by issuers and to be examined by enforcers according to the TD. Therefore, they should cover annual financial reports (consolidated and/or separate financial statements and management report) and interim financial report (interim financial statements and the interim management report).

67. Enforcers should implement an adequate quality review of the work performed by an examiner. If possible, the reviewer should not be directly involved in the examination.

68. Documentation should record all assessments and should be maintained in an accessible way to build up a repository of knowledge. The 'database' does not have to be necessarily IT-based, or wholly IT-based. It should, however, capture not only the infringements detected but also issuers' accounting treatments that have been validated by NCAs.

69. EECS is a key resource that enforcers should engage with and make use of.

2.3 Summary of NCA assessments in connection with onsite visits

NCAs listed in accordance with the sequence of the onsite visits

United Kingdom

70. In the UK, the AG visited the Financial Reporting Council, and also met for a short time with representatives of the FCA. The UK was chosen for an onsite visit due to the importance of the UK as a market, with the UK representing by number approximately 30% of the issuers in the Eurostoxx 600 index. The FRC team enforcing financial information is responsible for approximately 2,300 issuers.

71. The Assessment Group finds that, in comparison to other NCAs in markets of relatively comparable size, the UK has approximately three times the number of issuers per FTE (and twice as many equity issuers per FTE), a strong indication that there may not be sufficient resources in the FRC to carry out the EFI function taking into account the number of issuers subject to enforcement of financial information.

72. The FRC adopts a strategy of focusing its resources towards reviewing, by rotation, the issuers that represent the largest portion of the equity market by capitalisation i.e. those issuers in the FTSE 350. Other issuers i.e. smaller issuers or pure bond issuers, may be selected for examination based on random selection, because they belong to a sector being prioritised by the FRC, or as a result of responses to referrals. However, the likelihood of an issuer outside of the FTSE 350 being selected is much smaller than for those large equity issuers making up the index. The Assessment Group believes that there is an under-focus on smaller issuers and pure bond issuers in the UK, which is a risk-based decision by the FRC despite the fact that the quality of financial statements of smaller issuers is acknowledged to be lower. Neither the TD nor the Guidelines make a distinction between what issuers should be covered.

73. Around 1,300 of the listed companies in the UK are bond issuers. According to the FRC many of these companies are subsidiaries of often the same listed parents and so prepare accounts in accordance with UK GAAP. The FRC has argued that there is considerably less investor interest in these accounts than the group accounts which are subject to review (given that the groups have listed equity). Also, the FRC points out that, of the issuers the FRC selected for examination in the last five to ten years, approximately 35-40% are issuers from outside the top 350. Notwithstanding, the AG believes that there is no real likelihood of an issuer from this population being selected, as each year this selection approach selects for examination in the region of 2.5–4% of the approximate 1,900 issuers falling outside of the top 350.

74. Based on statistics reported by the FRC, the Assessment Group also concludes that the decisions taken by the FRC with regard to correcting material errors in financial statements are too weighted towards permitting those corrections to be made in future

financial statements, rather than ensuring that the issuer makes the correction publicly and much earlier in a corrective note. The FRC explained their approach in terms of the effectiveness of peer review, cooperation with issuers and consensus, in place of the use of mandatory powers. However, the Assessment Group believes that this reliance on agreed future corrections is instead due to the limitation of the FRC's powers, and this has, in the AG's view, the potential effect of making enforcement less effective.

Norway

75. In Norway, the AG found that the NFSA has effectively adapted its enforcement system to the characteristics and the sector composition of its domestic market using experts specialised in certain industries and valuation experts. This expertise allows the NFSA to challenge in-depth recognition and measurement issues in issuers' financial statements.

76. In addition, a system exists whereby in Norway the issuers file information with the NFSA about the financial statements, audit opinion and corporate governance structure, in a structured format that can subsequently be extracted to a file and be easily managed by the EFI team. However, the AG considers that this tool needs to be recalibrated as it captures too many issuers based on the risk thresholds in place.

77. The selection model in place in Norway includes rotation with every issuer listed in Norway to be reviewed at least once in every ten years. However, in 2014 and 2015, none of the issuers examined stemmed from the rotation approach; all issuers examined were selected based on the risk-based selection approach, European Common Enforcement Priorities or IPOs, to the neglect of a combined approach (risk and rotation) which would enable the NFSA to assess the soundness of the selection model in place.

78. There was a high quality of in-depth examination in relation to recognition and measurement issues, which was very commendable and was considered a good practice. However, the AG also considered that disclosures and presentation issues should not be deprioritised as part of an effective examination. The desk-top examination should not only be aimed at identifying significant measurement or valuation issues but also at identifying areas for improvement in the presentation of financial statements.

79. Looking at the data on enforcement actions taken in accordance with the Guidelines when material issues arose, the NFSA numbered 12 corrections in future financial statements and one immediate corrective note. Based on the above, the AG believes that enforcement powers and the use of corrective notes should be used more often by the NFSA, in particular when measurement and/or recognition infringements are detected. The AG also took positive note of the NFSA's plans to use corrective notes more in the future (if criteria in the Guidelines are met).

Portugal

80. The first aspect that the AG could identify in the CMVM is that while there were in theory sufficient qualified and experienced staff in the EFI function, they were not given the time to properly attend to the role of enforcement of financial information. The AG questions the efficiency of the allocation of EFI resources to tasks not dealing with financial information, and the AG believes that the CMVM should take advantage of expertise in-house to focus on the examination of financial information. The AG also recommends that the EFI staff is allowed more training on IFRS.

81. The AG found also that the CMVM over-relies on disclosure checklists for the purposes of an examination. While disclosures checklists may be relevant to ensure completeness, they should not be the only basis for the enforcement of financial information (not even when assessing disclosures). The AG found that there should be more focus on in-depth analysis of recognition and measurement of assets and liabilities.

82. The AG believes that the CMVM can improve its approach to the act of requiring information getting to the market immediately. It is fundamental that the enforcement system in place presents sufficient consequences for issuers (by requiring corrective notes to be published) when they misapply the applicable financial reporting framework. In this respect, the AG re-emphasises the principles in the Guidelines in relation to the use of corrective notes and/or corrections in the future financial statements. When infringements encountered are material, the CMVM should consider using corrective notes more frequently.

83. The AG also found that the work of the EFI was not sufficiently visible in the market and that its contribution to increasing investor confidence was low.

Italy

84. The AG considered that Consob operates within a framework of a strong statutory selection model and with good examination procedures. The AG believes that the model in place whereby auditors file information with Consob on the issuer's financial statements, audit opinion and corporate governance structure in a structured format, that can subsequently be extracted to a file and be easily managed by the EFI team, is a positive feature of the selection model in place.

85. The AG also considers that the Consob has a good culture of examination, using unlimited and focused examinations, and examinations that in about 80% of cases involve contact with issuers, and often with their auditors.

86. Over the period under review, Consob has conducted a sizeable number of examinations of financial statements of issuers (89 unlimited scope examinations and 27 focused scope examinations), many of which involved measurement and recognition issues. From these examinations, however, Consob required only 11 actions; and of

these only 2 actions related to issues other than disclosures. It is the expectation of the AG that there should be more findings that require action; and there should be more actions that require more than just further disclosures.

Malta

87. In the MFSA, very few resources are allocated to the enforcement of financial information examination and these resources include the MFSA outsourcing an important part of the job of reviewing financial statements to a third party. Although there is a team in place, they are only able to dedicate a very small portion of their time to EFI activities, the remainder being taken up with other work of the MFSA. The AG has found that this results in a disclosure checklist approach to the reviews of financial statements without any scrutiny of the recognition and measurement issues which is necessary for an effective enforcement. Also, as a result, the MFSA is not building up any expertise or experience, nor is the MFSA holding itself out as an enforcer that challenges issuers, and as an enforcer is somewhat invisible to the market.

88. In addition, the AG believes that the advantages, if any, of using a third party are very limited for the following reasons: over-dependency on external providers; lack of use of EECS in complex issues; no value added in the examinations performed (which are limited to an examination of the disclosures against a disclosure checklist). The third party does not enter into direct contact with issuers and is not able to ask questions and analyse answers. The AG took positive note that the MFSA was considering ending the outsourcing.

89. The AG acknowledges the potential synergies resulting from a strong interaction between the EFI team and persons responsible for reviewing prospectuses, but it also considers that the EFI team should have sufficient time to examine financial statements in depth, challenge the relevant accounting matters and take the appropriate decisions.

90. The AG also found that the MFSA's risk assessment considers only a few risks indicators, mostly based on external factors/sources such as referrals from other departments/authorities, complaints or media. While companies in financial distress are usually easy targets for the media or for complaints from investors, not all companies are exposed to the same level of attention by the media, and not all complaints received may be sufficiently detailed to prompt an examination.

91. When infringements encountered are material, the MFSA should consider using corrective notes more often. Even in situations where only disclosures are missing, this action may be appropriate if these disclosures are material or if the number of infringements found is significant.

Germany

92. There is a two-tier EFI system in Germany. The first tier, FREP, is designated in Germany as a competent authority for examining whether the financial statements of issuers comply with the relevant accounting framework (but not as the competent authority for taking the appropriate measures in case of discovered infringements). FREP is a government-appointed privately-run entity. BaFin, the second-tier, has the final responsibility and hence carries out reviews only when issuers do not cooperate with FREP, or do not accept FREP's findings, or when BaFin has substantial doubts about the accuracy of the examination result or the proper conduct of an examination by FREP.

93. FREP has a relatively large number of highly experienced examiners (Panel members) who are engaged on short-term contracts. While the short-term nature of the contracts is a feature that the AG believes could be improved upon, the examiners can and do, nevertheless, carry out good assessments of the financial statements of issuers and the concerns affecting those issuers that might lead to a misstatement in the financial statements. The procedures in place ensure an adequate level of quality review, ensure that the relevant areas of each examination are pursued and that the conclusions reached are sound.

94. The recently implemented selection model is, in the AG's opinion, a good example for other NCAs to learn from. This model utilises risk-based selection with rotation and random sampling. This model seeks to ensure that all issuers are subjected to an unlimited scope examination during a specific period of time. This has been included by the AG as an example of good practice in Annex 4. Notwithstanding that the structure of the model is exemplary, the AG believes that the risk assessment as such could be improved.

95. The AG also believes that the outcomes of the assessments and the actions undertaken could be more informative for investors. The information disclosed to the market is determined by German law and consists of a short notice in the Federal Gazette. Furthermore only BaFin can take a decision on the publication of any corrective note even when the issuer already agrees with FREP's findings.

Romania

96. The AG chose to visit the ASF after analysing the results of the Questionnaire and considering the examination rate of the ASF and the number of actions taken. Following a comprehensive discussion with the EFI staff of the ASF, the AG came to the view that some fundamental problems with enforcement needed to be corrected before it could be said that there as an effective enforcement of financial information in Romania.

97. It seemed to the AG that the number of qualified audit opinions (37 over the period under review out of a pool of approximately 90 issuers) is indicative of poor internal controls within issuers and to the ability and/or willingness of issuers to apply the relevant financial reporting framework. The ASF, as enforcer, needs to act upon the issues identified by auditors *and* support auditors. Also, the level of qualified audit opinions

needs to significantly improve and, to help this happen, the ASF should seek to work in tandem with the relevant authority governing auditing standards.

98. Meanwhile, the ASF must give its staff the time and space to do a thorough job, to carry out meaningful examinations, covering all areas of financial statements, and to take effective actions.

3 – General Information

3.1 Market Structure in Member States

99. **Table 2** sets out the number of issuers under the jurisdiction of the relevant competent authority in each Member State for the purposes of enforcement of financial information at end-2015 (as reported by NCAs):

Table 2 – number of issuers in each jurisdiction falling under the TD at end-2015[1]

	*Issuers with securities trading on a regulated market (in accordance with the TD) – **equities***	*Issuers with securities trading on a regulated market (in accordance with the TD) - **bonds***	*Issuers with securities trading on a regulated market (in accordance with the TD) - **other securities***	***Total***	*Of which IFRS issuers*
AT	65	65	0	130	113
BE	120	30	0	150	121
BG	381	46	0	427	427
CY	91	1	1	93	93
CZ	46	20	1	67	38
DE	539	90	57	686	535
DK	136	22	0	158	139
EE	15	1	0	16	16
EL	229	0	0	229	229
ES	144	27	0	171	147
FI	116	13	0	129	129
FR	510	25	0	535	525
HR	144	8	0	152	152
HU	48	15	0	63	42
IE	27	78	24	129	111
IS	16	23	0	39	39
IT	236	4	5	245	245
LI	0	0	0	0	0
LT	33	1	0	34	34

[1] Issuers incorporated in the jurisdictions whether they are listed in the jurisdiction in question or in another Member State.

	*Issuers with securities trading on a regulated market (in accordance with the TD) – **equities***	*Issuers with securities trading on a regulated market (in accordance with the TD) - **bonds***	*Issuers with securities trading on a regulated market (in accordance with the TD) - **other securities***	***Total***	*Of which IFRS issuers*
LU	48	170	6	224	153
LV	26	13	0	39	24
MT	22	21	0	43	43
NL	147	57	0	204	178
NO	195	66	0	261	250
PL	462	2	2	466	401
PT	46	12	3	61	58
RO	83	5	3	91	91
SE	297	27	4	328	313
SI	43	7	0	50	27
SK	50	18	0	68	27
UK	1021	1298	35	2354	1281
Total:	5336	2165	141	7642	5981

100.8 NCAs (CY, FR, IE, IT, NL, PL, SI, UK) also follow the principles of ESMA guidelines when examining financial information related to issuers not covered by the TD. However, the only two jurisdictions where that significantly increases the number of issuers under the responsibility of the relevant NCA is RO, where 78% of issuers under the responsibility of the ASF fall outside of the TD and hence outside of the scope of the Guidelines, and IT, where 21% of issuers under the responsibility of Consob fall outside of the TD.

101.The data reported here refers only to the work done by NCAs on issuers falling within the scope of the TD.

3.2 Legal and Organisational Character of NCAs

102.The central competent administrative authorities under the Transparency Directive in each jurisdiction are listed in Table 1 (above)[2].

Designation of 'other' competent authorities

103.Under Article 24(1), second sub-paragraph of the Transparency Directive, Member States can designate other competent authorities as responsible for examining adherence with the relevant reporting framework and for taking appropriate measures in case of discovered infringements.

104.4 Member States (DE, IE, IS, UK) have designated authorities other than the central competent administrative authority for the examination of financial information. These authorities are (in English):

- DE: Financial Reporting Enforcement Panel (FREP);
- IE: Irish Auditing and Accounting Supervisory Authority (IAASA);
- IS: Register of Annual Accounts (RAA); and
- UK: Financial Reporting Council (FRC)

105.Three of these Member States (IE, IS, UK) have also designated the authorities listed above for taking appropriate measures in cases of discovered infringements.

106.The legal relationship between the central competent administrative authority and the designated authority is described by the relevant NCAs:

[2] In the cases of AT, DE, IE, IS and UK, the designated or delegated entities in relation to enforcement of financial information are also included.

106.1. In IE, the IAASA is an independent statutory body that has been conferred with the powers to take appropriate measures in cases of suspected infringements, and is independent of the Central Bank of Ireland.

106.2.

106.2.1. In DE a two-tier procedure has been established that splits competences for the financial reporting enforcement between FREP and BaFin.

106.2.2. When it comes to examining whether information is drawn up in accordance with the relevant reporting framework, as a starting point, FREP and BaFin both act independently. However, because it lacks legal powers, FREP relies on the cooperation of the companies it examines.

106.2.3. Nearly all the error identification examinations are carried out on the first tier by FREP. BaFin is responsible to ensure a due process and there is also a role for BaFin in carrying out examinations independently if FREP and the issuer do not come to an agreement or in case of substantial doubts on the process or on the findings of FREP. If an error is identified (either by FREP or BaFin) actions taken subsequently are in the remit of BaFin only.

106.3. In IS, although the FME is the central competent authority in accordance with the TD, the Register of Annual Accounts (government body) has the legal authority and responsibility to enforce the duties of issuers to prepare consolidated annual accounts in accordance with international accounting standards (IFRS). Therefore, the EFI Guidelines are applied by the Register. The FME does not have authority over the Register of Annual Accounts.

106.4.

106.4.1. In the UK, the FRC has been designated and has been provided with the powers to request information for the purpose of carrying out its functions. However, the power to order the issuance of corrective notes, or to make corrections in future financial statements only lies with the FCA as central competent administrative authority.

106.4.2. The FCA and the FRC entered into a Memorandum of Understanding (MoU) to assist co-operation and co-ordination between the respective organisations and to set out the respective statutory regulatory responsibilities, arrangements for co-operation and the exchange of relevant information.

Delegation of tasks

107. Separately, Article 24(2) of the Transparency Directive permits central competent administrative authorities to delegate tasks, under certain conditions.

108. In 2 NCAs (AT, SE) this permission to delegate has been used in the context of enforcement of financial information.

109.

109.1. In AT there is also a two-tier system of enforcement in operation. The FMA is the central administrative competent authority and is the responsible authority for the purposes of the Guidelines. Most inspections are carried out by a private review panel (AFREP, the Austrian Financial Review Panel/ Österreichische Prüfstelle für Rechnungslegung). The AFREP is neither an authority nor does it have the powers required by Art. 24 para 4 TD for competent authorities. Nevertheless, the AFREP is obliged to report the outcome of the inspections to the FMA.

109.2. The FMA has only limited responsibilities with regards to the AFREP. Based on the Austrian legislation regulating the Enforcement of the Financial Information in Austria, the examination of the Financial Information is partly delegated to the AFREP by law, but the law entitles the AFREP only to examination on a voluntary basis. If the issuer does not agree with the exercise of the examination by the AFREP or with the results of the examination by the AFREP, the examination will be performed by the FMA.

109.3. The FMA decides which subject matters are inspected by AFREP.

109.4. In declaring non-compliance with the Guidelines when they were first introduced in [2014], the FMA stated “that [it] does not comply with Guidelines 1 and 2 due to a lack of provisions related to the powers of the enforcer and inability to seek sanction for additional personnel. There is an unclear split of responsibility between FMA and a private review panel (AFREP), to whom some enforcement responsibilities are delegated. Discussions are currently taking place to clarify the relationship, the delegation procedure and the transmission of enforcement reports between FMA and AFREP. Furthermore, a lawsuit is pending on the delegation of task to conduct regular inspections.”

109.5. In every case it is FMA which evaluates AFREPs results and result reports. FMA decides if administrative measures will have to be taken. If FMA disagrees with AFREPs reports and conclusions, FMA can conduct the inspection anew, without involvement of AFREP. In those cases AFREPs results and reports do not count at all. The FMA is the only competent authority for taking appropriate measures.

109.6. ESMA requested an update from the FMA regarding the statement of compliance by the FMA with the Guidelines, and in particular the transitory events that were described, namely the lawsuit and the negotiations.

109.7. The FMA reported that the lawsuit was withdrawn following an agreement and the FMA and the AFREP cooperate with each other constructively, although the FMA does not have responsibility over AFREP and does not have oversight into their documentation.

110.

110.1. In SE, the Government has delegated most of the tasks related to the monitoring and examination of periodic financial information to the stock exchanges (entity authorised to operate one or more regulated markets). For issuers that have Sweden as their home Member State and where the transferable securities are listed on a regulated market operated by a Swedish stock exchange, the stock exchanges carry out the examination of financial statements. The Finansinspektionen (which is the TD central competent administrative authority) has only direct examination responsibilities over issuers with Sweden as their home Member State listed on a regulated market outside Sweden but within the EEA. SE has notified ESMA that this arrangement does not comply with Guideline 3 due to a lack of independence from market operators.[3]

110.2. SE has reported that there are two stock exchanges that operate regulated markets in Sweden: Nasdaq Stockholm AB ("Nasdaq") and Nordic Growth Market NGM AB ("NGM"). Nasdaq has the largest number of issuers to examine (approximately 300). The Finansinspektionen and NGM have about 10 issuers each to examine.

110.3. Swedish law prescribes the principles to be followed by the stock exchanges for the monitoring including selection criteria and rotation, and says that the European framework shall be taken into account and that the exchanges shall also assist Finansinspektionen in European enforcement cooperation. There are also rules about actions to be taken when infringements are discovered and the reporting requirements from the exchange to the Finansinspektionen in case of infringement investigations. The stock exchanges report annually on their monitoring. The exchanges must have internal procedures in place and must keep records of their monitoring actions.

[3] These matters are outside of the scope of this peer review.

110.4. According to Swedish law, the exchanges are required to report incidences of deviances from financial reporting requirements to the Finansinspektionen. However, no report is needed if the issuer has made public a correction or made public missing information.

110.5. The Finansinspektionen can order an issuer to rectify its financial statements, and the Finansinspektionen must issue a reprimand for infringements. If the Finansinspektionen has issued a reprimand, the issuer may also be subject to a penalty.

110.6. Final responsibility lies with the Finansinspektionen. Potential divergences are addressed within the regular meetings held between the central competent administrative authority (Finansinspektionen) and the delegate competent authorities (Nasdaq and NGM).

3.3 Non-participating jurisdictions (HR, LI)

111.

111.1. The Financial Markets Authority in LI informed the AG that there are no markets or trading venues in LI, nor are there any issuers of securities that are traded on a regulated market. Therefore, there are no applicable cases for the application of the TD, and consequently, of the Guidelines. On this basis, the AG considered that it was unnecessary for the FMA to complete the Questionnaire.

111.2. In the compliance table for the Guidelines published by ESMA (attached as Annex 3), the FMA has already attested that it would implement the necessary processes and allocate the necessary resources if a practical demand arises to do so.

112.

112.1. In respect of Croatia, HANFA, the organisation that is the central competent administrative authority for the TD in Croatia, has informed the AG that there are 152 issuers in Croatia (as at the end of September 2016) that fall within the provisions of the TD. However, these issuers are not being examined in respect of the financial information that they publish.

112.2. In the compliance table for the Guidelines, HANFA stated that it “currently does not comply with the Guidelines due to a lack of final enforcement responsibility and authority. However, it intends to comply as soon as the necessary national legislative or regulatory proceedings have been completed.” The foreseen date

was originally estimated by HANFA as being June 30th, 2016. It has since been notified as being “at the latest by the end of December 2017”.

112.3.“This means that after all relevant national legislative changes are completed either HANFA will have all necessary enforcement responsibilities in respect of TD supervision and enforcement of financial information, or enforcement responsibilities regarding relevant financial reporting framework will be carried out by another designated competent authority and/or other entity.”

112.4.“In a case where HANFA has all enforcement responsibilities regarding relevant financial reporting framework, all necessary regulatory proceedings will be carried out by HANFA accordingly. HANFA will update ESMA after all necessary national legislative and/or regulatory proceedings have been completed.”

112.5.As, it appears, that in Croatia no legally mandated competent authority is carrying out the function of enforcement of financial information, the AG recommends that ESMA communicate this state of affairs to the EU Commission.

3.4 Compliance with Guidelines generally

113.While the TD has been in place in most countries since 2006, the discussions on enforcement of financial information in EECS started in 2005 based on the CESR Standards No. 1 and 2 on enforcement of Financial Information developed in 2004. The Guidelines on enforcement which substituted these two standards became effective in December 2014. There remain some NCAs who have not declared to ESMA that they fully comply with the Guidelines.

114.In addition to the situations described above (notably, AT, HR, SE), the AG draws attention to the following NCAs who declared non-compliance with the Guidelines:

114.1.BG: Due to budgetary constraints, the FSC does not comply with Guideline 2, 10 (EECS) and 11 (Discussion of accounting issues in EECS) . Similarly, the FSC does not comply with Guideline 5 as national legislative or regulatory proceedings need to be implemented.

114.2.DE: Due to legal reasons, BaFin does not comply with Guideline 7 (Enforcement Actions) and 17 (Publication of enforcement decisions).

114.3.SI: Due to current scope of work and the resources available, the SMA does not comply with Guidelines 10 to 17.

115.In 2016, the European Parliament declared in the Resolution of the European Parliament on International Accounting Standards that it “welcomes the fact that the Commission is encouraging Member States to follow the ESMA guidelines on the enforcement of financial information (ESMA Guidelines on enforcement); deplores that several

Member States do not comply and do not intend to comply with the ESMA guidelines on the enforcement of financial information and calls on these Member States to work towards compliance (….)";[4]

116. Considering the importance of the Guidelines for ensuring a common, uniform and consistent application of Union law as confirmed by the European Parliament, and considering also that NCAs must "make every effort to comply with" the Guidelines[5], the AG recommends that ESMA takes the necessary steps to promote, and where necessary enforce, compliance with the Guidelines.

117. The Methodology also provides that ESMA will figure follow-up on the findings of peer reviews to review whether NCAs have acted upon the suggested improvements from a peer review.

[4] Resolution of the European Parliament on International Accounting Standards (IAS) evaluation and the activities of the International Financial Reporting Standards (IFRS) Foundation, the European Financial Reporting Advisory Group (EFRAG) and the Public Interest Oversight Board (PIOB) (http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A8-2016-0172&format=XML&language=EN)

[5] Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority): Article 16.3.

4 - Peer Review Assessment

4.1 – Guideline 2

4.1.1 – Guideline 2 – Human and Financial Resources

General Guideline

Enforcers should ensure the effectiveness of the enforcement of financial information. In order to do so, they should have sufficient human and financial resources to carry out their activities in an effective manner. The manpower should be professionally skilled, experienced with the relevant financial reporting frameworks and sufficient in number, taking into account the number of issuers subject to enforcement of financial information, their characteristics, the complexity of their financial statements and their ability to apply the relevant financial reporting framework.

Supporting Guidelines

To ensure effective enforcement of financial information, enforcers should have sufficient resources. When considering the level of manpower required, the number of issuers within the scope of enforcement, the complexity of the financial information as well as the ability of those who prepare the financial information and of the auditors to apply the relevant financial reporting framework play important roles. The probability of being selected for examination and the degree to which this examination is performed should be such that it is not restricted because of lack of resources, creating the conditions for regulatory arbitrage.

There should be sufficient financial resources to ensure that the necessary amount of manpower and services can be used in enforcement of financial information. The financial resources should also be sufficient to ensure that the manpower is professionally skilled and experienced.

4.1.2 –Findings and analysis

Staff Resources performing the enforcement function

118. Enforcers should have sufficient financial resources to ensure that the human resources are professionally skilled and experienced. The financial resources should also ensure that manpower and services can be properly used in enforcement of financial information.

119. When preparing the Questionnaire to assess the level of compliance of enforcers with Guideline 2, it was considered that these three aspects should be assessed separately.

120. All Member States except AT, BG, IE, HR, SI declared their compliance with the Guideline 2. Nevertheless, where the data was available, the Assessment Group also assessed the responses of these Member States to the Questionnaire.

Sufficiency of human resources

121. The AG requested each NCA to quantify their available staff for EFI and to express that in terms of Full Time Equivalent (FTE). One Full Time Equivalent (FTE) is equivalent to one employee working full-time per week in accordance with contractual obligations in an NCA (e.g. anywhere between 35 to 40 hours per week). For example, (based on a 40 hour working hour week) three employees working respectively 50 hours, 40 hours and 10 hours amount to 100 hours per week. The FTE would, in this example, amount to 2.5 FTE (100/40).

122. While the AG gathered information on the amount of FTE available to an NCA for carrying out the EFI function, these figures are more useful when applied to the relative size of the job that needs to be done in Member States, in this case the number of separate issuers that fall under the jurisdiction of the relevant enforcer, and the number of separate issuers in a Member State that use IFRS in preparation of their financial statements.

123. When assessing the adequacy of human resources dedicated to the enforcement of financial information therefore, the AG considered four aspects:

a) number of IFRS issuers in a jurisdiction per FTE[6];

b) total number of issuers in a jurisdiction per FTE;

c) number of examinations completed per FTE; and

d) number of actual persons dedicated to the function of enforcement of financial information;

a) number of IFRS issuers per FTE

124. 17 NCAs (AT, BE, BG, CZ, DE, DK, EE, ES, FR, IS, IT, LT, LU, NL, NO, PL, SK) presented figures providing a ratio below the adjusted average of 43 IFRS issuers per FTE (see Figure 1A below).

125. FI has a ratio of 43 IFRS issuers per FTE.

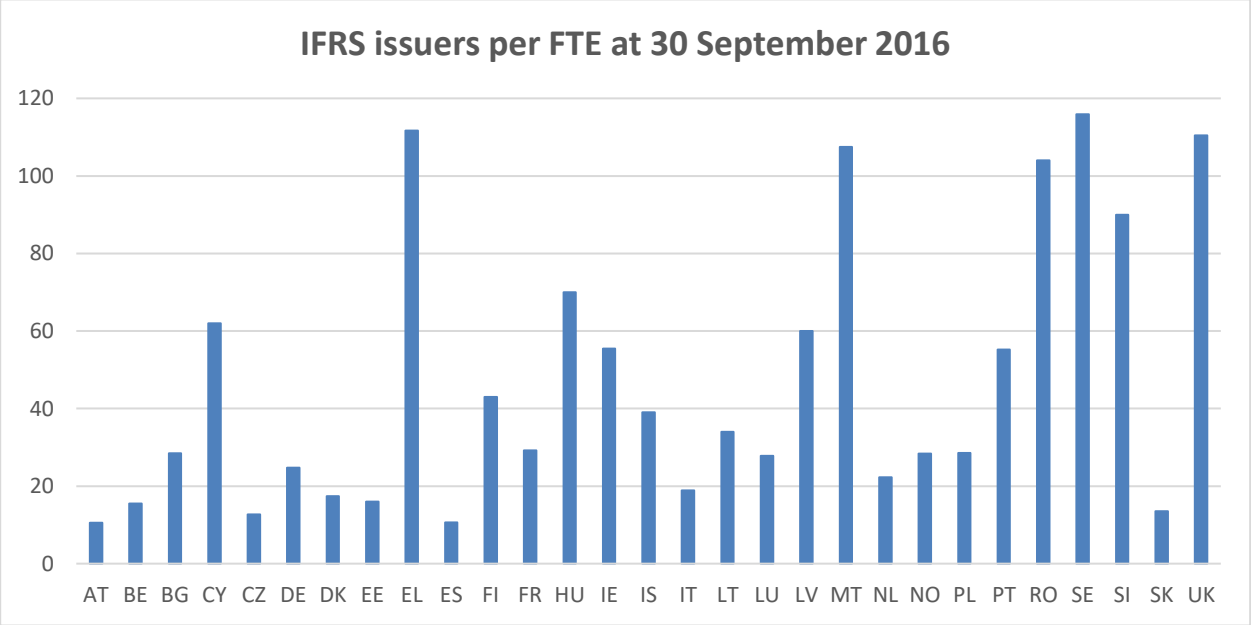
126. 12 Member States (CY, EL, HU, IE, LV, MT, PT, RO, SE, SI, UK) presented a ratio of IFRS issuers per FTE higher than the adjusted average.

[6] Considering that staff levels are relatively constant over the year

127.In this respect, the AG highlights the ratio in SE (116 IFRS issuers per FTE), EL (112), UK (110), MT (108), RO (104), and SI (90). It should also be emphasised that MT, RO, and SI present high figures due also to the fact that the FTE allocated to the EFI is below 1 (respectively 0.4, 0.9 and 0.3).

128.17 member states (AT, BE, BG, CZ, DE, DK, EE, ES, FR, IS, IT, LT, LU, NL, NO, PL, SK) presented a ratio of issuers per FTE below the adjusted average.[7]

Figure 1A



129.For comparative purposes amongst the different jurisdictions, this indicator compares the number of IFRS issuers with the FTE available in a given NCA. The AG notes, however, that in some jurisdictions not all issuers trading on regulated markets are required to apply IFRS, for instance in some jurisdictions issuers not required to prepare consolidated financial statements use local GAAP when publishing separate/individual financial statements to the market. Therefore, the ratios of issuers per FTE may increase significantly depending on the number of issuers not required to prepare consolidated financial statements using IFRS.

130.The AG has focussed on IFRS issuers because the work involved reviewing IFRS financial statements is more burdensome than local GAAP.

[7] Statistics for DE include both BaFin and FREP FTEs.

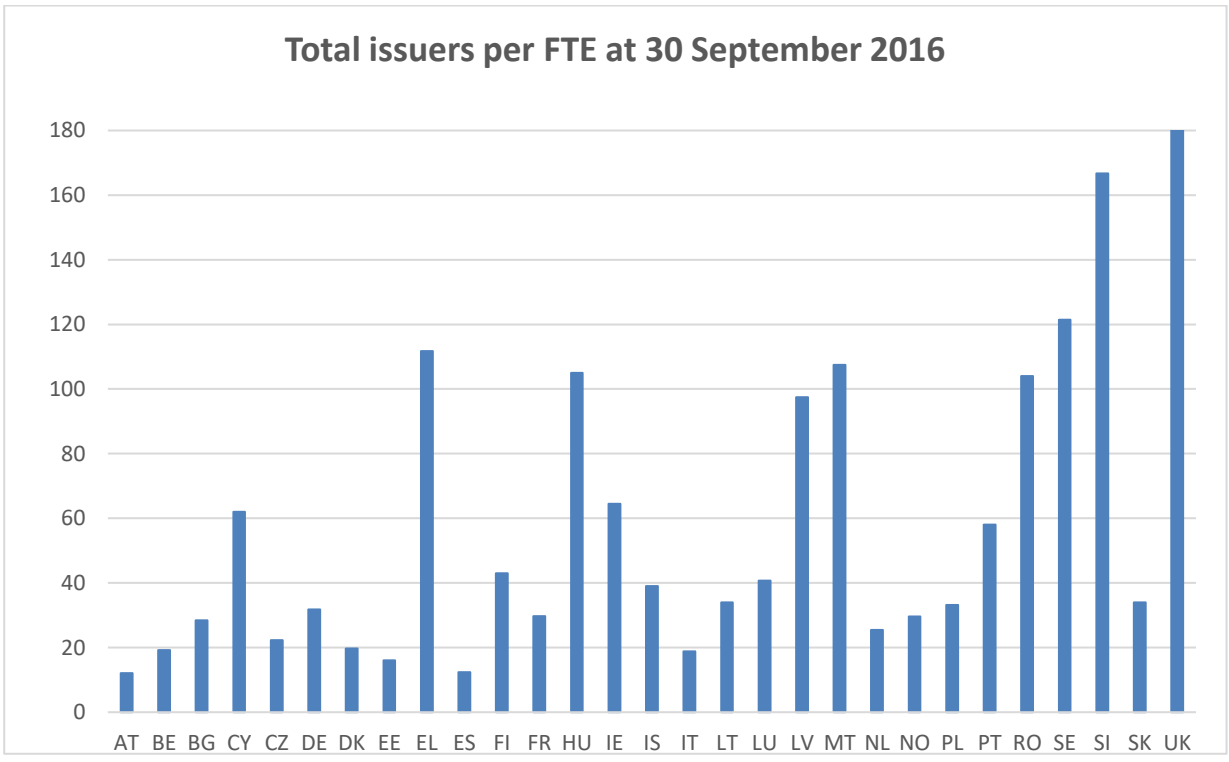
b) total number of issuers per FTE

131. When assessing the total issuers per FTE performing the EFI function (Figure 1B), the AG determined an adjusted average which excluded the three top and bottom outliers. The adjusted average of 50 issuers per FTE was then compared with the individual figures presented by each Member State (Figure 1A below).

132. 18 NCAs (AT, BE, BG, CZ, DE, DK, EE, ES, FI, FR, IS, IT, LT, LU, NL, NO, PL, SK) reported figures providing a ratio below the adjusted average.

133. 11 NCAs (CY, EL, IE, HU, LV, MT, PT, RO, SE, SI, UK) reported figures providing a ratio above the adjusted average. In particular, the outliers with ratios of more than double the adjusted average are noted: UK (203 issuers per FTE), SI (167), SE (121), EL (112), MT (108) HU (105), and RO (104). In respect of SI, MT, HU and RO, the FTE figure is below 1 (0.3, 0.4, 0.6 and 0.9 respectively).

Figure 1B



c) number of examinations completed per FTE

134. In relation to the number of issuers examined per FTE during the review of the 2014 annual financial statements, the adjusted average ratio was 6 completed examinations per FTE. In 14 Member States (AT, BG, CZ, DE, DK, ES, FR, HU, IT, NL, NO, LT, PT, SI and SK), the number of issuers examined was below the adjusted average. In this respect, the AG emphasises BG

and SI, where the average number of examinations of 2014 annual financial statements completed per FTE was below 1 (in SI the figure was 0).

135. In 15 Member States (BE, CY, EE, EL, FI, IE, IS, LU, LV, MT, PL, RO, SE, and UK) the average number of issuers examined for work done on the 2014 annual financial statements per FTE staff was equal to or above the adjusted average. In this regard, the AG highlights that LV, SE, RO presented a high number of examinations per FTE despite the number of FTE allocated to this function being relatively low (LV - examinations 17, FTE 0.4; RO - examinations 46, FTE 0.875; SE - 61 examinations, FTE 2.7). Considering this information, the ratio of financial statements examined per FTE was in these Member States 43, 53 and 23 respectively, which means that they are outliers when compared with the adjusted average.

136. The adjusted average of the examinations done on the 2015 annual financial statements examined was also 6 examinations completed per FTE. 15 Member States (AT, BE, BG, CZ, DE, DK, EL, ES, HU, IS, IT, LT, NL, NO, and SK) presented a level of completed examinations per FTE below the adjusted average.

137. 14 Member States (CY EE, FI, FR, IE, LU, LV, MT, PL, PT, RO, SE, SI and UK) presented an average number of completed examinations on the 2015 annual financial statements per FTE above the adjusted average. In this respect, the AG notes that RO, SE, SI presented a high number of examinations per FTE despite the fact that the number of FTE allocated to this function was relatively low (RO - examinations 50, FTE 0.875; SE - 70 examinations, FTE 2.7; SI - examinations 10, FTE 0.3). Considering that, the ratio of financial statements examined per FTE was, in these Member States, 57, 26 and 33 respectively, this means that they are outliers when compared with the adjusted average.

138. The AG also notes that while the ratio on the number of examinations completed per FTE gives relevant information on whether EFI staff is sufficiently deployed on the work of enforcement of financial statements, the different approaches undertaken by enforcers when examining financial statements also play a role. Although this is further elaborated in the section related to Guideline 6, the AG highlights that, for example, some enforcers conduct a significant number of focused examinations, whereas others conduct only unlimited scope examinations. While some enforcers carry out desktop examinations (where the issuer is not contacted to provide explanations), others do not. Consequently, the AG cannot draw conclusions on the efficiency of the work performed by the EFI unit solely based on the number of examinations completed and on the ratios (e.g. examinations/FTE) derived from these figures.

d) number of actual persons dedicated to the function of enforcement of financial information

139. 18 Member states stated that they have human resources fully dedicated to the function of enforcement of financial information (AT, DE, DK, EE, ES, FI, FR, HU, IE, IS, IT, LU, NL, NO, PL, SE, SI, UK). On average these Member States have 7 persons fully dedicated to the EFI function. In this regard, it is important to highlight that DE and UK have 15 or more persons

fully dedicated to the function of EFI and that 80% of the fully dedicated staff in SE is composed of external examiners.

140. From the Member States who answered that they have fully dedicated staff, 12 (AT, DE, DK, EE, ES, FI, FR, NO, PL, SE, SI, UK) also reported that in addition to the fully dedicated staff, they also have staff employed full time who partly performing the job of enforcement of financial information. In this respect, it should be highlighted that FR and PL have 22 and 33 persons employed full time in those NCAs but who attend to EFI duties only part of the time. On average, these part-time staff dedicate around 36% of their time to the EFI function[8].

141. 11 Member states (BE, BG, CY, CZ, EL, LT, LV, MT, PT, RO, SK) confirmed that they do not have human resources fully dedicated to the EFI function. On average, these Member States have around 4 persons performing the job of enforcement of financial information on part-time basis, dedicating around 32% of their time to the EFI function.

142. In two Member States (SE, UK), the enforcement activity is also performed by staff employed on a part-time basis.

4.1.3 Adequacy of the human resources including the qualifications and experience

Qualifications

143. The Guidelines require that NCAs have manpower that is sufficiently professionally skilled and experienced in working with the relevant financial reporting frameworks. To analyse and assess these elements, the AG sought information from NCAs on the make-up of staff of the EFI units and their qualifications and experience.

144. 24 NCAs (AT, BE, BG, CY, DE, EE, EL, FI, FR, HU, IE, IS, IT, LT, LU, LV, MA, NO, PL, PT, RO, SE, SI, SK) report that all of their EFI staff hold a qualification from a university or similar (e.g. diploma, degree). The remaining NCAs have varying smaller percentages with 5 NCAs (CZ, DK, ES, NL, UK) having between 80-95%.

145. With regard to the proportions of EFI staff that hold professional qualifications as an accountant or auditor, 7 NCAs (CY, EL, FI, IE, LU, MA, PT, SE) report that all of their EFI staff hold such professional qualifications. 3 NCAs (FR, NL, UK) report that 85-90% of their EFI staff are so qualified, while the remaining NCAs vary. However, the titles of 'accountant' or 'auditor' are used differently in different jurisdictions. There is no one standard for professional status in Member States, nor is there a standardised route to professional qualification. So, although some NCAs reported *prima facie* lower rates of professional qualifications, their staff were nevertheless sufficiently experienced with the relevant financial reporting frameworks taking

[8] In many NCAs these employees are also in charge of supervising MAR disclosures and prospectuses.

into consideration their qualifications and past professional experience as practitioners or academics.

146. The AG believes that although a qualification in auditing or accounting is not a pre-requisite to working in an EFI function, nor is there is necessity for a member of EFI staff to be a member of the relevant, local, professional body, it is essential that those who do work in the EFI team have a relevant background and experience in working with the relevant accounting framework.

Ongoing training

147. In relation to training, the information reported by the NCAs in answer to the Questionnaire shows a marked discrepancy amongst NCAs in the amount of training reported for their EFI staff. Any marked gaps in ongoing training was defended by NCAs on budgetary grounds.

Experience

148. The average length of service of members of the EFI staff in NCAs is 7.3 years, with the highest average length of service at 14 years, to a relatively low average of 2 years.

149. The Questionnaire sought from NCAs a break-down of the professional experience of persons in their EFI units as accountants or auditors. These figures were reported in three tranches: the numbers of persons with over 15 years' experience; from 5 to 15 years' experience; and under 5 years' experience.

150. The numbers reported were analysed by looking at the proportion of the totals represented by the various categories. CY, DE(FREP) and SK each reported that all of their EFI staff have at least 15 years' professional experience as accountants or auditors, with the average experience of their staff reported to be 22, 23 and 20 years respectively. The average level of such experienced staff amongst NCAs is 44%.

151. 6 NCAs reported that none of their EFI staff are this experienced.

152. Across all 29 reporting NCAs, the average professional experience of staff as accountants or auditors is 9 years.

153. In 22 jurisdictions there is no EFI staff with less than 5 years' professional experience. However, there are three NCAs with a significant amount of EFI staff with low levels of professional experience, ranging from a third of staff being less than 5 years' experienced to as much as two-thirds in one NCA.

Specialisation

154.14 NCAs (AT, BE, DE, DK, EL, ES, FI, FR, IT, LU, NL, NO, SI, UK) respond that examiners are specialised. 15 NCAs respond that they are not specialised.

155.For most NCAs, the criteria for specialisation were industries (especially the banking and insurance industries) and specialisations on certain accounting standards.

Financial resources

156.Guideline 2 on enforcement of financial information also requires enforcers to have sufficient financial resources to ensure that the necessary amount of manpower and services can be used in the enforcement of financial information. These financial resources should also be sufficient to ensure that the manpower is professionally skilled and experienced.

157.The Assessment Group also sought information from the participating NCAs on whether those authorities were able to ensure a competitive salary and other benefits to their employees, to ensure that they are able to recruit and retain skilled personnel. In this regard, the Assessment group tried to ascertain whether there was a remuneration gap between the private and the public sector that could jeopardise the retention of qualified and skilled manpower.

158.Most NCAs acknowledged the existence of a gap between the salaries paid in their authorities and the private sector, perhaps unsurprisingly. In most of the cases this remuneration gap was more evident in relation to senior staff with more years of experience. As a compensation for this remuneration gap, these Member States noted that other benefits such as working for the public interest, better work-life balance or employment security were provided.

159.Some Member States also noted that their remuneration conditions were, or still are, subject to significant budgetary constraints which impact their ability to recruit and retain skilled personnel.

4.1.4 – Analysis and recommendations

Sufficiency of resources

160.In Section 4.3 of this report, the AG discusses the approach of NCAs to examinations of financial statements of issuers. An examination demands a substantial assessment of the issuer, the risks to which the issuer is subject, and an interrogation of the financial statements by the enforcer that is more critical that a simple check-list review. For that reason there must be a limiting pressure on the number of issuers that examiners are able to review over a given period. A higher ratio of issuers-to-staff available results necessarily in fewer examinations or examinations of lesser depth and quality (or with a narrower scope), a pressure on examiners not to question issuers' financial statements, or not being able to do the work of questioning issuers' financial statements in depth.

161. The AG does not think that ESMA can prescribe a precise limit on the ratio of issuers to FTE that NCAs should observe. Such a relationship would depend on the quality of the human and financial resources available, the organisational structure within the NCA, and many other features of the jurisdiction and of the market. However, the resources available to enforce financial information in any NCA can be assessed against the requirement in the Guidelines.

162. The AG is of the view that, in addition to the countries who have declared their non-compliance with Guideline 2 (BG, IE, SI), there are strong indications that in the cases of EL, HU, LV, RO, SE and UK there may not at present be sufficient resources to carry out enforcement of financial information effectively. In the cases of EL, SE, UK the number of IFRS issuers per FTE is a significant outlier when compared with the adjusted average of 43 issuers per FTE (112, 116, 110 respectively), LV, RO and HU reported that the FTE is inferior to 1 (i.e. on average the time allocated to enforcement is equivalent to less than one full time employee) which is likely to be insufficient considering the population of issuers per FTE (98, 104, 105 respectively).

163. In addition, based on findings of the onsite visits, the AG is of the view that the time allocated to the EFI work is insufficient in PT and MT. In both countries, because the EFI team is integrated in a multifunctional team/department, the EFI resources are also used to carry out tasks such as review of prospectuses, TD ongoing[9] and market abuse disclosures, corporate governance reports. As such, the actual time allocated to the examination of financial statements is limited. This affects both the number of examinations performed (e.g. 10 in 2015 for PT - none following the selection model in place) and/or the type of examinations performed (only focusing on missing disclosures in MT). Therefore, the AG strongly believes that in both countries the time spent by EFI resources allocated to the EFI unit should be increased. In these cases, the AG believes that the resources available to the EFI team should, if possible, focus mainly on the examination of financial statements instead of being an ancillary function within their respective departments.

164. In addition to the observations related to the compliance of the Guideline 2, the AG considered it important to address the following recommendations:

Financial resources

165. All NCAs are carrying out a non-profit function on behalf of their respective States (even where the NCA is a private entity in law). There is naturally an ever present budgetary limitation on such organisations, and in the current financial climate this impacts even more. This is not something that the AG can criticise or assess. However, in reviewing the responses by NCAs to the Questionnaire, the AG has identified that, where there are significant gaps in the ability

[9] Information about major holdings and information for holders admitted to trading on a regulated market

of the NCAs to compete in the area of recruitment of staff because of the ceilings placed on salaries, this is an operational risk that should be mitigated against.

166. There are natural elements of public service that can and should be emphasised: the idea that one is working in the service of the common good, a relative job security, better work-life balance. NCAs should, where they can, supplement the direct salary gap with training budgets, and the possibility of achieving qualifications.

167. It is also essential that, to the extent possible, the NCAs implement measures/policies to promote the retention of personnel, and an effective capacity to recruit experienced and highly skilled personnel to the EFI unit, in particular in those NCAs that reported a significant gap between the salaries in place in the authority and the private sector. Although some authorities also reported that additional benefits are provided, the AG considers that when these gaps are very high there is a significant risk that current staff decides to leave and there are difficulties in hiring personnel adequately experienced for the EFI unit. As such, measures/policies should be put in place to reduce this gap and/or mitigate this risk.

Training

168. Training is not primarily a perquisite to be granted to staff, but it is there to ensure that staff gains and maintains current knowledge and skillset. The AG has identified that in a number of NCAs, a good source of up-to-date and relevant training is the EECS.

169. EECS is a forum of discussion where European enforcers discuss accounting/enforcement cases. Participating in the discussion enables enforcers to understand how practice evolves in other countries, the approaches/rationale used by other enforcers when analysing a specific case. This discussion enables them to learn from each other and apply similar strategies when discussing similar cases at national level. Therefore, even if this is not considered training, attending EECS proves to the very useful to increase the know-how on the application of IFRS in Europe by EFI staff.

170. Regularly, ESMA and EECS organise training on the most relevant standards. For instance, in 2016 ESMA and EECS organised a training on the new IFRS (IFRS 9, IFRS 15) and on areas where significant divergence in practice were identified (e.g. IAS 12). These trainings are designed to respond to enforcers' needs, as it usually includes sessions where the IASB staff presents the standards, and the enforcers present expected enforcement difficulties and how these issues can be dealt with. Therefore, European enforcers should consider attending such trainings organised by ESMA.

171. In addition to regular training sessions organised, during the EECS physical meetings, enforcers sometimes (on their own initiative) provide an overview of the procedures they have in place when selecting issuers or examining financial statements (e.g. sessions about the selection model in place in ES or BE). While the latter is not considered a training, it allows members to share experiences and learn with their peers on enforcement procedures and

approaches. These sessions allow European enforcers to get useful information about the enforcement procedures/approaches used in other countries and, where necessary, to adapt their internal guidance, and is highly commended by the AG.

172. Moreover, the AG has seen that many NCAs have adopted the good practice of preparing within EFI teams for EECS meetings in a way that resembles an on-the-job training. The papers are often discussed amongst the team members in advance and a debriefing session is held following the EECS meetings. This is a good source of up-to-date, relevant, and directly applicable training.

Qualifications

173. Although a qualification in auditing or accounting is not a pre-requisite to working in an EFI function, the AG believes that it is essential that those who do work in the EFI team have a background and experience in working with the relevant accounting framework.

Dedication to enforcement

174. Staff should be sufficiently dedicated (by their employer) to the work of EFI so that they can build familiarity, expertise and a sense of responsibility. As much as possible NCAs should concentrate some of their available staff on the work of examination of financial statements. This work should not be done piecemeal where other responsibilities and demands both dilute the knowledge that can be built up, but can also make calls on the time of such staff to the detriment of enforcement work. The AG recommends that all NCAs have, where possible, at least one member of staff fully dedicated to EFI work, in particular those NCAs with a ratio of issuers to FTE above the average.

Specialisation

175. The enforcement of financial information is in most cases an uneven exercise. In most cases, enforcers are one step back when compared with auditors and issuers in terms of information about the transactions undertaken by a specific issuer, who have access to all records, data and, in some cases, access to significant financial resources enabling them to hire external consultants to support their analysis and accounting treatments. Enforcers need to balance this apparent disadvantage with highly qualified and skilled personnel. It is paramount that enforcers are able to discuss accounting matters with issuers and auditors on an equal footing in terms of knowledge of the relevant financial reporting framework.

176. Consequently, depending on the composition of the market and of its size, some industries/sectors can have a significant impact on the national economy. The AG recommends that in such cases, consideration is given to recruiting or training an internal expert to specifically challenge issuers in those significant industries.

177. For instance, when the relative weight of financial institutions is high in the domestic market, enforcers should consider to have, within their EFI team, experts in accounting treatment for financial assets and liabilities. When other markets have a significant industry presence (e.g. oil and gas in Norway), enforcers should adapt the composition or the know-how of their staff to the reality of their domestic market.

178. The AG strongly recommends enforcers in larger and medium size markets to consider having experts in standards dealing with measurement, such as, for example, IFRS 9 *Financial instruments* and IFRS 13 *Fair Value Measurement*. These standards are, with different levels of importance, transversal to all markets and almost all issuers. In this case, the AG emphasizes the example of the Norwegian FSA that has recruited valuation experts to its EFI team. This expertise allows the NFSA to challenge in depth measurement issues in financial statements, such as the assumptions and judgements used by issuers when measuring assets and liabilities.

179. While the AG does not consider it necessary to recruit personnel with this background as expertise in these areas can be built in house, AG believes that this expertise within the EFI team brings added value to the enforcement system in place.

Independence

180. The NCAs could also consider implementing policies to ensure the independence of the authority in relation to issuers and auditors under their supervision/examination. For instance, NCAs could consider setting up cooling off periods to prevent that members of the EFI teams or its management terminate contracts with NCAs and start immediately thereafter working for an issuer where they had a previous direct involvement in the examination of financial statements.

181. Similar rules could be applied when EFI team members terminate contracts and start working in audit firms. In this case, EFI team members should be prevented from having any direct relationship with audit work related to issuers previously subjected to an examination where the EFI member had direct involvement.

182. EFI members could also be required to notify the Board of the NCA in case they start employment negotiations with issuers subjected to enforcement examinations and/or with auditors of supervised issuers.[10]

[10] In this respect please refer to the ECB code of conduct https://www.ecb.europa.eu/ecb/legal/pdf/oj_joc_2015_204_r_0004_en_txt.pdf as an example of code of cooling off periods and notifications. These examples would need to be adjusted to the circumstances of the contracts, work performed and the legal framework in each jurisdiction.

4.2 – Guideline 5

4.2.1 – Guideline 5 – Selection Methods

General Guideline

Enforcement normally uses selection. The selection model should be based on a mixed model whereby a risk-based approach is combined with a sampling and/or a rotation approach. A risk based approach should consider the risk of a misstatement as well as the impact of a misstatement on the financial markets.

Supporting Guidelines

Selection should be based on a combination of a risk based approach and either random sampling or rotation or both. A pure risk based approach would mean that those issuers not fulfilling the risk criteria determined by the enforcer would never be subject to enforcement. There should always be a possibility of an issuer being selected for review. A pure random system could mean that issuers with high risk are not selected on a timely basis. The same would apply to a pure rotation system and, in addition, there would be a possibility that an issuer would be able to estimate when its financial statements were likely to be selected.

Determination of risk should be based on the combination of the probability of infringements and the potential impact of an infringement on the financial markets. The complexity of the financial statements should be taken into account. Characteristics such as the risk profile of the issuer and its management, ethical standards and experience of the management and their ability or willingness to apply the relevant financial reporting framework correctly, as well as the level of experience of the issuers' auditors with the relevant financial reporting framework should, as far as possible, be taken into consideration. While larger issuers are typically faced with more complex accounting issues, fewer resources and less experience in applying the accounting standards could be more prevalent among smaller and /or new issuers. Hence, not only the number but also the characteristics of issuers are relevant factors.

Indications from the auditors of misstatements, whether in their reports or otherwise, will normally trigger a selection of the financial information in question for examination. Indications of misstatements provided by auditors or regulatory bodies as well as grounded complaints should be considered for enforcement examinations. On the other hand, an unqualified opinion from an auditor should not be considered as proving the absence of risk of a misstatement. Enforcement examinations should be considered where, after preliminary scrutiny, a complaint received appears reliable and relevant for a possible enforcement examination.

In order to ensure European supervisory convergence, when applying the relevant criteria for selection, enforcers should take into account the common enforcement priorities identified by enforcers together with ESMA. Selection models should comply with ESMA's supervisory briefing on selection. Such criteria are not public in particular in relation to the fact that issuers might identify

the time when they become subject to examination. Enforcers should communicate factors used as part of their national selection method and potential subsequent amendments to ESMA for information. ESMA will ensure confidentiality of such information in accordance with the provisions of the ESMA Regulation. Such information will serve as a basis for any further potential developments that may be envisaged in relation to the criteria used for the selection methods.

4.2.2 –Analysis of findings - Guideline 5 – Selection Methods

183. The Guideline envisages the use by NCAs of a selection model in their enforcement of financial information when selecting issuers for examination. All 29 jurisdictions have confirmed that they use a model for the selection of issuers to be subject to enforcement.

184. 26 NCAs (all except HU, MT and UK) have formalized their selection method in a written document. Only 5 (DE, IE, IS, IT and SE) have published this document so that it is available to issuers, their advisers and the market.

185. In relation to the process for selection of issuers, 18 jurisdictions (BE, CY, CZ, DE, EL, ES, FI, FR, HU, IS, IT, LT, LU, LV, NL, PL, PT, SK) operate an approval process that envisages a formal approval by a higher authority within the NCA (for instance, the responsible Director, the Board of Directors, etc.). Such an authority is responsible for the selection of issuers for examination and for formally approving the selection of issuers. 11 jurisdictions (AT, BG, DK, EE, IE, MT, NO, RO, SE, SI, UK) do not describe a formal approval process.

186. The selection of issuers whose financial statements are to be reviewed is generally not made public. Only 1 jurisdiction describes this as being made public (SE).

Frequency of the selection process

187. The selection process is run annually in most jurisdictions. Only in the following 3 jurisdictions it is run with another frequency:

- MT: it is run on a quarterly basis.
- BG: it is run both annually and semi-annually.
- DK: issuers are selected continuously, but the random selection is performed semi-annually.

When is made the selection and how can it be later amended

188. The AG asked NCAs to describe the month during which the selection process was run, or finalised. This can be relevant because the examination of financial statements often require extensive exchange of communication with issuers and thus requiring significant amount of time. At the same time, the information included in financial statements may provide relevant indications for the selection of issuers.

189. The responses show a variety of situations with March being the most common month for the selection process, followed by June. Overall, 65% of the jurisdictions concentrate their selection in the period that goes from March to June.

190. 7 jurisdictions (DE, DK, ES, FI, IS, LV and SK) perform the selection of issuers on a month close to the year end, that is in December, January or February. For 5 jurisdictions (DK, ES, IS, LV and SK) out of those 7, it is possible to update/change the selection once it is made. ES describes adjustments or modifications to the selection method and to the initially selected issuers, in order to take into account possible new risk factors that might appear after running the selection process.

191. Regarding the possibility of updating or changing the selection once it is made, there are only 3 jurisdictions (BG, DE, and LT) that cannot do so. However, DE and LT can choose additional issuers for examination whenever it may be necessary during the course of the year as issues arise.

192. In some jurisdictions it is also possible to de-select issuers, for instance because such issuers have been de-listed

Selection process based on a risk assessment

193. The NCAs were requested to provide information on whether their selection model includes a risk assessment and, if applicable, on what basis this assessment is carried out. All NCAs confirmed that their selection model includes a risk-based assessment.

194. In assessing risk, it is necessary for NCAs to consider both the probability of a material misstatement in the financial statements and its potential impact on the market. Indeed taking into consideration only one aspect of the risk could make the enforcement process less effective by leading NCAs to select for examination only issuers of low impact with a significant probability of errors or, on the contrary, issuers where the potential impact on the market is significant but the risk of errors quite low.

195. According to Guideline 5, the selection model developed by NCAs should include a risk-based approach where the risk is determined through the combination of the probability of misstatement and the potential impact of such misstatements on the financial markets. When performing this risk assessment, all NCAs except one (SE) consider both components of the risk. SE only considers the probability of infringements.

Number of issuers that should be selected for examination during each process of review, in accordance with the selection model

196. The number of issuers that are expected to be selected for examination in each cycle by each NCA is set out in Table 3.

197. The size of the market in each country should always be taken into account. So, expressing the number of issuers that would normally be selected for examination each year as a percentage of the total number of IFRS issuers in a jurisdiction (Table 2) the results are as follows:

198. 6 jurisdictions (BG, FI, HU, LT, MT, UK) select approximately 7% - 11% of the total IFRS issuers per year for examination. 11 jurisdictions (CY, CZ, DE, DK, EL[11], FR, IS, IT, NO, PT, SE) select between 15% and 22%. Higher than this proportion are AT, PL and NL at approximately 27%, LU at 29%, IE and SK at approximately 33%, EE, SI and BE at 37%, RO and ES at approximately 40%., In LV the number of issuers selected for examination each year over the review period amounted to approximately 77% of the total issuers in LV each year, and more in number than the number of IFRS issuers in LV (hence the figure of 102% in the fourth column).

199. It is important also to look at the number of issuers to be selected each year relative to the FTE available in the jurisdiction performing the job of enforcement of financial information (which includes examinations and taking actions on the basis of examination).

[11] From calendar year 2017 onwards EL will select 10% of issuers as at the 31st of December of the previous year.

Table 3: selection of issuers relative to FTE

	Issuers to be selected annually in accordance with the model	% of total TD issuers selected annually	% of IFRS issuers selected annually	No. of issuers selected annually per FTE
AT	30	23%	27%	2.8
BE	45	30%	37%	5.8
BG	40	9%	9%	2.7
CY	17	18%	18%	11.3
CZ	6	9%	16%	2.0
DE[12]	100	15%	19%	4.6
DK	24	15%	17%	3.0
EE	6	38%	38%	6.0
EL	46	20%	20%	22.4
ES	61	36%	41%	4.4
FI	10	8%	8%	3.3
FR	90	17%	17%	5.0
HU	3	5%	7%	5.0
IE	35	27%	32%	17.5
IS	8	21%	21%	8.0
IT	50	20%	20%	3.8
LT	3	9%	9%	3.0
LU	45	20%	29%	8.2
LV	25	63%	102%	61.3
MT	4	9%	9%	10.0
NL	50	25%	28%	6.3

[12] Statistics for DE include both BaFin and FREP FTEs.

	Issuers to be selected annually in accordance with the model	% of total TD issuers selected annually	% of IFRS issuers selected annually	No. of issuers selected annually per FTE
NO	50	19%	20%	5.7
PL	105	23%	26%	7.5
PT	13	21%	22%	12.6
RO	36	40%	40%	41.1
SE	66	20%	21%	24.4
SI	10	20%	37%	33.3
SK	9	13%	33%	4.5
UK	142	6%	11%	12.2

200. On average the selection models in place in each NCA ensures a coverage of 25% of the IFRS issuers in their respective jurisdiction. In 17 NCAs (BG, CY, CZ, DE, DK, EL, FI, FR, HU, IS, IT, LT, MT, NO, PT, SE, UK) the selection model captures less than the average. In this respect, it is highlighted that in BG, FI, HU, LT and MT the selection model in place ensures a coverage of IFRS issuers in their jurisdiction below 10%.

201. The selection model in 12 NCAs (AT, BE, EE, ES, IE, LU, LV, NL, PL, RO, SI, SK) seeks to select more than 25% of the total of IFRS issuers in each jurisdiction. In this respect we emphasise that LV, ES, RO have a coverage of 40% or more of the IFRS issuers in their jurisdiction.

202. In order to carry out the examination of the selected issuers, NCAs have an average of 6 FTE staff, who, following their own selection model, examine on average 12 IFRS issuers per year. It is however, highlighted that this figure is affected by the fact that the time allocated to the EFI function in some NCAs is below 1. As such, the ratio of issuers selected per FTE in HU, LV, MT, RO, SI is not representative, as in some cases the ratio presents a figure above the total number of IFRS issuers in the respective jurisdiction (e.g. LV). It is also noted that this average of selected issuers per FTE is only indicative as it does not reflect the complexity of the issues raised during an examination and the time spent in the interaction with issuers and in taking decisions. For example, it is acknowledged that when the issues raised by a NCA relate to recognition or measurement principles, the time spent by a specific examiner is usually longer than the time spent when the issues encountered relate solely to missing disclosures.

203. 11 jurisdictions describe some factors that they take into account to adjust the *number* of issuers selected for examination each year, such as: the EFI department capacity, staff constraints or the actual resources available; the issuer's highest risk; the market or systemic risks; ESMA's ECEP; the rotation or whether the issuer has been examined before; the IPO market activity; the past experience or history of errors.

Use of random sampling or sampling by rotation in the selection process

204. As stated in the ESMA Guidelines, selection should be based on a combination of a risk-based approach and either a random sampling, or rotation, or both. A pure risk-based approach would mean that those issuers not fulfilling the risk criteria determined by the enforcer would never be subject to enforcement. This implies that there should always be a possibility for an issuer being selected for review.

205. All 29 NCAs confirmed that the process for selection of issuers for examination is based on a mixed model combining a risk based approach together with a sampling and/or a rotation approach, following Guideline 5.

206. Three NCAs (FI, IT, PT) use only random sampling in addition to risk based sample (but not a formal rotation).

207. 11 NCAs (BE, CY, CZ, EE, HU, LT, LV, MT, NL, NO, SI) use a rotation approach without also using random sampling.

208. 15 NCAs (AT, BG, DE, DK, EL, ES, FR, IE, IS, LU, PL, RO, SE, SK, UK) use both random sampling and rotation in their selection model.

209. Many NCAs mention that aside from their risk and rotation selections, in order to avoid that an issuer is able to estimate when its financial statements are likely to be examined and to allow for each issuer to be selected, additional issuers are randomly selected each year for an unlimited scope examination.

Whether the procedure for selection of issuers ensure that over a period of time all issuers will be covered

210. A total of 21 NCAs (AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, IE, IS, LU, LV, MT, NL, NO, RO, SE, SI, SK) consider that their selection procedure ensures that over a definite period of time all issuers will be covered.

211. For the other 8 NCAs (FI, FR, HU, IT, LT, PL, PT and UK) their procedure for selection would not ensure that over a period of time all issuers will be covered.

212. Of the 21 NCAs, all describe the period over which all issuers will be covered with certainty. For 13 jurisdictions (AT, BE, CY, DK, EE, EL, LV, MT, NL, RO, SE, SI, SK) that period spreads from 2 to 6 years, for 3 jurisdictions (BG, CZ, IS) the period is from 6 to 8 years, and in NO it is 10 years.

213. In addition, some particular periods are as follows:

- LU considers a period of 3 years for issuers with high risk profile and 10 years for all other issuers.
- For IE the period is 5 years for equity issuers and 10 years for closed-ended funds and debt issuers.
- DE considers a period of 4-5 years for indexed companies (DAX, MDAX, etc.), and 8-10 years for other issuers.
- For ES all equity and debt issuers should be reviewed at least once every 4-8 years.

Assessment of the probability of a misstatement in the financial statements

214. The NCAs were presented with a list of common risk-factors that were referred to in the Guidelines or that were identified by the AG. The AG requested NCAs to indicate which of these were taken into account in the assessment of the risk of a misstatement. There was a wide diversity of approach amongst NCAs.

215. NCAs take into account 15 factors on average when assessing the risk of misstatement. 7 NCAs review more than 20 different factors in their assessment whereas 5 NCAs consider less than 10 factors.

216. All NCAs take into account at least one factor linked to the issuer's auditor (type of opinion issued, experience with relevant financial reporting framework or changes of auditor before the end of its mandate).

217. Among the factors considered by NCAs, the 10 most prevalent are: qualified opinion (27 NCAs), emphasis of matter paragraph issued by the issuer's auditor (25); date of the last enforcement examination performed (24); signals received from third parties (23); issues identified during previous enforcement examinations (21); key events identified during the year (20); information received from whistle-blowers (19); experience of the issuer (18); and financial ratios (18).

Assessment of the impact of a misstatement on the financial markets

218. The NCAs were also presented with a list of common risk-factors that were referred to in the Guidelines or that were identified by the AG. The AG requested NCAs to indicate which of these were taken into account in the assessment of the impact of a misstatement on the financial markets.

219. 28 NCAs (all NCAs except SE which does not consider the risk of impact) provided the factors used in their assessment of the impact of a misstatement on the financial markets. The average number of criteria considered by NCAS is 6. However, 2 NCAs (FI and RO) only take into account one factor, that of the market capitalisation of the issuer in their impact assessment; whereas 4 NCAs (ES, IE, LU and NO) consider more than 9 separate factors.

220. Among the factors considered by NCAs, the most common are: market capitalisation (25), size of the issuer (21), type of securities issued (15), share trading activity (15), financial ratios (14), type of industry/sector (13), and the number/nature of the investors (12).

221. Finally, when considering other potential factors used by NCAs to assess the impact of a misstatement on the financial markets, 6 NCAs (AT, BE, CY, LT, LU and LV) also take into account the characteristics or the number of the regulated markets on which the relevant securities are listed and 4 NCAs (BE, BG, LU, PL, PT) also review if those securities are included

in a stock exchange index. FI also considers carrying out an examination where issuers have high levels of goodwill on the balance sheet.

Factors common to both assessments

222. When reviewing the various criteria used by NCAs, some factors (type of industry/sector, type of securities and financial ratio) are considered in assessing both the probability of a misstatement and the impact of such a misstatement on the market.

223. 10 NCAs (DK, FR, HU, IE, IS, IT, NL, NO, PT and SK) consider financial ratios, 10 NCAs (EE, EL, ES, HU, IE, IS, IT, FR, NO and UK) take into account the type of industry/sector in both risk assessment, and 9 NCAs (CZ, EE, ES, HU, IE, FR, NO, PT and SK) consider the type of securities issued.

224. Finally, the Guidelines require NCAs to take into account the common enforcement priorities (ECEP) when applying the relevant criteria for selection. All NCAs answered that this was the case.

225. NCAs tended to explain in their selection process description that once a first sample of entities to be examined is obtained from their model, the result can be adjusted to take into account the ECEP that has not been parameterised in the model.

226. For their assessments of risk of misstatement and of risk of impact, NCAs tend to rely more widely on quantitative and objective factors than on judgmental criteria.

Consideration of factors involving some element of expert's judgment

227. The NCAs' responses evidence that certain factors, often indicative of the experience and professional judgment of the enforcer, are key elements to ensure that all material aspects are taken into account when assessing the risk for the selection method. However, they are regarded as difficult to quantify and record. Therefore, in the context of a potential supervisory briefing to be prepared by ESMA, it could be useful to develop some guidance on such qualitative factors to ensure a consistent approach to the risk assessment when these factors are to be taken into consideration.

Weightings given to the various risk factors

228. When analysing the different factors included in the risk assessment, NCAs may decide to give those criteria some weightings in order to ensure that key elements are adequately addressed. This approach has been implemented by 15 NCAs (BE, BG, CY, CZ, DK, ES, FI, FR, HU, IE, IT, LT, LU, NO and PT), whereas 14 NCAs (AT, DE, EE, EL, IS, LV, MT, NL, PL, RO, SE, SI, SK and UK) report that they do not apply weightings to the risks factors used in their assessment.

229. For the NCAs which apply weightings, 10 NCAs (BE, BG, CY, CZ, ES, FI, FR, IT, LU and NO) have implemented a more formalised and detailed approach where different weights are given to factors based either on quantitative or qualitative elements. The other 6 NCAs that weight the risk factors report that they operate a more judgmental and overall approach when considering the weightings given to the various factors in their assessment of risks.

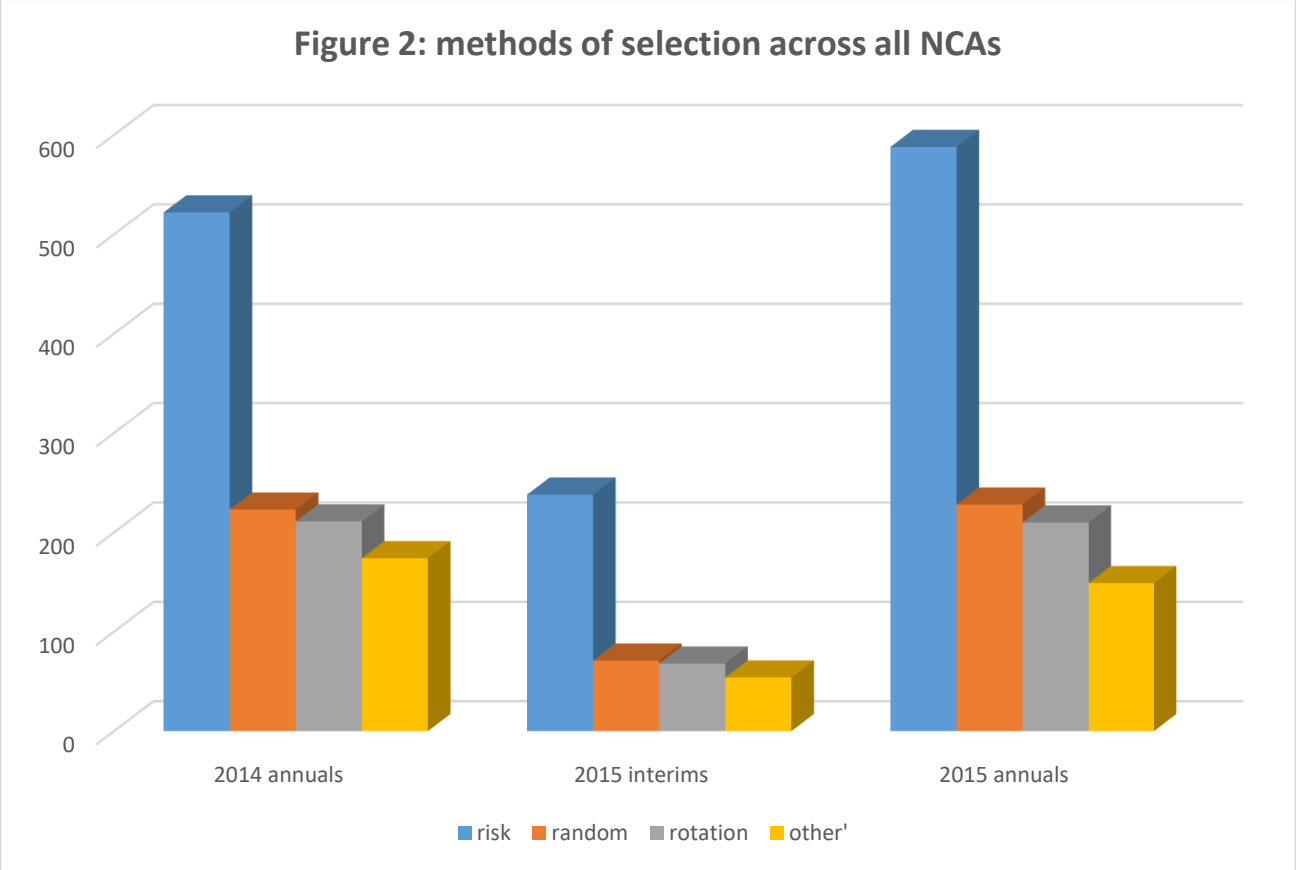
Use of different approaches in selection

230. With regard to the different approaches to selection, below there are charts for each reporting period that show, cumulatively, how many issuers were selected in each jurisdiction based upon the different approaches (risk based assessment, randomly, rotation; 'other' approach). These are based on the data provided by NCAs in response to the Questionnaire.

231. In all cases where an NCA reported figures for issuers selected for examination in any given year under the heading 'other' (BE, CY, DE, DK, ES, FI, IS, NO, PL, PT, UK), the AG sought clarification. In all cases where this was reported, the reasons given related to selections based on *ad hoc* reasons for deciding to carry out an examination, usually a focused examination. These reasons might be, for example, a referral by another agency, a complaint, a market event, a transaction, an IPO, a media comment, or the ECEP priorities. NCAs regarded this method of auto-selection as not being based on risk. The AG believes that these are nevertheless selections based on risk because the indicators to prompt an examination are risk-indicators.

232. There is, however, a valid distinction to be drawn between the selection of issuers based on data that builds up a risk profile of an issuer, or of an industry, and those single events that are risk indicators in themselves and that prompt selection. The AG is of the opinion that the Guidelines require that the former type of assessment should always be carried out by NCAs in order to be able to properly identify and anticipate the areas of its market that carry the most risk.

233. Figure 2 below shows the aggregate number of issuers selected under these headings for 2015 (work done on 2014 annual financial statements) and 2016 (work done on 2015 interim and annual financial statements) based on the different selection approaches:



234.Figures 3A and 3B show the methods of selection used by each NCA over the review period:

Figure 3A: total number of issuers selected for examination depending on selection approach

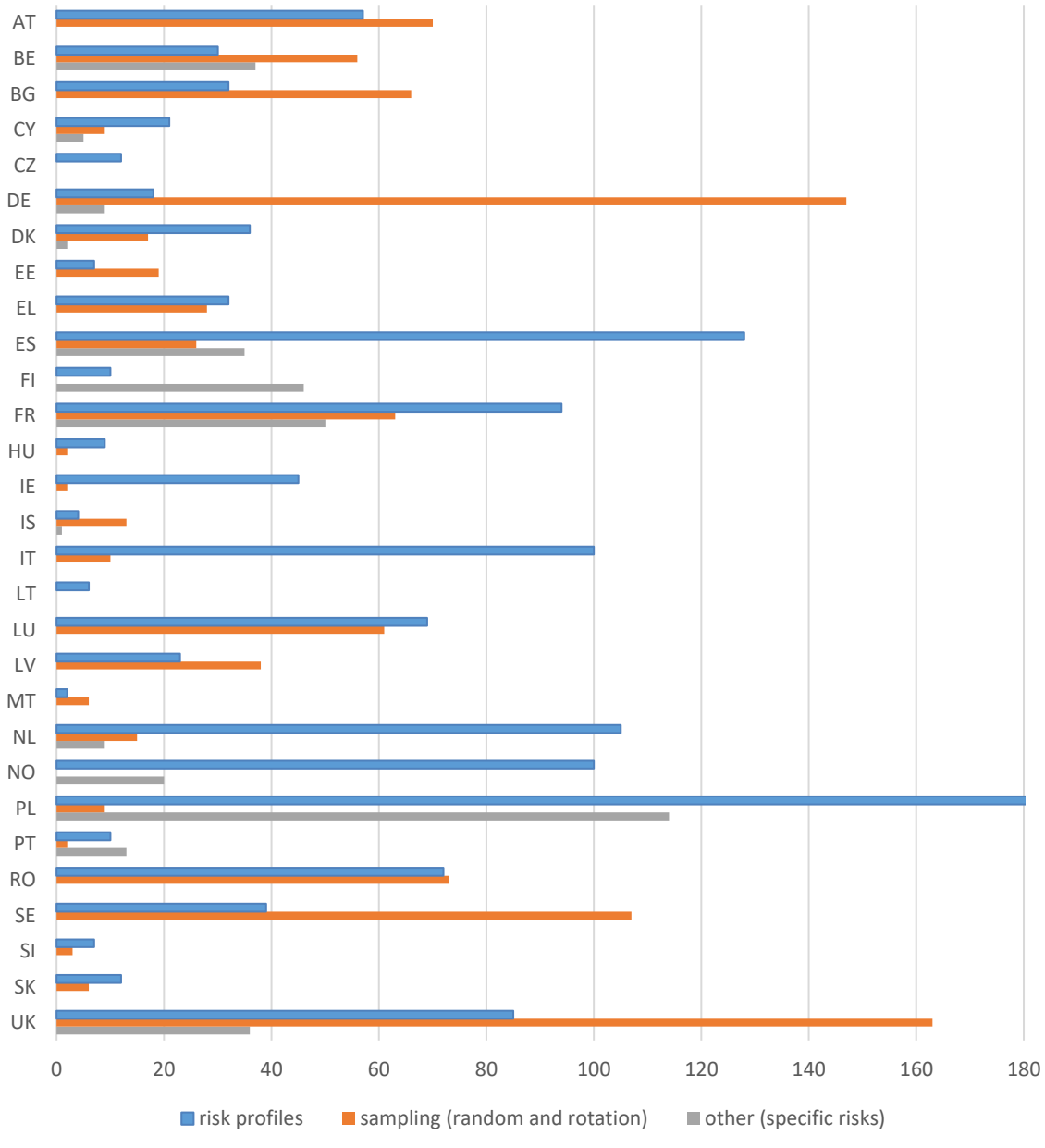
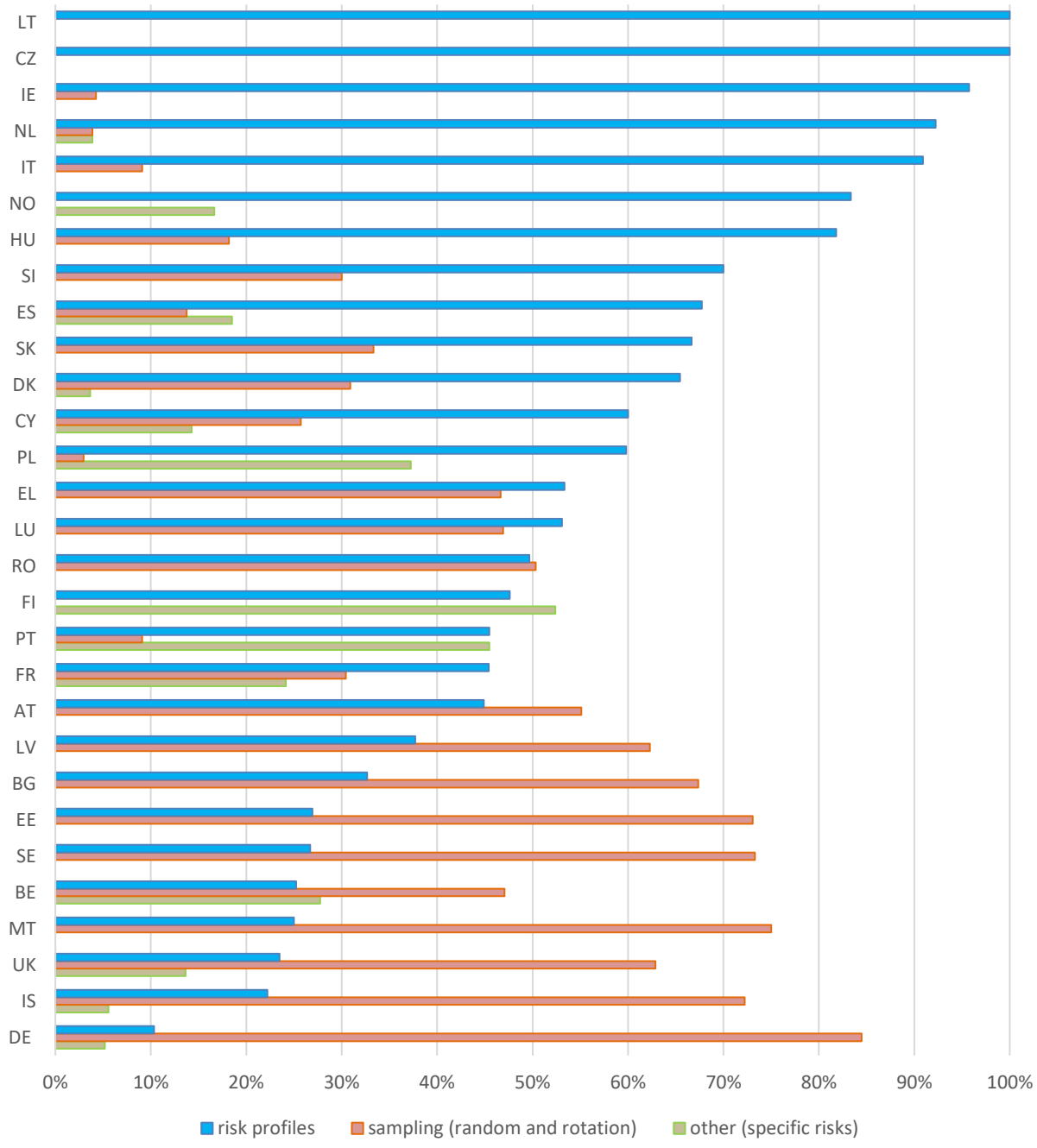


Figure 3B: Proportion of issuers selected for examination depending on selection approach



235. The average proportion of the total selected issuers based on risk profile (abstract risk) is 55%. If combined with the other *risk category* that is captured by the answers under the heading 'other' i.e. the concrete risk triggers that apply to specific issuers, then the average proportion of the total that is determined by risk is 64%.

236. The average proportion of the total selected issuers that are selected either randomly or by rotation is 36%.

Section model: Examinations planned vs completed

237. The AG considers that the selection model implemented and actually followed by NCAs is just as important as to assess whether the selection model in place is in accordance with the Guidelines.

238. The following table provides information on the number of issuers selected in accordance with the selection model in place and the examinations actually completed (in percentage) for the period under review:

Table 4: examinations completed compared to examinations planned

NCA	*Total of examinations planned for period under review*	*Total completed for period under review*	*% of planned selections completed for period under review*
AT	127	127	100%
BE	123	84	68%
BG	98	80	82%
CY	35	23	66%
CZ	12	12	100%
DE	174	122	70%
DK	55	54	98%
EE	26	26	100%
EL	60	38	63%
ES	189	188	99%
FI	56	56	100%
FR	207	197	95%
HU	11	9	82%
IE	47	42	89%
IS	18	15	83%
IT	110	110	100%
LT	6	5	83%
LU	130	120	92%
LV	61	27	44%
MT	8	8	100%
NL	129	79	61%
NO	120	108	90%
PL	306	292	95%
PT	25	14	56%
RO	145	123	85%
SE	146	146	100%
SI	10	10	100%
SK	18	18	100%
UK	284	283	100%

239. The AG notes that, in 7 jurisdictions, interim financial statement were not individually selected for examination (CZ, FI, FR, IS, LT, MT, SI).

240. The AG acknowledges that there may be deviations between planning and reality. However, when comparing the activity carried out by NCAs with the number of issuers selected based on their own internal procedures, these differences are more evident in BE, CY, DE, EL, LV

and PT. In these jurisdictions the difference between planned and completed examinations was 30% or more.

Prioritisation of examinations

241.17 NCAs (BE, CY, CZ, DE, DK, EE, ES, FR, HU, IE, IS, IT, LV, NL, PL, SE and UK) have decided to prioritise their reviews in terms of order of examination, with, in most cases, priority given to issuers selected based on the risk assessment (CY, DE, DK, ES, FR, LV and NL) or with identified misstatements (CZ and PL). Some NCAs give also priority to equity issuers (IS), to issuers with higher market capitalisation (FR) or to issuers where complaints are received (UK).

242.10 NCAs (BE, CY, DE, DK, EE, ES, FR, IT, PL and SE) also confirm that they prioritise their examinations depending on whether the examination will be unlimited in scope or focused, with unlimited scope examinations normally, but depending on the causes, being carried out before focused examinations.

243.4 NCAs (BE, ES, LU and PT) perform unlimited scope examination for issuers selected according to the risk assessment, whereas other NCAs decide on the kind of examination depending on, for example, the accounting issues identified (CY, DE, DK, IT).

244.9 NCAs (AT, BG, FI, MT, NO, PT, RO, SI, SK) recognise that they have not implemented a pre-defined prioritisation when performing their examinations.

4.2.3 – Conclusions and recommendations - Guideline 5 – Selection Methods

245.Based on the information received through the Questionnaires and the onsite visits, the AG is of the view that the MT, PT, RO, SE, UK do not comply with Guideline 5 for the following reasons:

246.In the case of PT, the AG considers paramount that NCAs follow the risk model in place. The reported figures on the examinations concluded in 2015 and 2016 by CMVM indicate that the selection model in place is not effective in practice. From the 17 issuers selected for an unlimited examination following the selection model, only 6 unlimited examinations were concluded (none of them arising from the risk based approach). The execution rate (issuers examined/issuers selected) is only 35% which gives a clear indication of the insufficiency of the time allocated by the EFI team to the examination of financial statements.

247.Regarding MT and RO, the AG believes that the risk model in place does not capture the intrinsic risk profile of an issuer as most of the risks indicators used are identified based on external factors/sources such as referrals from other departments/authorities, complaints or media. The AG is of the view that although external factors sources should always be taken into account, specific factors relating to the intrinsic risk profile of an issuer should also be considered. For example, financial indicators arising from financial statements, industry risks,

risks arising from analysis to information related to financial trends or significant deviations of market expectations against reality.

248. SE stated in its response to the Questionnaire that its risk model does not take into account the potential impact of misstatements on the financial markets which contradicts the principle included in Guideline 5.

249. In the case of the UK, in spite of counting in the region of 2,284 issuers[13] falling under the scope of the TD, among which 1,288 are pure bond issuers, the UK selection model does not sufficiently take into account all issuers listed on regulated market and thus subjected to the TD requirements. For instance, according to the UK selection model, small issuers, issuers with bonds listed on the UK regulated market or issuers listed outside the UK are selected for examination only in case of referrals by other authorities or of grounded complaints received from stakeholders. These issuers are approximately 1,900, but the coverage in the UK means that there is a very small likelihood that these issuers i.e. issuers outside of the FTSE 350, will be selected. The AG considers that the selection model in place should consider all issuers under the scope of the TD regardless of their size. There should be a real possibility that all issuers may be selected for examination.

250. Overall, the description by NCAs of their selection process reveals a widely divergent set of practices. Although all NCAs approach the selection of issuers whose financial statements should be examined on the basis of some form of risk selection, there is neither consistency in the methods of selection nor in the sample size or in the coverage of the issuer population.

251. There is a number of ways in which the Assessment Group believes the practices followed by NCAs can be improved and harmonised to some degree. These recommendations are described in the following paragraphs:

Formal procedure and review of the selection model

252. Even if not formally required by the Guidelines, the AG believes that a formalised written procedure describing the selection model and the steps to be followed is recommended to ensure completeness of the selection approach and its consistency over time.

253. The selection model is being applied to a changing environment, both in terms of the numbers of issuers that are within its scope and the nature of the risks that are relevant in any given jurisdiction. The AG recommends that models should have as part of their ongoing features a process of revision and assessment of whether the model is (still) serving to identify the real risks and select the correct issuers from time to time.

[13] Out of which 1,281 are IFRS issuers.

254. The AG emphasises that not only the selection model in place should be sound, but it should also be followed in practice. The information gathered has shown in some cases that the number of issuers examined was inferior to the number of issuers selected based on the selection model. The AG understands that every year there might be some deviations between the number of issuers selected vs the number of examinations actually carried out. However, it also recommends NCAs to assess at the end of each reporting year whether their enforcement activity planning was achieved. When this is not the case, significant deviations should be analysed and an action plan be prepared in order to reduce these differences. When doing this exercise, NCAs should assess whether the enforcement planning was realistic and based on reasonable assumptions, and whether they have sufficient human resources to carry out the examinations selected and/or whether the selection model in place should not be adjusted/revisited.

Timing and flexibility of the selection model

255. While there is no formal month set out in the guidelines in respect to when the selection of issuers should be made, experience and the statistics provided to the AG (including during the onsite visits) shows that the examination, discussions with issuers and reaching final conclusions may take several months. As such, to ensure that the enforcement of financial statements of a given year is effective, it is important that the selection of issuers is run as early as possible (as far as practicable, before the deadline set out in the TD for the publication of annual financial reports[14]).

256. This timing would enable enforcers to plan in advance the work for that year and avoid the conclusions of a given examination being taken close to the year-end when the next set of financial statements are already being prepared by issuers and where investment decisions might have been taken based on financial statements with material infringements.

257. Even if the AG cannot prescribe a formal month to ensure that the risk model needs to be terminated, an enforcement system is not efficient if is not able to act in due time. If NCAs take until June to select issuers, then in most cases they are not able to finalise their examinations before the next financial statements are almost finalised, unless they start the examinations before the selection is final.

258. A full selection for a reporting period does not need to be made before NCAs can commence work examining the financial statements of issuers who have already been selected. So, for example, if a rotation of issuers has already been identified, an NCA should be able to commence even if a risk-based sample has yet to be finalised. Examinations can also start earlier based on other selection triggers (e.g. obvious high risk issuers, first financial statements after IPO, financial statements with qualified auditor reports etc.).

[14] 30 April for those issuers using 31 December year end.

259.Finally, it is important also that selection models should be flexible. NCAs should also have the capacity to do additional, at least focused, examinations of financial statements where issues arise during the year giving rise to suspicions of errors or increased requirement for scrutiny e.g. media reporting. Alternatively, a limited substitution of issuers where issues arise during the year might be permitted. Any changes to the sample of selected issuers should be justified and properly documented. The AG considers that the establishment of selection models that are dynamic should be encouraged, which means that they should take into account, if needed, new significant risks that arise after the selection process is run (i.e. a specific risk identified with an issuer).

Risk Factors frequently considered in the selection of issuers

260.The AG asked NCAs to identify what risk factors are taken into account when assessing the level of risk posed. A non-exhaustive list of factors was identified in the Questionnaire. The NCAs were also asked to identify other risk factors they used which were not already listed by the AG.

261.The answers described a general, but not total, consensus on the core risk factors. However, there was no overall consensus on what additional factors should be included in the model.

262. As an illustration, a qualified opinion of an auditor is considered a risk factor in all of the 29 NCAs.

263.But, for example, only 15 of 29 NCAs indicated that a change in an auditor before the end of its mandate would be a factor that would influence a selection based on a risk of a misstatement. The AG considers that this example should be a factor that is taken into account by all NCAs when undertaking this assessment.

264.The AG is of the opinion that risk factors that are objectively relevant to the risks should be included by an NCA when undertaking an assessment of the risk. There should be no divergence of practice between jurisdictions on what factors are relevant.

265.There are, and there should be, distinctions drawn by NCAs between those factors on which information should be routinely gathered for review and analysis to inform the risk assessment,(e.g. auditor's opinions, financial ratios) and those factors which are not systematically sought but that may be relevant if they arise (e.g. whistle-blowers).

266.Naturally, the result of the risk assessment may differ from NCA to NCA and from jurisdiction to jurisdiction, even though they operate the same general model.

267.So, the AG is of the opinion that NCAs should always seek and have up-to-date information on the following risk factors to inform their selection of issuers for examination:

Table 5 – risk factors on which information should be routinely gathered

Factors influencing the assessment of a risk of a misstatement	Factors influencing the assessment of the impact of a misstatement
IPOs	size of issuer e.g. market capitalisation
type of industry/sector of issuer	type of industry/sector of issuer
qualified opinion of the auditor	type of securities
emphasis of matter of the auditor	share trading activity
change of auditor before the end of its mandate	
complexity of business model and/or accounting	
financial ratios (e.g. decrease of assets or net results, net debt, weight of the intangible etc.)	
credit risk (e.g. rating)	
prior enforcement issues identified with issuer	
business/economic trends	

268. In addition, the AG believes that the fact that some NCAs select for examination financial statements of new issuers (e.g. IPO – before or after its admission to trading) is commendable. The existing timing limitations in the prospectus legislative framework in relation to the approval of a prospectus may in fact affect the ability of enforcers to look at financial statements included in a prospectus. The AG therefore considers that financial statements of new issuers should be selected for examination, at the latest, after the securities are admitted to trading to ensure that potential infringements do not remain unsolved after the admission of securities to the regulated market. The admission of securities to trading will often be the first time that an issuer is using IFRS. Of course, this should not preclude NCAs carrying out examinations during the IPO process.

269. The AG is also of the opinion that NCAs should always take into account any information that might be available on the following risk factors to inform their selection of issuers for examination.

Table 6 – risk factors which are always relevant if information is available

Factors influencing the assessment of a risk of a misstatement	Factors influencing the assessment of the impact of a misstatement
Issues identified in the issuer's internal controls	Number and nature of investors
Key events of the year (e.g. acquisition, profit warning, restructuring)	
Risk profile of issuer's management	
Ethical standards of management (e.g. compliance with codes of ethics)	
Experience of/changes in management	
Ability/willingness of management to apply relevant financial reporting framework	
Whistle-blowers	
Market intelligence/information	
Third party signals	
Incidence or existence of relevant of unusual related party transactions	

270. In the opinion of the AG none of the factors listed are, irrelevant. The weight of individual factors might differ depending on the circumstances, but nevertheless the information should be taken into account.

271. In relation to the assessment of the impact of a misstatement, the factors identified by the AG are all such that information should be periodically available to the NCA when considering the selection and making the assessment of the risk.

272. For example, 9 NCAs (BG, CZ, FR, LT, LV, PL, RO, SV and UK) do not consider any factors in relation to the behaviour and/or the experience of the issuer's management in their assessment of the risk of misstatement. It is not clear what type of information might be gathered by an NCA here, or what considerations need to be taken into account. This is something that could be expanded upon by ESMA. For example, there may be some objective evidence in relation to the adherence, or otherwise, to applicable corporate governance codes.

Application of risk factors

273. Within the partial model recommended above, the AG identified the risk factors potentially emanating from the type of industry within which an issuer operates. Another risk factor relates to the business or economic trends that may affect a business, a market, or a country.

274. The experience of the AG was that in many NCAs the application of risk factors in the process of selection was limited to an assessment of issuer-specific items on which the NCA had information. There is little work done on analysing and assessing the business and economic risks such as environmental factors for a group of issuers, factors that might put pressure on issuers thereby increasing the risk of misstatement. This should be part of the risk profile of an issuer, referred to in the Guidelines as something that should be taken into account in the assessment of risk of misstatement.

Risk of impact and risk misstatement

275. Although Guideline 5 is not prescriptive on the weight that each component of risk (risk of impact or risk of misstatement) should have when designing/implementing the selection model, the AG believes that not only both risks should be taken into account, but also their weights should not be unbalanced.

276. Even if not formally required by the Guidelines, in view of the numerous factors used by NCAs in their selection methods, implementing some weightings in the risk approach may allow NCAs to focus their selection on the key risk elements. However, no consistent approach seems to exist amongst NCAs. ESMA may consider further analysing whether such a weighting approach in the factors influencing selection of issuers might be beneficial.

277. When assessing which risk factors might be included in the selection model or in the weightings given to each factor, NCAs should seek to ensure a general balance in the weighting between the risks of misstatement and the risk of impact of a misstatement. No components should be marginalised. To give too much weight to the risk of misstatement implies the risk that NCAs focus too much on smaller issuers representing a small impact on the market, whereas too much focus on the impact may mean that small issuers are not looked at all.

Proportions of issuers selected based on risk, based on rotation/random selection

278. The AG believes that it is not possible, nor is it desirable, to set a minimum or maximum proportion of the selection that comes from either of the selection methods: risk and rotation/random. However, the AG finds that it is not a good practice if the proportions are too unbalanced as this would not allow NCAs to compare the findings/outcomes of the examination between the two approaches, or to conclude on whether the risk model in place is functioning correctly or well.

279. Generally, it is expected that the detection of material misstatements is more likely for issuers selected based on risk than issuers selected on rotation/random basis. If this is not the case (i.e. more relevant issues are found in the rotation/random based issuers), then the enforcer should reassess its risk based model, and where necessary recalibrate it to ensure that it captures the most relevant risks for its market.

280. In practice (as can be seen from Figures 3A and 3B), there is a wide divergence amongst NCAs, although the proportions between risk-based and random/rotation are, on average, reasonably balanced at 56% to 35%.

Other recommendations

281. Finally, NCAs should always keep under review the list of issuers that have not been examined in the recent past in order to ensure that the selection model does not routinely omit some important aspect of the market or a subset of issuers.

Supervisory Briefing

282. The Guidelines envisage a “supervisory briefing on selection” by ESMA in this area and state that the information gathered on selection criteria “will serve as a basis for any further potential developments that may be envisaged in relation to the criteria used for the selection methods”. The recommendations of the AG on the selection criteria, as well as weightings given to each factor/component, could be a starting point for ESMA for working on an amendment to the Guidelines, or on a supervisory briefing as envisaged by the Guidelines.

Modifications to Guideline 5

283. In addition to the recommendations described above, to strengthen the harmonisation of practices within the limits of Guideline 5, the AG is of the view that some of its current principles might be amended or complemented. These are referred below:

Coverage of the Selection model per year

284. The AG considers that ESMA could further investigate if this should be a relevant feature of all selection models with a coverage period of the whole population of issuers, such as 10 to

15 years To date, on average NCAs ensure an examination rate/total of issuers of approximately 25% (see Table 3).

Selection by rotation and/or randomly

285. The Guidelines only require that NCAs select some issuers based on risk factors and others based on either rotation or random sample. The Guidelines also require, however, that "there should always be a possibility of an issuer being selected for review" (paragraph 48). If a rotation system is used (without a random element of selection), in addition to risk factors, then this requirement will not be met. Rotating issuers for selection means that, absent some specific risk factor to prompt selection, an issuer that has been reviewed in the recent past is not available to be selected again until the rotation has run its course. That is, in the absence of a random element there is no possibility that an issuer will be selected for review two years in a row.

286. The random approach alone may allow a significant portion of the market not being subject to an examination at all.

287. The AG believes that both random and rotation should feature as part of a selection model in addition to the risk based selection. The presence of these non-risk-based selection methods is required by the Guidelines to ensure that there is sufficient coverage of the market. The Guidelines also require that there should not be "a possibility that an issuer would be able to estimate when its financial statements were likely to be selected". Even if the random element is a small proportion of the total selected for examination, this feature would ensure a sufficient level of uncertainty to meet the requirement of the Guidelines. The AG recommends, therefore, that ESMA clarifies this in the Guidelines.

288. The information gathered during this peer review shows that half of NCAs already have in place both approaches (random and rotation) in their selection model.

289. The AG believes that some aspects of the model recently implemented by the Financial Reporting Enforcement Panel in Germany represent a good example of an appropriate mix of risk-based, rotation and random selection. This model is described in summary in Annex 4.

4.3 – Guideline 6

4.3.1 – Guideline 6 – Examination procedures

General Guideline

As part of the enforcement process, European enforcers should identify the most effective way for enforcement of financial information. As part of the ex-post enforcement activities, enforcers can either use unlimited scope examination or a combination of unlimited scope and focused examinations of financial information of issuers selected for enforcement. The sole use of focused examination should not be considered as satisfactory for enforcement purposes.

Supporting Guidelines

Examples of examination procedures of an issuer's financial information include the following:

a) Scrutinising the annual and interim (consolidated) financial reports, including any financial report published subsequently;

b) Asking questions of the issuer, usually in writing, in order to better understand: the areas of the issuer involving significant risks, the significant accounting issues which arose in the year under review, how the issuer treated the significant accounting issues, and how the issuer's chosen accounting treatment complies with the relevant reporting framework;

c) Posing questions to or having meetings with the auditors of the issuer to discuss complex issues or issues of interest, depending on the needs of the examination process;

d) Referring matters to the bodies responsible for the audit and/or approval of financial information, such as a supervisory board or audit committee;

e) Identifying accounting issues inherent in the issuer's industry, available, for example, from the EECS database;

f) Engaging external experts, where considered necessary, to assist in providing industry or other specialist knowledge;

g) Exchanging information concerning the issuer with other departments within the enforcer, for example, where the issues may concern market abuse, takeovers or major voting rights;

h) Engaging in on-site inspections.

Further examples of procedures considered relevant as part of the examination process include:

a) Reviewing other relevant financial information made available by the issuer;

b) Reviewing recent press articles and accounting commentaries concerning the issuer and its industry;

c) Comparing the issuer's financial reports to those of its competitors;

d) Comparing key financial relationships and trends within the issuer's financial reports, both in the year under review and for prior periods.

Enforcers should ensure that examination procedures undertaken are sufficient in order to achieve an effective enforcement process and that the examination techniques used and the related conclusions of the review of the financial information of issuers selected as part of the enforcement process are documented appropriately.

…

4.3.2 – Summary of Findings

290. Guideline 6 of the Guidelines is not prescriptive on the procedures to be undertaken by enforcers when carrying out the enforcement of financial information. Instead, the guideline enumerates the procedures that should be considered by enforcers when reviewing financial information and gives NCAs the freedom to use them as long as they ensure an effective enforcement of financial information. The guideline also requires the enforcers to document appropriately the procedures undertaken as well as the related conclusions.

291. Against this background, the AG sought to identify practices that are routinely followed by NCAs in order to assess if there was a lack of convergence or if there were opportunities to recommend further work by ESMA to promote the effectiveness and efficiency of enforcement. This identification of practices took significant advantage from the findings and conclusions of the onsite visits to the seven jurisdictions. Enforcement of financial information is still conditioned to a certain degree by the powers conferred to NCAs in charge of ensuring the compliance of the TD requirements and the relevant financial reporting framework.. Nevertheless there are practices that may be recommended without going beyond the legal framework. They may, however, also go further than the requirements/principles included in the Guidelines as long as, enforcers still take into the Guidelines into account when confirming or amending the procedures in place.

292. In response to questions by the AG set out in the Questionnaire, NCAs gave summary descriptions of their examination procedures. Some NCAs seem to have a focus on formalities in the financial statements and look for obvious errors and mistakes. Many of the NCAs use disclosure checklists to identify missing information/disclosures. Other NCAs seem to focus more on material infringements and focus on the most important matters for the issuer and the financial statements.

293. According to the answers to the Questionnaire, all NCAs use unlimited scope examinations. In addition, all but three (HU, LV, MT) use focused examinations. In one case, one NCA (SE) only uses focused examinations for follow up reviews (which are not examinations *per se*).

294. 14 NCAs (AT, BE, DE, EE, EL, ES, FR, IT, LT, LV, LU, NO, SE, UK) consider that unlimited scope examination is the default approach.

295. The guidelines do not set limits or ratios on the use of each approach. However, they explicitly note that the sole use of focused examinations should not be considered as satisfactory for enforcement purposes.

296. The following Figure provides an overview of the data received from NCAs in response to questions about the number of planned examinations by type (e.g. unlimited scope examinations or focused examinations):

Table 7: proportion of examinations that are 'focused examinations'

	0%	1%-25%	26%-49%	More than 50%	n/a	total
Number of NCAs: 2014 annual reports	7 EE, HU, LT, LV, MT, SI, UK	10 AT, BG, DE, EL, FR, IT, LU, PT, SE, SK	8 BE, CZ, DK, ES, IS, NO, PL, RO	4 CY, FI, IE, NL		29
Number of NCAs: 2015 interim reports	9 EE, HU, LV, NL, NO, RO, SI, SK, UK	5 AT, BG, DK, EL, IT	2 ES, PL	7 BE, CY, DE, IE, LU, PT, SE	6 CZ, FI, FR, IS, LT, MT	29

Number of NCAs: 2015 annual reports	7 CZ, EE, HU, LT, LV, LU, MT	10 AT, BE, DE, EL, FR, NO, SE, DI, SK, UK	9 BG, ES, FI, IS, IT, NL, PL, PT, RO	3 CY, DK, IE		29

297. The existence of a specific issue or a risk factor is an important aspect when deciding to undertake a focused examination for 22 NCAs (BG, CZ, CY, DE, DK, EE, EL, ES, FI, FR, IE, IS, IT, LT, LU, NL, NO, PL, PT, SI, SK, UK. Some NCAs gave details on what they consider a specific issue or a risk factor. Criteria listed include amongst others (in no particular order):

(a) ESMA Common Enforcement Priorities
(b) Third party signals (from media; other regulators; complaints; whistle blowers)
(c) Qualified opinion in auditors' report
(d) Key financial events of the year
(e) New IFRS standards
(f) Overall quality of financial statements or prior enforcement issues identified with the issuer
(g) Indicator EDF (Expected default frequency), calculated according to the model KMV provided by the service Credit Edge Plus of Moody's, weighted by market capitalization
(h) NCA own priorities
(i) Systemic risk (mainly banks)
(j) Cyclical factors
(k) Industry-specific issues, such as accounting policies and accounting similar transactions, or accounting of similar transactions by issuers of different industries
(l) Complexity of financial statements (e.g. credit institution)
(m) Market capitalisation
(n) Type of industry/sector of issuer
(o) Incidence of related party transactions
(p) Business/economic trends
(q) Date of last unlimited scope examination

298. The AG notes the diversity in practice on the factors used by NCAs when deciding to carry out focused examinations. To reduce this diversity, it may be appropriate to define a list of factors to be considered by enforcers when deciding on the type of examination.

Scope of enforcement of financial information

299. Although the Guidelines should be applicable by enforcers when examining financial statements drawn up in accordance with the TD, enforcers may also use the guidelines when enforcing financial information published by issuers in accordance with *other* national requirements.

300. In this respect, while all NCAs examine annual consolidated financial statements which are drawn up in accordance with the IAS regulation, not all NCAs examine annual separate financial statements, or interim consolidated financial statements. In this respect, it is noted that:

    a. 3 NCAs (FI, HU, PT) do not examine annual separate financial statements, when the consolidated statements are reviewed;

    b. 3 NCAs (CZ, MT, SI) do not examine interim consolidated financial statements.

301. Although the AG considers that emphasis and priority should be given to consolidated financial statements, as these are what most investors use to base their investment decisions, consolidated financial statements are drawn up in accordance with common accounting framework in Europe and are subject to audit. Nevertheless other requirements should not be overlooked, in particular when these are relevant for investors. For instance, in most countries the distribution of dividends is calculated on the basis of separate annual financial statements. An enforcer must also ensure that separate financial statements are also reviewed, because there may exist in these documents important financial information not available elsewhere. The AG takes note of the diversity in practice that exists when defining the scope of the enforcement of financial information. As such, the AG recommends further harmonisation in this area to ensure that important aspects of financial statements are not overlooked.

Process of examination of financial statements

302. The AG observes that practices vary from one NCA to another, sometimes significantly. Guideline 6 is not prescriptive, but rather includes a list of elements which might be considered as part of the examination, or ways in which examinations can be carried out. As such there are no features of an examination that must exist in order to ensure that an NCA complies with the Guidelines. Overall however, in order to comply with the Guidelines, the procedures should be sufficient to ensure that an examination is effective.

303. The AG asked NCAs to describe the methods that they use in carrying out their examinations of financial statements to see what lessons could be gleaned from a desk based review of procedures in place in NCAs.

304. A good practice seen in a number of NCAs (BE, CZ, DK, FI, FR, PL, SE) is that the EFI team sometimes copies to the auditors of the issuer the letters sent to the issuer on questions raised.

For instance in the case of IT, Consob frequently asks questions to auditors to gather certain relevant information.

Information examined as part of an unlimited scope examination

305. The AG is of the view that the procedures should ensure that when financial statements are being examined, a suitably experienced and qualified person is assigned the task. This person should be given sufficient time to carry out a first review of the available information, which should extend beyond the financial statements themselves and should include at least: the management reports; the auditor's opinion; any recent media commentary; any available market analysis; any record of the enforcer's prior examinations and the issues raised before.

306. The AG asked NCAs whether the enforcers maintain a record of prior examinations of an issuer. 23 NCAs (AT, BE, CZ, DE, DK, EL, ES, FI, FR, HU, IT, LT, LU, LV, MT, NL, NO, PL, RO, SE, SI, SK, UK) reported that they have a database of the prior decisions and actions taken, whereas 6 NCAs (BG, CY, EE, IE, IS, PT) indicated not having a database.

307. 25 NCAs (AT, BE, CY, CZ, DE, DK, EE, EL, FI, FR, HU, IS, IE, LV, LU, MT, NL, NO, PL, PT, RO, SK, SI, ES, UK) confirmed the use of a work instruction/checklist containing considerations for financial statements examination and instructions for the practice of examination. 4 NCAs (BG, IT, LT, SE) reported not to have such a tool.

Distinction between 'desk-top' examinations and more intensive examinations

308. In the Questionnaire, the AG requested data from NCAs on whether they made a distinction between 'desk-top' examinations and more intensive examinations'. Desk-top examinations are those carried out solely by an analysis of the published financial information without having any recourse to the issuer. If NCAs analyse management reports (which accompany financial statements) or press-releases with financial information, and do not ask questions to the issuer, this should be assessed as being a desk-top review. An examination is generally 'more intensive' than a 'desk top' examination when the NCA enters into communication with the issuer for understanding the financial statements.

309. 12 of the respondents (BG, EE, FI, HU, IE, IS, IT, LT, NO, SE, SK) make a distinction between these type of examinations whereas 17 (AT, BE, CY, CZ, FR, DE, DK, ES, LU, LV, MT, NL, PL, PT, RO, SI, UK) do not.

310. Of those respondents who make such a distinction, in 6 cases all issuers selected for examination were selected for more intensive examinations (BG, EE, LT, FI, HU, SE). In two cases, this proportion amounted to two thirds of the issuers selected (IE, IT) and in three cases there is a range between 20 and 33% (IS, NO, SK).

Industry accounting issues

311. It is important for the NCAs to be aware of the issues that might arise or have arisen in the industry of which the issuer is a participant in order to be able to do a proper review. 6 NCAs (EL, ES, FI, FR, IE, UK) always have reference to industry relevant accounting issues as part of their review. 8 NCAs do this frequently (AT, CZ, DE, DK, EE, LU, NL, NO); 6 NCAs said that this is something that they do only sometimes (BE, CY, IE, IT, PL, SE), 7 rarely (HU, LT, LV, PT, SI, SK, RO) and 2 never (BG, MT).

312. These issues can be sourced sometimes in the EECS, which is not only a valuable source of training, but also a valuable and perhaps necessary tool in ensuring the access of enforcers to up to date information on emerging issues relevant to their examinations or matters identified as part reviews of issuers in the same industry.

313. All NCAs except for 4 (CY, CZ, IS, PT) hold regular meetings amongst EFI staff to exchange information about new decisions related to the application of accounting principles. 21 NCAs exchange information in written format among examiners about new decisions of principle concerning examining financial statements.

Quality review

314. The output of the first review should always be reviewed by another suitably experienced and qualified person. All 29 NCAs confirmed that the comments prepared by the examiner are reviewed by another person.

315. This second review does not have to be a full review of the same financial statements. The second reviewer should always bear in mind that there is a possibility of something significant being overlooked during the first review. The second reviewer should therefore be at least familiar with the issuer and the key risks associated with that issuer.

Onsite inspections

316. A rare feature of examinations of financial information is the use of onsite inspections. Only 2 NCAs (HU, PL) carry out on-site inspections on a frequent basis. 3 NCAs (BG, IT, LT) do so occasionally. The AG understands that enforcement of financial information can make good use of the findings of onsite inspections, but it also believes that it can be effective without using such a resource-intensive tool.

Assessment of available information

317. The enforcer should be ready and able to challenge the judgements made by issuers when preparing their financial statements.

318. Consideration should be given to engaging outside expertise where possible and relevant. NCAs rarely or never engage experts to assist them during the examination of financial statements. 7 NCAs (DE, DK, IE, LT, NO, SE, UK) occasionally call for expert assistance. Some NCAs have the opportunity to get the benefit of an expert advisory panel (EL, NO, UK).

Procedure in place regarding submission of emerging issues to EECS

319. 23 NCAs reported that there is a procedure in place regarding the submission of emerging issues to EECS.

320. 6 NCAs (EE, MT, PL, SI, BG, HU) respond that they do not have such a procedure.

321. Most of the NCAs that have a procedure, state that they follow ESMA Guidelines on enforcement of financial information and/or the Methodological Framework issued by ESMA. Some NCAs respond that they consider going to EECS if they need the feedback/comfort from EECS to be able to enforce an issue.

Length of time for an examination

322. The AG considers that an NCA should always be able, depending on resources, to open an examination of the financial statements of an issuer and to to carry on examination work unconstrained by deadlines. Such deadlines may limit the number and quality of questions that could be raised by the EFI team. For example, in IT Consob may only challenge the annual accounts within six months of the entry of the annual accounts, or the consolidated accounts, in the company register. That sets an unnecessary limit to Consob's examinations.

323. 11 NCAs (BG, CZ, EE, FR, HU, IT, LV, LT, MT, PL, PT) indicated that there is a date by which an examination must be opened and/or concluded.

Follow up

324. All requirements imposed from an NCA following an examination should be followed up by the EFI team to ensure their implementation in the next financial statements.

325. Follow-up examinations are performed by the majority of NCAs either automatically (18 NCAs: AT, BE, CZ, DE, DK, FR, EL, ES, IE, IS, LT, LU, LV, MT, NL, NO, PT, UK) or frequently (9 NCAs: CY, EE, FI, HU, IT, PL, SK, SE, SI).

Issuing alerts or other publications to assist issuers in preparing financial statements

326. 23 NCAs indicated that they issue alerts or other publications to assist issuers in preparing financial statements. 6 NCAs (AT, BG, EE, DE, RO, SK) reported that they do not issue any

such communications. Other NCAs (e.g. AT, FI, FR, DE, UK) also engage in end-of-year communications with the market e.g. seminars, round-table discussions, presentations, in order to communicate issues arising to issues and auditors.

4.3.3 – Analysis and recommendations

327. Guideline 6 provides enforcers with a list of examination procedures that may be undertaken by NCAs when performing focused or unlimited scope examinations. The results of the Questionnaire as well as of the onsite visits have shown that there is a significant diversity in how these procedures are applied in practice. For instance, some NCAs limit their examination procedures to the review of disclosures; others focus mainly on measurement and recognition issues. Some consider that unlimited scope examinations should require interaction with issuers, where others do not. Some engage with the boards of issuers, others involve as well the audit committees and the auditors with different degrees of frequency, based on the importance of the issues raised or stages of the process. Some engage regularly with external parties to support their decisions - some of these are bodies set up specifically to assist NCAs, whereas others are contracted on ad-hoc basis.

328. Part of this diversity may be explained by the different powers each authority was conferred through the transposition of the TD or by the type of examination carried out. The AG believes nevertheless that analysis of the responses to the Questionnaire alone cannot determine which procedures should (or not) be carried out in each type of examination by all authorities.

329. The onsite visits provided the AG with in depth information about the procedures that the selected NCAs undertake when performing examinations, their rationale as well as the possibility to challenge these procedures. However, the onsite visits findings are not representative of procedures performed by the other non-visited authorities as each authority has in place its own examination model and their own internal procedures.

330. The AG is not of the view that the examination procedures can be fully harmonised at the European level as they depend on the facts and circumstances: type of examination, issues raised, powers at the disposal of the authorities, time constraints and resources available, etc. However, the AG is also of the view that the current Guideline 6 does not fulfil the objective of reducing the diversity in practice.

331. The AG does not believe that one-size fits all, however, but it believes that the principles included in Guideline 6 could be improved. For this purpose, the AG considers the following recommendations as something ESMA could consider as a starting point for such work. Whilst improvements to Guideline 6 are pending, NCAs could also consider these recommendations when amending, supplementing or incorporating their supervisory practices.

Focused vs unlimited scope examinations

332. While the guidelines do not prescribe as to when should focused examinations be used or any ratios/proportion when compared with unlimited scope examinations, the AG reiterates that the sole use of focused examinations do not lead to an effective enforcement of financial enforcement. As such, unlimited scope examinations should be by default the examination procedure when carrying out the enforcement of financial statements.

333. This does not mean that, when reviewing the financial statements of an issuer, the enforcer needs to ask questions in relation to all the standards applicable to the financial statements of an issuer. Consideration should be given to materiality of the items in the financial statements of an issuer and/or the risk of infringement/complexity of a specific area/standard.

334. In this regard, the AG considers that when reviewing financial statements, an examiner in charge of an examination should identify the issues relevant to a particular issuer that are, or should be, given priority for examination. The examination should then focus on those core issues.

335. The AG acknowledges that using focused examinations when carrying out enforcement usually requires fewer resources, and they give the possibility to focus on a specific risk area of the issuer (e.g. a significant acquisition). The AG believes there should be further guidance either as an amendment to Guideline 6, or through the development of a supervisory briefing) proposing criteria/factors that could be considered by European enforcers when deciding to use focused examinations.

336. These factors could include (but might not be limited to) the following situations:

a. Emphasis of matter, or qualified opinion of an auditors;
b. Thematic review of a specific accounting treatment/sector/geography/standard;
c. ECEP/ National enforcement priorities;
d. Identification of a concrete risk/third party signals (from media; other regulators; complaints; whistle blowers);
e. Date of last unlimited scope examination
f. Type of financial statements (e.g. interim financial statements, separate annual financial statements)
g. Examination of prospectus before its approval

337. At the same time, unless exceptional circumstances occur, or an NCA is performing a study on the application of new standard, or a thematic review, focused examinations should not form too great a proportion of the total examinations carried out in a given year. The AG believes that a limit on focused examinations of no more than one half of all examinations might be a reasonable starting point.

Areas of focus

338. Although the Guidelines do not define what is an effective enforcement process, how to assess it or how to achieve it, the AG considers that overall the enforcement process is effective if the procedures undertaken are sufficient to cover all the main areas of the applicable financial reporting framework. The AG believes that the examination procedures should be sufficient to assess whether issuers comply with the recognition, measurement, presentation and disclosure principles and that financial statements do not contain material misstatements.

339. The AG observed that some NCAs only perform an examination based on disclosure checklists. While disclosures checklists may be used to work on the completeness of the information included in financial statements, the AG strongly believes that enforcement should not rely only on the use of disclosures checklists. Enforcers should have a critical look at the disclosures to ensure that they are informative (e.g. not boiler plate), provide sufficient and useful information and challenge them when information contained therein is not reasonable (most notably the assumptions used). But an effective enforcement of financial information cannot be achieve with disclosures checklists.

340. While the AG acknowledges that challenging, for example, issuers' judgements or assumptions used in recognition and measurement entails an important extra workload, the AG also believes that judgements and assumptions should be enforced when they are not reasonable and/or supported. As such where this is identified, issuers should be requested to change their assumptions with a consequent impact on recognition and/or measurement of assets, liabilities, revenue or expenses. In some situations, it might not be enough to require further disclosures. In this respect, the AG highlights the work performed by the Norwegian FSA when challenging in the measurement of assets and liabilities of issuers as good practice.

341. Enforcers should not, at the same time, disregard the importance of contributing to the quality of the disclosures provided to the market and ensure that the financial statements are presented in accordance with the principles included in the relevant reporting framework. By ensuring a correct presentation of financial statements, European enforcers are contributing to improve the comparability of financial statements. When reviewing disclosures, enforcers should consider the relevance and materiality of this information to avoid disclosure overload by issuers. However, when encountering minor issues on disclosures (e.g. in areas not material), enforcers should contribute to the improvement of financial reporting by pointing to these issues without a need to further inquire. In this respect, the AG considers that the approach followed by the FRC in promoting the quality of the disclosures to the market is a good practice.

Desktop examinations

342. The AG notes that several NCAs use desktop reviews as part of their examination procedures. The AG acknowledges that desktop reviews can be useful in identifying areas of focus or issues to pursue. However, the AG also believes that their use should be limited as it cannot be considered as an in-depth review in most cases. Taking into account that the AG believes that

unlimited scope examinations should cover all relevant areas (recognition, measurement, presentation and disclosures), it is important that enforcers should be encouraged to ask questions of issuers even without a suspicion of misstatement.

343. Effectiveness of enforcement is unlikely to be achieved where enforcers are reluctant to contact issuers to ask for further information in particular when measurement and recognition issues are identified. The AG suggests that ESMA should consider reviewing the Guidelines in order to incorporate some form of minimum mandatory standard for examinations as well as establishing limits for the use of desktop examinations without further work.

Raising questions

344. The procedures for examination should encourage examiners to put questions to issuers in areas of key risk even if, in the financial statements, there is no obvious error observed. NCAs should put questions to issuers even in the absence of specific suspects that an error exists.

345. Questions raised by an NCA to an issuer on the production of the financial statements should be presented so that the significant issues are clear, and that issues of disclosure quality or presentation are separate.

346. The initial communication with an issuer, setting out issues and questions raised, should be sent to the persons within the issuer responsible for the statements signed in accordance with the TD and/or the key management, as well as to executive officers, to ensure that there is full transparency within an issuer. Thereafter, the communication can be done with the executive officers of the issuer.

Scope of examinations

347. The scope of the Guidelines includes harmonised documents i.e. those documents published by issuers under obligations set out in the TD. Although the AG considers that Consolidated Financial statements as mentioned before should be the primary focus of attention of European regulators, it also considers that enforcers should not disregard other documents whose publication is required by the TD and which may be used by investors to take their investment decisions. The examination procedures in place should try to cover to a certain extent all the financial information required to be published by issuers, i.e. consolidated, separate, annual and interim financial statements and the management report.

348. The AG also considers that different approaches may be undertaken depending on the relevance of the information contained in the documents published by issuers. For instance, the enforcer may consider to have a unlimited scope examination to the annual consolidated financial statements and a focused scope examination to annual separate financial statements- for instance to ensure that information on equity or dividends distribution is correctly calculated/presented and vice versa. Enforcers should not however, systematically scope out any

of the “harmonised document” since the risk that these documents contain relevant misstatements exists.

349. Enforcers may also consider, in a given year, conducting a thematic study in a specific area outside the consolidated financial statements (e.g. management report). When infringements are detected these should be communicated to issuers.

Quality review

350. Enforcers should have in place/implement an adequate quality review of the work performed by an examiner. As far as practicable, the quality review person should not be directly involved in the examination (to ensure the independence of the review) but should be professionally skilled and sufficiently experienced with the relevant financial reporting framework to ensure that the (s)he can cover the most relevant areas, discuss the main findings, challenge the conclusions reached by the examiner.

351. Although not mandatorily required, and depending on the size of the EFI team, the quality reviewer should review relevant documents examined by the person responsible for the case, have access to all communications exchanged with issuers and, where necessary, participate in physical meetings where the technical issues are discussed. There should be evidence of the work carried out by the quality reviewer. The documentation of a case file should provide evidence of the quality review performed and, where applicable, include information on divergent views or other aspects not considered in the examination.

352. The quality review could also provide an opinion on the examiner’s proposal and on the conclusions taken by the examiner in relation to a specific examination in accordance with Guideline 6.

Documentation

353. Although Guideline 6 is not prescriptive about what information should be included in the file, as this is dependent on the type of examination carried out (e.g. unlimited scope examination vs focused examination) or on the examination procedures undertaken by enforcers, the guideline gives a clear guidance that this documentation should appropriately address the examination techniques used and the conclusions reached. The documentation in the file should be sufficiently detailed to enable someone not involved in the examination to understand the work performed by the examiner, the quality review undertaken, the conclusions reached and its rationale.

354. In case of unlimited scope examinations, the documentation should, at minimum, cover evidence of the review carried out by the examiner and the quality reviewer, communication exchanged with issuers/ auditors/ auditor’s committee (emails, letters), evidence of the consul-

tation of EECS database, a memo analysing all significant issues raised with issuer, a proposal/conclusion from the examiner on each one of the topics raised with the an issuer, information on the outcome of the examination undertaken including the rational for this proposal.

355. In addition to the procedures above, where applicable, the documentation of an examination could also contain:

a. evidence of analytical procedures undertaken by enforcers (particularly relevant in relation to measurement issues - e.g. spreadsheets);
b. evidence of comparisons with issuer's competitors;
c. documents gathered on onsite inspections;
d. documents received from external experts (either as part of the enforcement system in place e.g. experts panels available to the enforcer, or external parties e.g. opinions from auditors, experts;
e. minutes of physical meetings with issuers;
f. information on whether issues should (or not) be submitted to EECS, evidence of the outcome of the discussions and, where applicable, how the outcome of the discussion in EECS was taken into account. Similarly, when the outcome of the discussion in EECS was not followed, the file should contain the relevant explanations for this fact.

356. Where, in accordance with the internal procedures, the decisions/conclusions need to be validated/confirmed by the Director/Board of the NCA, the file should contain evidence of this validation/confirmation. Where the decisions are not confirmed or validated, the file should provide explanations of this departure.

EECS

357. The AG strongly believes that the discussions in EECS and the EECS database provide NCAs with useful information when analysing cases and/or taking decisions. NCAs can take advantage of the experience of other NCAs when dealing with similar cases, such as information about the issues, the arguments presented by the issuer / the enforcer, information about the decision taken and in some cases on the information gathered. EECS minutes provide information about the discussions held during the physical meetings, notably, the views/experiences of other NCAs (not directly dealing with the case)whether they agree with the issuer, the enforcer and/or whether there are mixed views and if they believe that the case is not enforceable. In most cases, EECS minutes provide an overview of the discussion and a conclusion based on the comments brought forward by other enforcers.

358. AG believes that, in some jurisdictions, the engagement with EECS should be strengthened. Members who are not attending, should make an effort to do so; members who attend should foster internal discussions to ensure that all members of the EFI team take benefit of the knowledge shared in the EECS. In this respect, AG recommends the EFI teams to organise

internal meetings before and after the physical meetings take place. Meetings before allow the EECS representative to provide relevant feedback about the experiences encountered by the NCA in its jurisdiction to the group during the physical meetings. Meetings after allows other members of the EFI team to obtain information about the discussions held and their outcome. This is important also because this outcome has to be taken into account when taking a decision also in other similar cases.

Database

359. Regardless of the size of the EFI unit, all NCAs should keep record of all cases examined, main issues raised with issuers and whether the accounting treatments followed by issuers were accepted or not. This record allows members of the EFI unit not involved in a given examination to take advantage of the work performed / analysis made by other colleagues and to ensure consistency on the approaches and on the decisions taken.

4.4 – Guideline 6 cont.

4.4.1 – Guideline 6 - outcomes and effectiveness

Guideline 6 cont.

...

The conclusions of an enforcer following the examination procedures can take one of the following forms:

a) A decision that no further examination is needed

b) A decision whereby an enforcer accepts that a specific accounting treatment is in accordance with the relevant financial reporting framework and no enforcement action is required

c) A decision whereby an enforcer finds that a specific accounting treatment is not in accordance with the relevant financial reporting framework, whether it constitutes a material misstatement or an immaterial departure and whether an enforcement action is required.

4.4.2 – Summary of findings

Actions taken following review of financial statements

360. All 29 NCAs confirmed that, following the examination procedures, the conclusions of an enforcer can take one of the following forms:

a) A decision that no further examination is needed
b) A decision whereby an enforcer accepts that a specific accounting treatment is in accordance with the relevant financial reporting framework and no enforcement action is required
c) A decision whereby an enforcer finds that a specific accounting treatment is not in accordance with the relevant financial reporting framework, whether it constitutes a material misstatement or an immaterial departure and whether an enforcement action is required.

361. The AG sought information from the NCAs on the enforcement actions taken following decisions adverse to the issuer. The Guidelines require that NCAs should be able to take at least certain actions including: reissuance of the financial statements; the issuance of a corrective

note; corrections in future financial statements; or writing to an issuer about an immaterial departure from the relevant standards stating that it may pose a significant risk in the future.

362. While the specific Guideline that requires these actions is outside the scope of this peer review, the AG nevertheless requested information from NCAs to see if there are issues, in any jurisdiction, that undermine the effectiveness of the EFI function. The AG has been requested to review and assess the effectiveness of the provisions under review and the level of supervisory convergence. In order to do this, the AG believes that it is necessary to look at the outcomes of the examination process, as well as at the inputs into that process in order to determine whether the process is working, and if so, if it is effective. So, the AG sought statistics on the number and kind of actions taken by NCAs.

363. Table 8 shows the data reported by NCAs on the actions taken following the reviews within the scope of this peer review. The AG analysed the examinations carried out for a given review period to see the proportion of examinations completed on the 2014 and 2015 annual financial statements that resulted in actions being taken.

364. The AG emphasises that the different actions referred to in the above table are not understood with full consistency between NCAs and that corrections in future financial statements include recognition, measurement and disclosures issues.

Table 8: number and type of actions taken over the review period:

	Total examinations completed over review period	**Actions taken:**	Reissuance	Corrective Note	Correction in future financial statements	**Total of actions taken**	Letter about immaterial departure (Paragraph 59)
AT	127		0	19	0	19	11
BE	84		0	3	10	13	0[15]
BG	80		0	80	0	80	0
CY	23		0	0	2	2	5
CZ	12		1	2	4	7	0
DE	122		0	6	0	6	29
DK	54		0	6	18	24	4
EE	26		0	0	0	0	0
EL	38		9	0	19	28	0
ES	188		5	32	7	44	28
FI	56		0	1	13	14	16
FR	197		15	2	80	97	40
HU	9		0	0	9	9	0
IE	42		0	0	27	27	0
IS	15		0	1	0	1	0
IT	110		1	11	0	12	20
LT	5		0	0	5	5	0
LU	120		0	0	22	22	44
LV	27		3	0	6	9	0
MT	8		0	0	8	8	0
NL	79		0	4	7	11	0
NO	108		0	1	12	13	3
PL	292		0	0	3	3	0
PT	14		0	0	12	12	0

[15] BE reports that they do not record these actions for statistical purposes but that the FSMA "sometimes" mentions in letters to issuers that if something comes material they should take the applicable IFRS into account.

	Total examinations completed over review period	**Actions taken:**	Reissuance	Corrective Note	Correction in future financial statements	**Total of actions taken**	Letter about immaterial departure (Paragraph 59)
RO	123		1	0	2	3	15
SE	146		0	2	24	26	1
SI	10		0	0	0	0	2
SK	18		6	35	0	41	0
UK	283		0	1	82	83	11

365. Table 8 reveals a distinct low level of use of corrective notes by some enforcers. and in the on-site visits, the AG has seen few corrective notes ordered by NCAs upon findings of material errors. It should also be noted that the statistics do not include actions taken by enforcers when reviewing financial statements included in a IPO because prospectuses are not included in the scope of the EFI Guidelines or when pre-clearances[16].

366. The AG discussed with many of the NCAs visited onsite their approach to the timeliness of publication by issuers of correct information following the finding of material misstatement in the financial statements. Two issues arose: first, NCAs use the power to order that corrective notes be published in a wide variety of ways; the second was the regard had by NCAs to correct information in the accounts and a distinction in the approaches of NCAs between this type of information and information that would fall under the Market Abuse regime.

(a) use of corrective notes

367. The statistics provided to the AG by the NCAs, and the experience of the AG during the onsite visits, have shown to the AG that there is no consistency amongst NCAs in the use of corrective notes. The statistics point to inconsistencies, but this may be due to other variables. The AG believes that this inconsistency is due in part to the fact that there is seemingly no full agreement within the EFI community on the definition of corrective note in the Guidelines and how and when to use it.

368. Generally, where a material error is uncovered following an examination of financial statements, the AG would expect that a corrective note is ordered unless one of the exceptions set out in the Guidelines applies e.g. that publication is “very close” to the date of publication of the financial statements, of if the market is already sufficiently informed about the correct information at the date of making the decision. For investor protection purposes it is important that the correct information is given to the market.

369. There is also a feature of corrective notes that is overlooked by some NCAs when considering their use. When a corrective note is published it can generate publicity for the process of enforcement of financial information and raise the profile of the enforcer, which can be seen as important for the effectiveness of the enforcement.

370. In some cases, e.g. UK, the body responsible for carrying out examinations of financial statements does not have the necessary power to direct the publication of corrective notes. The AG believes that it is fundamental that enforcers have and, where necessary, use the powers that should be conferred on them in accordance with the TD, and that these must include the ability to require that issuers publish information to the market and in a manner that the competent authority directs. So, for example, all enforcers must be able to require the publication of corrective notes and within a short timeframe. In DE, for instance, even where the issuer accepts the findings of FREP, BaFin directs the publication of a corrective note. It takes approximately 3 to 4 weeks for publication to be made. Hence between the

[16] As referred in Guideline 4 of the EFI Guidelines.

time when FREP makes an accepted conclusion, and the market is informed of the error it takes approximately 6 weeks. The AG was informed that this is a consequence of German law.

(b) timeliness for correction to the market

371. There seems to be a difference between the MAR regime and the EFI regime in the handling of information that is unavailable to the market. Under the Market Abuse Regulation, inside information i.e. information that, generally speaking, is likely to have a significant effect on the prices of the related financial instruments, must be disclosed by an issuer to the market "as soon as possible". The AG's impression was that in the NCAs visited, information correcting an error in accounts was generally not treated with similar urgency. NCAs did, though, demonstrate an understanding that correct information i.e. the correcting of a misstatement in the accounts, could amount to inside information. They saw the importance of keeping contact with the market abuse teams within their regulator, or elsewhere.

372. Where there is a material error found in financial statements (i.e. where the NCA believes that investors will be misled should they not have access to the information), it is the AG's impression that NCAs tended not to regard disclosure to the market as something that needed to be done in as timely a manner as under market abuse.

373. IFRS states that materiality depends on whether the information would reasonably be expected to influence decisions of users of that information. In the Market Abuse Regulation, "likely to have a significant effect on the prices" of financial instruments means "information a reasonable investor would be likely to use as part of the basis of his or her investment decisions". This is quite close to the concept of materiality under IFRS. The AG notes that there might be different approaches amongst at least some NCAs in their treatment of information under EFI, compared to information under market abuse.

374. The AG notes the good practice of Consob which, when a material measurement misstatement is detected and the power to require a corrective note is exercised, reports that along with the corrective note It also requires a price-sensitive press release to inform the market about the restoration of the correctness of financial information. If the issuer does not comply with the request, then Consob can make the disclosure itself.

Decisions submitted to the EECS

375. According to Guideline 10, through EECS, European enforcers discuss and share their experience on the application and the enforcement of IFRS. In particular, they discuss enforcement cases before and/or after decisions are taken in order to promote a consistent approach in the application of IFRS. When taking an enforcement decision, European enforcers should take in account the outcome of the discussion held in EECS of ex-ante cases. In addition, EECS produces technical advice on the issuance of ESMA Statements and/or opinions on accounting matters, which deserve specific focus. It also reviews accounting practices applied by European issuers to enable ESMA to monitor market developments and changes in those practices.

376. The Guidelines also include principles to be followed by NCAs when submitting emerging issues or decisions to the EECS database. During the peer-review, the AG did not assess whether and how NCAs followed these principles However, the number of decisions and emerging issues submitted provide relevant information about the enforcement activity in a specific jurisdiction, the type of the examination carried out and the issues raised with issuers.

377. Guideline 13 requires NCAs to submit decisions to the EECS if the decision fulfils one or more of the following criteria:

a) The decision refers to accounting matters with **technical merit**;
b) The decision has been **discussed as an emerging issue**, unless it was decided otherwise during the discussion in the EECS meeting;
c) The decision will be of interest for other reasons to other European enforcers (this judgement is likely to be informed by EECS discussions);
d) The decision indicates to an enforcer that there is a **risk of significantly different accounting treatments** being applied by issuers ;
e) The decision is **likely to have a significant impact on other issuers**;
f) The decision is taken on the basis of a provision not covered by a specific accounting standard;
g) The decision has been overruled by an appeals committee or Court; or
h) The decision is apparently in contradiction with an earlier decision on the same or a similar accounting issue.

378. Although the guidelines do not define “technical merit”, and thus NCAs may use their judgement when assessing this criterion, this term is generally well understood by enforcers. Usually, decisions based on disclosures (apart from disclosures on major judgements used) or on principles on which the standards are clear should not be submitted to EECS.[17]

379. The following table provides information about the number of decisions submitted to the EECS database during the period under review (2015 and 2016) in comparison with the relative weight of the markets size and the relative weight of the number of examinations carried out to the 2014 annual financial statements and the 2015 annual and interim financial statements.

Table 9 – proportion of decisions submitted to EECS, compared to total number of examinations and number of issuers

NCA	% of Decisions Submitted EECS (A)	% Total of examinations carried out (2015 and 2016) (B)	% N. of IFRS issuers (C)	Difference (A-B)	Difference (A-C)
AT	4.00%	5%	2%	-1%	2%
BE	6.00%	4%	2%	2%	4%
CZ	1.00%	1%	1%	0%	0%
DE	6.00%	4%	9%	2%	-3%

[17] Please refer to paragraph 75 of Guidelines

DK	12.00%	2%	2%	10%	10%
ES	5.00%	8%	2%	-3%	3%
FI	3.00%	2%	2%	1%	1%
FR	9.00%	8%	9%	1%	0%
IE	14.00%	2%	2%	12%	12%
IT	2.00%	5%	4%	-3%	-2%
LT	1.00%	0%	1%	1%	0%
LU	2.00%	5%	3%	-3%	-1%
NL	7.00%	3%	3%	4%	4%
NO	9.00%	5%	4%	4%	5%
PL	4.00%	12%	7%	-8%	-3%
PT	2.00%	1%	1%	1%	1%
SE	4.00%	6%	5%	-2%	-1%
UK	9.00%	12%	21%	-3%	-12%
Others		15%	20%	-15%	-20%
Total	100%	100%	100%		

380. In 2015 and 2016 NCAs submitted a total of 163 decisions to EECS and carried out 2408 examinations to the 2014 and 2015 annual financial statements and to the 2015 interim financial statements. At the end of 2015 there were around 5981 IFRS issuers in Europe.

381. This table shows that 18 NCAs (AT, BE, CZ, DE (FREP), DK, ES, FI, FR, IE, IT, LT, LU, NL, NO, PL, PT, SE, UK) submitted at least one decision to the EECS database, whereas 11 NCAs (BG, CY, EE, EL, HU, IS, LV, MT, RO, SI, SK) did not submit any decision following the criteria set out in GL 12. The latter represents around 20% of the total of IFRS issuers admitted to trading on regulated markets and 15% of the total number of examinations carried out during the period under review.

382. When comparing the number of the decisions submitted to the EECS by each NCA with the relative weight of its market size or of the number of examinations, the AG notes that on the one hand DK, IE and NO submitted a number of decisions to EECS higher than their relative market size and number of examinations. On the other hand, IT, PL and UK submitted a number of decisions whose relative weight compared with the total decisions submitted is lower than their weight on the market size[18] and the number of examinations carried out.

383. Although there is no scientific figure which could be set out by the AG on what is expected from each NCA in terms of submission of decisions to the EECS database compared with its market size or the number of examinations, the AG considers that, at least, it would be expected that countries with larger markets and higher number of examinations would submit more decisions to the EECS database than countries with fewer examinations and fewer issuers under supervision.

[18] Calculated based on the number of IFRS issuers listed on regulated market.

384. While the AG cannot assess in detail the reasons why decisions were not submitted, it believes that the type of examinations carried out (e.g. desktop reviews, focused examinations vs unlimited scope examinations), the focus of those examinations (e.g. focus on disclosures or presentation issues vs recognition/measurement issues), the lack of internal procedures or the lack of resources may explain why some NCAs do not submit decisions and thus why their figures are significantly below the importance of their markets or the number of examinations carried out.

385. The AG believes that NCAs should reinforce their own internal procedures for submitting emerging issues and decisions to the EECS database. The AG also expects that if the recommendations that NCAs focus more on recognition and measurement issues are implemented, there should be an increase in the number of emerging issues and decisions being submitted and thus more convergence amongst NCAs.

Visibility of the work undertaken by NCAs on the market

386. During the onsite visits the AG requested information from the NCAs about the information they share to the market and their interaction with the different stakeholders. The AG indeed considers that an important feature of the enforcement system in place is the communication to the market whenever enforcement is taking place.

387. Communication to market is not limited to the information disclosed in relation to actions taken, but it is also about providing information on the main infringements encountered, rationale for the decisions, recommendations to improve the quality of the financial reporting and, in some cases, publication of reports on enforcement/application of specific standards.

388. The AG is of the view that good communication leads to financial stability and investor protection as investors will have confidence on the quality of the financial information published by issuers when taking their investment decisions and issuers will have information on the enforcer's views on specific accounting matters, and take them into account when preparing financial information. An effective communication has, in the AG's view, a direct positive effect in preventing misstatements and avoiding actions from NCAs.[19]

389. As such, the AG considers it important that enforcers share their main findings with issuers, auditors and investors. Meetings with auditors are particularly relevant as enforcers are able to cascade messages to issuers and audit teams about aspects to improve or accounting treatments not acceptable or inadvisable. Reports, alarms and recommendations to issuers allow issuers and auditors to anticipate areas of focus of the enforcer, and thus contribute to the improvement of financial reporting.

[19] As also evidenced by the study conducted in the US "Does the Public Disclosure of the SEC's Oversight Actions Matter?, Duro Miguel, Heese Jonas, Ormazabal Gaizka, May 2017

Interaction with other departments within the NCAs

390. During the onsite visits, the AG also considered the interaction of the EFI unit with other departments within NCAs. The AG acknowledges that there are different organisational setups in Europe for the supervision/monitoring of financial information. Although the AG does not recommend organisational changes, NCAs should identify synergies between the work performed by different departments/units and, to the extent practicable, work to achieve these synergies. In particular, the AG highlights the synergies that exist:

(a) In the approval of prospectuses.

391. In the case of operations on the market such as IPOs, the prospectus drawn up in accordance with the Prospectus legislative framework is the first document to be published by an issuer asking for admission to the regulated information and/or public offer. Prospectuses include financial information to describe the financial performance of an issuer, financial statements (which may be included by reference) and risk factors to be considered by investors deciding in investing in shares.

392. The Prospectus Directive requires a positive action, i.e. the approval of the prospectus by the NCA. Therefore, NCAs should ensure its conformity with the Prospectus Directive. While the EFI Guidelines do not apply to prospectuses drawn up in accordance with the Prospectus Directive the AG considers that there are synergies that can be obtained when the interaction of both units/departments/authorities is effective. For instance, NCAs in charge of the approval of prospectuses may identify areas of risk (e.g. based on the risk factors) to communicate to the EFI team when performing examinations. Similarly, the EFI team, when performing examinations of financial information, may identify areas where information included in a prospectus should be enhanced (e.g. based on examinations carried out to the issuer asking for approval of a prospectus or another issuer).

(b) In the supervision of issuers in accordance with the Market Abuse Regulation

393. In addition to the interaction that exists when publishing corrective notes to the market (addressed in the following section), the AG considers that selection models of issuers could be improved if the department in charge of the supervision of the Market Abuse Regulation would exchange information with the EFI units in relation to issuers monitored. As financial information is usually price sensitive, abrupt movements in the price of securities may give an indication that financial information of a particular issuer may need to be examined.

(c) In the prudential supervision of issuers

394. The AG considers that EFI units could consider participating on onsite visits organised by other departments such as the department in charge of prudential supervision. This is of particular relevance when NCAs are integrated regulators, accommodating both the prudential and securities supervision responsibilities. Onsite inspections could, in some cases, allow the EFI team to gather information relevant for the enforcement of financial

information where this is considered useful and relevant to the specific issues such as recognition and measurement of complex financial instruments.

395. Although the AG considers that enforcement of financial information can take advantage of the findings of onsite inspections, it also believes that enforcement of financial information can be effective without using this tool which would be resource-intensive.

396. The AG also considers relevant that the NCAs ensure that different departments share information with other departments within the organisations (e.g. market abuse department/ prospectus department). However, it also considers fundamental that issues raised with other departments/areas authorities are followed up by the EFI unit.

Interaction with external supervisory bodies

397. The AG considers that it is important that NCAs ensure communication with external supervisory bodies, in particular those responsible for auditor supervision, and with the audit committees of issuers.

398. If material infringements are encountered, NCAs could communicate them to the respective oversight bodies. Similarly, NCAs should take into due consideration any referral received from these national bodies. Referrals from other authorities (e.g. within the EU or outside the EU e.g. SEC) should also be considered in the enforcement of financial information (e.g. in the selection of issuers and/or in the examination procedures to be undertaken).

399. The AG believes that strengthening cooperation with the audit oversight bodies is paramount, and that ESMA should encourage NCAs in this direction.

400. NCAs should enhance communication with the prudential supervisor such as sharing conclusions and findings but still performing their own examination procedures and, where necessary, take enforcement actions. NCAs should not over-rely on the work performed by prudential regulators.

401. The AG emphasises that the focus of the analysis of the prudential regulators is different to that of securities regulators. Therefore, securities regulators should not lower the level of risk and supervision of entities subjected to prudential oversight of the ECB or national regulators.

5 – Good Practices

No.	Good Practice	Benefits
1.	In each examination, the FRC Case Officers review issuers' audit committee reports.	This is a good source of valuable information for enforcers to be able to identify the key issues on issuers financial statements.
2.	The FRC identifies only the most important issues in the main body of a letter to an issuer, and includes minor issues to be resolved (such as minor issues encountered in disclosures) in an appendix.	This gives a strong message to issuers about the priority and the urgency of the main issues raised.
3.	It is a good practice that enforcers ensure a quality review of the examinations performed	This ensures that the main issues are identified, analysed and the conclusions reached are sound. It ensures consistency of the decisions taken.
4.	The selection for examination of financial statements of newly listed issuers (e.g. following an IPO) is positive.	This is likely the first time that an issuer is using IFRS and this presents an obvious risk trigger.
5.	The AG considers a good practice to always raise questions and/or request documentation in the context of an unlimited scope examination. If the examination covers the whole financial information, FREP (DE) will generally focus on the main key issues, even if no indication of errors have been encountered or irrespective of the quality of the disclosures.	This overall approach clearly demonstrates going beyond a review of the disclosures and going to questions dealing with recognition, presentation and measurement issues.
6.	The AG considers that the sector expertise gathered by the NFSA (NO) EFI unit is particularly relevant for instance when discussing accounting matters relevant to a specific sector with an issuer.	This allows NFSA to ask pertinent questions to issuers in those sectors, to analyse in detail the responses received based on the issuers' business model and to discuss with issuers their views in similar footings of knowledge

No.	Good Practice	Benefits
7.	The AG considers that this expertise (no.6) on valuation within the EFI team brings value added to the enforcement system in place.	This expertise allows the NFSA to challenge in depth measurement issues in issuers' financial statements.
8.	AG also considers a good feature of the enforcement system in place is the work performed by the EFI unit in the prospectus area.	The AG believes that relevant synergies can be identified between work performed by the team in charge of scrutinising financial information included in a prospectus and the EFI team in charge of examining financial statements published in accordance with the TD. For this purpose, the integration of both teams in the same department helps that these synergies are achieved.
9.	The AG believes that the model in place in NO whereby issuers file information with the NFSA about the financial statements, audit opinion and corporate governance structure, in a structured format that can subsequently be extracted to a file and be easily managed by the EFI team, is a positive feature of the selection model in place.	The use of this form enables the EFI team to save time when gathering relevant information from issuers. When considering individually the items/questions in the form, the AG believes that most of (if not all) the questions included in the form are relevant to determining the risk profile of issuers.
10.	The AG also considers positive that in some NCAS, members of the enforcement team participate in onsite inspections.	This is a useful learning opportunity for experts in accounting to interact with their counterparts in industry. Also, onsite inspections allow the EFI unit to gather information and to discuss accounting issues directly with issuers in their own environment and to see more directly how measurement principles are being applied.
11.	The AG considers positive that the NFSA publishes the final letter sent to issuers when infringements are found during an examination. These final letters provide the identification of	This increases transparency, but also shows the effective enforcement of financial information at work to investors and to the issuers. It also effectively

No.	Good Practice	Benefits
	the error encountered, the impact in the financial statements as well as the enforcer's rational.	communicates to the issuers and auditors the views of the enforcer on specific matters.
12.	The AG also considers positive that the CMVM takes into account, as a factor for the determination of risk selection, the compliance of listed issuers with the corporate governance codes.	It is expected that issuers with sound corporate governance structure and procedures are less riskier than issuers with poor internal controls and deficient corporate governance structures
13.	The AG also considers positive that the CMVM monitors continuously the presentation of results of issuers included in the main stock index over the year.	As these companies represent the larger companies in the market, the monitoring of these companies helps the CMVM to identify trends and to obtain relevant information for the purpose of selecting them for examination.
14.	The AG also considers positive that the NFSA monitors continuously some companies in the OBX index (i.e. 9 companies) regardless of their risk profile.	As these companies represent approximately 60% of the total market capitalisation, the monitoring of these companies helps the NFSA to identify trends, and infringements when they are reported and to act promptly to avoid a significant disruption on the market.
15.	In cases where the time limit causes constraints when concluding whether an issuer misapplied the accounting framework and there is a strong indication that the accounting treatment followed by the issuer may not be correct, the AG regards it as a good practice that Consob requires issuers to disclose in the prospectus that an investigation is ongoing and, where applicable and practicable, the potential impact that an alternative accounting treatment may have on the issuer's financial statements.	This practice ensures that relevant information gets to the market and that there is a visibility on enforcement of financial information.
16.		

No.	Good Practice	Benefits
	Even if not formally required by the Guidelines, the AG considers positive that the selection model in place is formalised in written procedure describing the risk factors considered and the steps to be followed. The AG also considers positive that the risk model foresees a revision every three years to ensure that all factors are still relevant (CMVM).	This ensures completeness of the selection approach and its consistency over time.
17.	The AG believes that the model in place whereby auditors file information with the Consob on the issuers' financial statements, audit opinion and corporate governance structure, in a structured format that can subsequently be extracted to a file and be easily managed by the EFI team, is a positive feature of the selection model in place.	The use of this form enables the EFI team to save time when gathering relevant information from issuers. When considering individually the items/questions in the form, the AG believes that most of (if not all) the questions/items included in the form are relevant to determining the risk profile of issuers.
18.	As part of the examination procedures, Consob reported that issuers are contacted in 80% of cases i.e. more than just a desktop examination.	The AG considers it positive that in a large number of cases issuers are contacted as desktops reviews often are not sufficient to assess whether issuers are complying with the applicable measurement and recognition principles.
19.	The AG has seen the good practice in many NCAs of the preparation for EECS meetings, within EFI teams, being used as an on-the-job training. The papers are often discussed amongst the team members in advance and the opportunity is often taken of having a similar debriefing session following the EECS meetings.	This is a good source of up to date, relevant, and directly applicable training.
20.	A good practice noted in a number of NCAs is that the EFI team sometimes also sends to the auditor copies of the letters sent to issuers on issues raised.	Thus, the auditor who is a key stakeholder in the financial statements is aware of the process and may be a valuable source of information for the enforcer.

No.	Good Practice	Benefits
21.	AG notes the good practice of Consob which, when a material measurement misstatement is detected and the power to require a corrective note is exercised, Consob reports that along with the corrective note, it requires a price-sensitive press release to inform the market about the restoration of the correctness of financial information. If the issuer does not comply with the request, then Consob can make the disclosure itself.	This benefits investors by increasing the visibility of the correction and of the work done by the enforcer.

Annex 1

Mandate

12 July 2016

MANDATE FOR A PEER REVIEW ON GUIDELINES ON THE ENFORCEMENT OF FINANCIAL INFORMATION (ESMA/2014/1293)

Background

1. Recital 16 of the Regulation (EC) No 1606/2002 on the application of international accounting standards ('IAS Regulation') provides that: "A proper and rigorous enforcement regime is key to underpinning investors' confidence in financial markets. Member States, by virtue of article 10 of the Treaty, are required to take appropriate measures to ensure compliance with international accounting standards"

2. Therefore, first CESR and then ESMA put in place, respectively, standards and guidelines in relation to the enforcement activities carried out to ensure that financial information in harmonised documents provided by issuers whose securities are admitted to trading, and by issuers who have applied for admission to trading of their securities, on a regulated market comply with applicable requirements.

3. The ESMA Guidelines on the Enforcement of Financial Information (ESMA/2014/1293) ("**Guidelines**") are principles-based and:

   (a) define enforcement and its scope;

   (b) set out expected characteristics of the enforcer;

   (c) describe acceptable selection techniques and other aspects of enforcement methodology;

   (d) indicate the types of enforcement actions that may be available to enforcers; and

   (e) explain how enforcement activities are coordinated within ESMA and are reported.

4. Enforcement of financial information implies examining financial information to assess whether it is in accordance with the relevant financial reporting framework[20]. In order for enforcement of financial information to be effective, enforcers should also take appropriate actions in accordance with the Guidelines. Where departures from the relevant financial reporting framework are detected, enforcers should, where necessary, ensure that market participants are provided with accurate information that complies with the relevant financial reporting framework.

5. The published ESMA compliance table for the Guidelines, ESMA/2015/203REV, indicates that 6 NCAs have communicated a non-compliance with some of the Guidelines, of which three relate to the Guidelines under review.

6. The 2016 Supervisory Convergence Work Programme provides that in 2016, ESMA will begin a peer review on some of the Guidelines for enforcers of financial information in order to assess compliance by NCAs with the Guidelines, identify good practices and potential areas for improvement.

7. The focus of the review will be Guideline 2 (ensuring the effectiveness of the enforcement of financial information), Guideline 5 (risk-based approach and sampling) and Guideline 6 (examination procedures).

Legal basis

8. This Peer Review will be conducted in accordance with Article 30 Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 (ESMA Regulation).

9. The peer review will be governed by the methodology of the former Review Panel (ESMA/2013/1709) (**Methodology**), and the guidance note in relation to onsite visits in peer reviews (ESMA/2015/RP/011).

Purpose

10. In line with the Methodology, the peer review will cover the assessment of:

    10.1 the independence of the NCAs and capacity to achieve high quality supervisory outcomes, including

    - the adequacy of resources and governance,
    - the effective application of the Guidelines,

    10.2 the capacity of the NCA to respond to market developments.

    10.3 the degree of convergence in application of law and supervisory practices

[20] IFRS, national GAAP, or equivalent third country GAAP.

- the extent to which the practices achieve the objectives,
- determination of good practices.

10.4 the effectiveness and degree of convergence with regard to enforcement of provisions including administrative measures and sanctions.

Scope

11. More particularly, in the context of these Guidelines, the objectives of this peer review will be

In the context of Guideline 2:

11.1 to assess the sufficiency of human and financial resources of NCAs taking into account the number and characteristics of issuers subject to enforcement of financial information; and

11.2 to assess the adequacy of the professional experience and background of enforcers considering the nature of the issues that need to be dealt with under the applicable rules.

In the context of Guideline 5:

11.3 to assess whether selection methods in place within an NCA are based on a mixed approach whereby a risk based approach is combined with a sampling and/or rotation approach;

11.4 to assess whether the risk based approach considers the combination of the probability of infringements by an issuer and its potential impact on the financial markets. When performing this assessment, the peer review will consider whether the risk approach takes into consideration all the relevant criteria as defined in the Guidelines;

11.5 to assess whether the sampling and/or rotation approach ensures that issuers not captured in the risk criteria may be selected for review; and

11.6 to assess whether the selection model takes into account the common enforcement priorities identified by enforcers together with ESMA.

In the context of Guideline 6:

11.7 to assess whether the examination procedures in place within an NCA ensure that the enforcement of financial information performed either by unlimited scope examinations, or a combination of unlimited scope and focussed examinations, is effective; notably, whether the examinations carried out by enforcers ensured that material errors were likely identified;

11.8 to assess whether the examination procedures following the risk based selection model are adequate; and

11.9 to assess whether the examination techniques used and the related conclusions of the review of the financial information of issuers selected as part of the enforcement process are appropriately documented.

12. The review should be targeted and sequenced:

12.1 at first stage, a self-assessment questionnaire should be developed by the Assessment Group and circulated to all NCAs focusing on the following matters to the extent that they are relevant to the enforcement of financial information: market structure, organisational set-up of the NCAs and their resources, decision making processes in the NCAs, selection methods for examination of the financial statements and scrutiny process as regards financial statements. The questionnaire will also seek from NCAs information on what these processes have processed during the review period, for example, the numbers of examinations; the number of enforcement actions etc.

12.2 at second stage, on the basis of criteria outlined below, a number of NCAs (from 5-7) will be selected for the purposes of performing desk analysis and on-site visits in order to complement the findings from the questionnaire with the detailed information that will be needed to gain a thorough understanding of the supervisory practices applied, and for Competent Authorities to demonstrate their compliance. Meetings will be arranged between the Assessment Group members and the national experts in the field, including their management. Each on-site visit shall last for one to three days.

12.3 The second stage will include the review of (i) appropriate use of the selection methods (including taking into account the European common enforcement priorities in the selection process) and (ii) sample of enforcement[21] files examined by the selected NCAs, and an analysis of the nature, quality and consistency of findings and conclusions reached during the examinations of financial statements. The aim of the review is not to 'second-guess' enforcement judgements already made, but rather when reviewing those files, to assess the effectiveness of the whole process in which the judgement has been made.

12.4 The Assessment Group may also gather other publicly available information.

13. The desk based analysis shall consist of the review of a limited number of enforcement files.

14. The NCAs in question will be requested to provide working documents, which the Assessment Group may request to be translated into English, detailing comments that were provided during the enforcement process.

15. Criteria for the selection of NCAs for the second stage will be a combination of:

[21] In the context of this Peer Review the word enforcement can mean both the effective implementation of the financial information rules, as well as the more traditional concept of the imposition of administrative or criminal measures or sanctions.

15.1 Indicators capturing the greatest impact of failure in enforcement for European regulated markets:

15.1.1 the size of the market under the responsibility of the NCA in a jurisdiction (measured through the weight of the national regulated market within European Eurostoxx 600 index);

15.1.2 breadth of the market under the responsibility of the NCA in a jurisdiction (measured through the absolute number of IFRS issuers admitted to trading on regulated markets);

15.2 Indicators based on the enforcement activity of an NCA:

15.2.1 percentage of issuers examined in 2015 ('examination rate');

15.2.2 of those issuers examined in 2015, the percentage in respect of which actions were taken ('action rate').

15.3 Indicators related to resources (human and financial) affected to enforcement of financial information:

15.3.1 ratio of the total number of issuers admitted to trading on regulated markets to the total resources devoted to IFRS enforcement (man years);

15.3.2 ratio of the total number of issuers examined in 2015 to the total resources devoted to IFRS enforcement (man years)

15.4and other criteria considered relevant by the Assessment Group.

a) Following the initial responses to the questionnaire, the Assessment Group will establish a shortlist of NCAs to be visited. The selection will be informed by the criteria above, and an explanation of the proposed selection will be provided. This proposal will be submitted to the Board for its approval before any visit starts.

Seeking input from stakeholders

b) Depending on the outcome of the responses to the self-assessment questionnaire, the Assessment Group may seek input from stakeholders. At this stage, no proposal to meet with stakeholders is being made to the Board. If after the first stage of the peer review the Assessment Group decides to seek stakeholder input, it will seek sanction for such approach from the Board. Any such input will be governed by the recent principles adopted by the Principles – Stakeholder Engagement in Peer Reviews (ESMA/2016/BS/078).

Review approach

16. In accordance with the Methodology, the peer review will be carried out by an Assessment Group. The Assessment Group will be composed of the following persons, with extensive knowledge and experience in the enforcement of financial reporting standards and in the conduct of reviews:

17. The Assessment Group shall be co-ordinated by Lars Østergaard, DFSA (DK).

18. The members of the Assessment Group will be:

    Nusret Calo (FMA, AT)

    Eduardo Damasio (ESMA)

    Jose Maria Fernandez (CNMV, ES)

    Thomas Hoeppner (BaFin, DE)

    Lee Piller (FCA, UK)

    Tine Svae (NFSA, NO)

    Florence Tiberini (AMF, FR)

    Jerome Tourscher (CSSF, LU)

    Gianluca Vittorioso (Consob, IT)

19. Michael Hennigan, from ESMA's Legal, Convergence and Enforcement department, will act as Rapporteur of the Assessment Group.

20. In line with the Methodology the Assessment Group will report its findings to the Board of Supervisors, for its approval, after having consulted the Supervisory Convergence Standing Committee.

Review Period

21. The period under review covers enforcement activity under the Guidelines from 1 January 2015 up to 31 October 2016 carried out in relation to the 2014 annual financial statements and 2015 interim financial statements (where applicable), and will extend to the work carried out on the 2015 annual financial statements.

Methodology

22. As well as reviewing extant policies and procedures, such as sampling procedures, some of the tools that can be used include, but are not limited to, interviews with NCAs' staff, access to enforcement files and demonstration of the work carried out. As far as the access to files is concerned, at least the following documents will be requested: the financial statements subject to examination, documentation of the initial analysis of the financial statements, all correspondence with the issuer, any documents received from the issuer supporting the accounting treatments of the issuer (for relevant areas) that were analysed in detail as well as documentation describing results of such analysis, final report of the examination detailing the findings and any action taken (including any communication of the results or recommendations to the issuer).

23. The obligations on professional secrecy as stipulated by Article 70 of the ESMA Regulation and subsequently by the ESMA Management Board Decision on Professional Secrecy and Confidentiality (ESMA/2011/MB/4) will apply to all members of the Assessment Group through their explicit consent to comply with those obligations. A confidentiality agreement will be signed by all members of the Assessment Group.

24. As a matter of principle, all Assessment Group members should commit to actively participate to the review, including through the on-site visits. Furthermore, to perform this review within the deadline and deliver the outcome by July 2017, all NCAs must commit to cooperating with the Assessment Group and facilitating the work of the Assessment Group within the timelines set out.

25. In respect of a number of jurisdictions, the work of this peer review will mean the Assessment Group contacting competent authorities who are not normally represented at ESMA meetings. ESMA members are reminded of their obligation to encourage and facilitate cooperation and communication between ESMA and these specific competent authorities.

26. The Coordinator, with the assistance of the Rapporteur, will work to prevent conflict of interest arising in the Assessment Group. This will include the rule that no onsite team can include a representative of the NCA being visited, nor can an NCA representative work on the assessment of that NCA.

Evidence

27. Competent Authorities will be asked to support their replies to the questions (written or oral) with examples from their supervisory actions, practices and procedures, in the form of supervisory files, and samples, and their supervisory handbooks, instruction manuals and similar material. The evidence shall demonstrate their supervisory actions in relation to the application of the Guidelines. The evidence will have to be provided in English if available. When an English version of the evidence is not available, the answer has - to the extent practicable - to describe the relevant evidence in English as stated by the ESMA Review Panel Methodology in paragraph 28.

Publication

28. The Report resulting from the work shall be made public, unless the Board of Supervisors decides otherwise at the time of approving the report. The findings of the Assessment Group shall in any case be shared with the Board of Supervisors, after consultation of the Supervisory Convergence Standing Committee.

Time-line expected for the work

Task/Event	***Dates (tentative)***
Approval of the mandate by the Board of Supervisors	*July 2016*
Launch of the questionnaire (to be completed within approximately 4 weeks)	*October 2016*

Analysis of replies, begin drafting of report and preparation of visits, selection of the relevant enforcement files; selection, approval, and organisation of onsite visits	*November-December 2016*
On-site visits and analysis of files	*January – March 2017*
Accuracy checking with NCAs bilaterally	*April – June 2017*
Finalisation of report following and consultation of the Report with the Supervisory Convergence Standing Committee	*June 2017*
Submission of Report to the Board of Supervisors	*July 2017*

Annex 2

Questionnaire

Date: 1 October 2016
ESMA/2016/LCE/077

Acronyms used

EFIEnforcement of Financial Information
ESMAEuropean Securities and Markets Authority
FTEFull Time Equivalent
NCANational Competent Authority

QUESTIONNAIRE - PEER REVIEW ON ENFORCEMENT OF FINANCIAL INFORMATION - GUIDELINES 2, 5 AND 6

A. Introduction

1. The ESMA Supervisory Convergence Work Programme 2016 provides for the Peer Review of the ESMA Guidelines on the Enforcement of Financial Information (Guidelines) in order to assess compliance by NCAs with the Guidelines, identify good practices and potential areas for improvement.

2. This Peer Review will be conducted in accordance with Article 30 Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 (ESMA Regulation) and the revised ESMA peer review methodology (ESMA/2013/1709) (Methodology).

3. In line with the ESMA Regulation and the Methodology, the mandate for the peer review provides that the peer review must also include a review of the independence of the NCAs and capacity to achieve high quality supervisory outcomes, including the adequacy of resources and governance and the effective application of the Guidelines, the capacity of the NCA to respond to market developments, the degree of convergence in application of law and supervisory practices, and the extent to which the practices achieve the objectives.

4. In accordance with the Methodology, the peer review will be carried out by an Assessment Group. The mandate for the Peer Review provides, in paragraph 12.1, that "at first stage, a self-assessment questionnaire should be developed by the Assessment Group and circulated to all NCAs focusing on the following matters to the extent that they are relevant to the enforcement of financial information: market structure, organisational set-up of the NCAs and their resources, decision making processes in the NCAs, selection methods for examination of the financial statements and scrutiny process as regards financial statements. The questionnaire will also seek from NCAs information on what these processes have processed during the review period, for example, the numbers of examinations; the number of enforcement actions etc." The peer review will also include a review of the effectiveness and degree of convergence with regard to enforcement of provisions including administrative measures and sanctions.

5. In line with the Methodology the Assessment Group will report its findings to the Board of Supervisors, for its approval, after having consulted the Supervisory Convergence Standing Committee.

6. The peer review shall focus on Guidelines 2, 5 and 6 of the Guidelines.

7. Depending on the outcome of the responses to the self-assessment questionnaire the Assessment Group may seek input from stakeholders and in accordance with the Stakeholder Engagement in Peer Reviews (ESMA/2016/BS/078).

8. This questionnaire will be followed by on-sites visits in some NCAs.

9. The "period under review" covers enforcement activity under the Guidelines from 1 January 2015 up to 31 October 2016 carried out in relation to the 2014 annual financial statements and 2015 interim financial statements (where applicable), and will extend to the work carried out on the 2015 annual financial statements.

10. The Report resulting from the work shall be made public in line with the Methodology. Any publication may exclude certain information for confidentiality or sensitivity reasons.

B. Instructions to fill in the questionnaire

11. Where there is more than one body in a Member State responsible for completing the questionnaire (whether as competent authority or as delegate, or other), it is the responsibility of all the bodies to ensure that the answers to this questionnaire represent the state of affairs in that Member State, and that where appropriate the answers describe the aggregate of answers from these bodies (e.g. personnel numbers). The ESMA member is responsible for ensuring that a response to this questionnaire is made, and is made in a timely manner.

C. 12Where a description of a process/procedure or policy is required, please provide a summary within the space allowed on the electronic survey. All questionnaire answers should be provided in English.

13. Please provide the name and contact details of the person(s) who are responsible in each NCA for the completion of this questionnaire, and who can be contacted for clarifications, further information etc. by members of the Assessment Group.

D. If a clarification is required with regard to any particular question, please contact the Rapporteur, Michael Hennigan, ESMA, at Michael.Hennigan@esma.europa.eu.

E. Market structure in the Member State

14. Please provide the following information:

(a) Number of issuers within your jurisdiction whose financial statements fall within the jurisdiction of your NCA for the purposes of the Guidelines[22]?

[an issuer should only be counted once – so:

- if an issuer has issued equity securities as well as bonds or other securities, it should only be included in the 'equity' column

[22] The Guidelines apply EFI activity i.e. to the jurisdiction of an NCA to enforce those obligations on issuers arising under the Transparency Directive.

- where an issuer has issued both bonds and other securities, it should only be included in the 'bonds' column]

Covered by NCA responsibility under the Guidelines:	*Issuers with securities trading on a regulated market (in accordance with the TD)*			*Other issuers not falling under the TD*[23]			*Total*	*Of which IFRS issuers*
Period under review:	*Equity;*	*Bonds;*	*Other securities*	*Equity;*	*Bonds;*	*Other securities*		
End-2014								
End-2015								

(b) Please provide the list of issuers subject to enforcement by your NCA which were included in the European Euro stoxx 600 index as at 31 December 2015[24].

(c) What proportion (%) of the total market capitalisation of all equity issuers in your country is represented by the aggregate of the list of issuers in *(b)*?

(d) If the market in your jurisdiction contains a significant amount of bond issuance, please describe this market and its comparison to the equity issuance in your jurisdiction.

F. Legal and organisational character of the NCA and of the EFI unit

15. What authority has been designated as central competent administrative authority in your jurisdiction pursuant to Article 24 of the Transparency Directive[25]?

Designation of other competent authority[26]

16. Has your Member State designated a competent authority (other than the central competent administrative authority) for examining whether information referred to in the Transparency Directive is drawn up in accordance with the relevant reporting framework? y/n

If yes, please name that designated competent authority.

17. Has your Member State designated a competent authority (other than the central competent administrative authority) for taking appropriate measures in case of discovered infringements (following examinations)? y/n

If yes, please name that designated competent authority.

[23] Paragraph 4 of the Guidelines provides that "the competent authorities and other relevant entities may choose to follow these guidelines also when enforcing financial information based on other requirements which issuers must comply with under national law."

[24] Please consider only equity issuance.

[25] Directive 2004/109/EC.

[26] Article 24 (1) subparagraph 2 of the Transparency Directive.

18. If you answered yes to question 16, or 17, please describe the legal relationship between the central competent administrative authority and the designated competent authority, including the procedure in place for resolution of any cases of disagreement or divergence of views.

Delegation by central competent administrative authority[27]

19. Has the authority referred to in q.15 [central competent administrative authority under the Transparency Directive] delegated any tasks involved in the enforcement of financial information under the Transparency Directive to any other entity? y/n

If yes, please name that entity, and describe briefly the scope of the delegation and the precise conditions for regulating the delegation[28].

20. If you answered yes to q.19, is the delegate entity supervised by the central competent administrative authority? y/n

If yes, how?

21. If you answered yes to q.19, does the final responsibility for supervising compliance with the provisions of the Transparency Directive remain with the central competent administrative authority?

22. If you answered yes to q.19, please indicate how many cases in the periods under review where there was a divergence/disagreement between the delegate and the central competent administrative authority with regard to the judgement made on the accounting issue.

Year under review	*Total*
2014 annual reports	
2015 interim reports	
2015 annual reports	

23. If you answered yes to q.19, please describe the procedure in place in case of divergence between the delegate competent authority responsible for taking appropriate measures and the central competent administrative authority.

24. If you answered yes to q.19, please indicate how many cases in the periods under review where there was a divergence in the actions to be taken arising from the enforcement process?

Year under review	*Total*	*As a % of all enforcement actions*
2014 annual reports		
2015 interim reports		
2015 annual reports		

25. With reference to question 24, please describe the main points of divergence that arise, and how they are reconciled?

Human Resources

26. **A.** Question 26A seeks to elicit information about the human resources available to carry out EFI activity in your jurisdiction in terms of numbers of FTE (or 'full time equivalent').

[27] Article 24(2) of the Transparency Directive.

[28] In such case, references throughout this questionnaire to NCA should be understood as referring to 'the NCA and/or its delegate'.

One Full Time Equivalent (FTE) is equivalent to one employee working full-time per week in accordance with contractual obligations in your NCA (e.g. anywhere between 35 to 40 hours per week). For example, (based on a 40 hour working hour week) three employees working respectively 50 hours, 40 hours and 10 hours amount to 100 hours per week. The FTE is 2.5 (100/40).
If there is a variation in the FTE available to do the work of EFI through the year, please describe and explain that variation in the response to the questionnaire.

Please indicate (for both the dates indicated in the table below)

(a) the number of FTE performing the job of enforcement of financial information (which includes examinations and taking actions on the basis of examinations)

(b) the number of FTE involved in other activities within the EFI unit[29] (administration, management, oversight, etc.)

(c) number of FTE (within an NCA) outside EFI unit but supporting the EFI work (e.g. legal, communications etc.)

	26A(a)	*26A(b)*	*26A(c)*	*Total 26A (a) + (b) + (c)*
31 December 2015				
30 September 2016				

In Questions 26B to 31, the questions are asked 'as at the present point in time' – not at specific dates, and request answers in terms of numbers of actual persons.

26 **B**

(a)are there persons who solely perform the job of examination of financial information? y/n

If so, how many?

(b) (i) How many *persons* make up the EFI unit (excluding ongoing recruitments/vacancies)?

(ii) What is the approved complement/headcount for the EFI unit?

(c) Please provide an organisation chart showing the make-up of the EFI unit.

27. (a) Are there *persons* employed full-time in your NCA, but only work part-time on EFI activity? y/n

(b) If so, how many?

(c) What is the approximate average amount of the weekly time of those persons spent on EFI activity?

28. (a) Are there persons employed part-time by your authority (i.e. equal or less than 20 hours per week) on EFI activity? y/n

(b) If so, what is the percentage of these persons made up of part-time workers?

(c) If there is a variation on the number of part-time workers employed through the year, please describe.

[29] The term 'unit' is general and covers the organisation of EFI however described, e.g. team, division, department etc.

29. Please indicate the number of persons directly involved in the enforcement of financial information (answer to 26B(b)(i)) having the following years of relevant experience (e.g. work within the NCA, work in the private sector preparing or advising on financial statements e.g. from an accounting or audit perspective, etc.):

    a) less than 5 years

    b) from 5 to 15 years

    c) over 15 years

30. Please indicate also the average length of relevant experience in each of a), b) and c).

31. Please indicate the average length of service (in years) in the EFI unit.

    An open space for additional commentary will be provided in the online response for any NCA that wishes to provide any explanation of facts or figures provided in answer to the Human Resources questions.

    Training/qualifications

32. How many persons in the EFI unit (26B(b)(i)) hold a qualification from a university or similar (e.g. diploma, degree)?

33. How many persons in the EFI unit (26B(b)(i)) hold a relevant professional qualification e.g. as an accountant or auditor?

34. In your NCA, please indicate the number of hours that the staff involved in the examination of financial information had on training (e.g. such as internal training or external training in IFRS, Accounting directive[30]) on the area of enforcement of relevant financial reporting framework

    a)in 2014 (hours per year per staff member):

    b)in 2015 (hours per year per staff member):

35. In your NCA, please indicate the main subjects covered by this training and its hours:

    a)in IFRS (e.g. measurement of financial assets or non-financial assets);

    b)accounting directive/National GAAP;

    c)enforcement methodologies/practices;

    d) other specific areas Please provide details.

    Financial resources

36. Please indicate the percentage of your NCA's annual securities and markets budget[31] allocated to the EFI function. Where another authority has been designated/delegated the enforcement of financial information (answer to questions 16 to 19) please consider the % in comparison

[30] But not including on-the-job training, or meetings/material referred to in q.44.11 and q.44.12.

[31] 'securities and markets budget' should be the budget allocated to the performance of competent authority duties under the legislation under the remit of ESMA i.e. that legislation listed in Article 1(2) of the ESMA Regulation, and not including any budget for, for example, banking supervision.

with the total of the securities and markets budgets of the central competent administrative authority plus the budget of the designate/delegate.

37. Please describe (as a %) any observed gap in your jurisdiction in the average salary in the EFI unit of your NCA compared to the equivalent private sector salary.

    Please also provide any comments/explanations that you wish to explain the difference (if any), and its impact (if any).

    Other

38. Please explain in general terms if and how, in your jurisdiction, the characteristics of issuers, or the complexity of financial statements (e.g. specific standard/industry/sector etc.) affect the resources required (e.g. resources allocation) by your NCA to carry out examinations of financial statements.

39. Please explain if and how, in your jurisdiction, the ability of issuers to apply the relevant financial reporting framework, affects the resources required (e.g. resources allocation, number of resources etc.) by your NCA to carry out examinations of financial statements.

G. Process for selection of financial statements for Examination

40. Does your enforcement of financial information use a selection model when selecting issuers for examination of the financial information? y/n

41. Is the selection process described in a written document? y/n

    If yes, has this been published or otherwise made available to issuers/their advisers? y/n

    Please provide a description of the process detailing the main stages of the process, including the approval process and whether the selection is made public.

42. Is the process for selection of issuers for examination ("the selection process") based on a mixed model combining (a) a risk based approach and (b) sampling and/or rotation approach? y/n

    If no, please explain the selection process.

43. Process for selection of issuers for examination:

    43.1Is the selection process run

    a) annually

    b) semi-annually

    c) with another frequency?

    If c), what other frequency?

    43.2 In what month is the selection finalised?

    43.3 Is it possible to update/change the selection once it is made? y/n

    If yes, what factors are usually considered to change the selection of issuers for examination?

    43.4 In accordance with your selection model, how many issuers should be selected for examination during each process of review?

Please provide any comments you may have on this answer.

43.5 Is there a minimum or maximum number of issuers that can be selected for examination?

43.6 Does the selection process use random sampling?

43.7 Does the selection process use sampling by rotation?

43.8 Does the procedure for selection of issuers provide for the potential for any issuer to be selected? y/n

If yes, please explain how.

43.9 Does the procedure for selection of issuers ensure that over a period of time all issuers will be covered? y/n

If yes, over what period will all issuers be covered with certainty?

43.10 Does the selection process include a risk-based assessment? y/n

If yes, which of the following risk-based assessments are included?

- assessment of the risk of a misstatement;
- assessment of the impact of a misstatement on the financial markets

43.11 If your selection process includes an assessment of the risk of a misstatement, please tick each of the risk factors listed below included in this assessment:

- issuer's internal controls e.g. existence of internal audit department;
- experience of issuer (e.g. new issuer);
- type of industry/sector of issuer;
- type of securities;
- qualified opinion of the auditor;
- emphasis of matter of the auditor;
- change of auditors before the end of its mandate;
- complexity of financial statements (e.g. credit institution);
- key events of the year (e.g. acquisition, profit warning, restructuring);
- risk profile of issuer's management;
- ethical standards of management;
- experience of/changes in management;
- ability of management to apply relevant financial reporting framework;
- willingness of management to apply relevant financial reporting framework;
- experience of issuers' auditors with relevant financial reporting framework;
- financial ratios (e.g. decrease of assets or net results, net debt, weight of the intangible etc.);
- whistle-blowers;
- market intelligence/information;
- date of last review;
- prior enforcement issues identified with issuer;
- incidence of related party transactions;
- business/economic trends;
- third party signals;
- other?

If other, please describe.

43.12 If your selection process includes an assessment of the impact of a misstatement, please tick each of the risk factors listed below included in this assessment:

- size of issuer;
- type of industry/sector of issuer;
- type of securities;
- market capitalisation;
- financial ratios (e.g. decrease of assets or net results, net debt, weight of the intangible etc.);
- credit risk (e.g. rating);
- share trading activity;
- share volatility;
- number and nature of investors;
- public profile;
- other?

If other, please describe.

43.13 Please explain how the subjective factors included as part of the risk assessments are implemented in the final selection process.

43.14 Are there weightings given to the various risk factors included in the assessment? y/n

If yes, please give a short description of the weightings given.

43.15 (a) Are the issuers selected for examination thereafter prioritised in terms of order of examination? y/n

(b) Are the issuers selected for examination thereafter prioritised in terms of whether the examination is full-scope or focussed? y/n

If yes in either case, please describe?

43.16 How often does your NCA select an issuer for examination following

(a) indications from auditors – whether in (1) reports or (2) otherwise – of misstatements? (always, often, rarely, never)

(b) indications of misstatements by regulatory bodies? (always, often, rarely, never)

(c) grounded complaints, and complaints that seem "reliable and relevant" after preliminary scrutiny? (always, often, rarely, never)

43.17 How many issuers were selected for examination (either unlimited scope or focused examination) arising from each selection method (an issuer should count only once)?

Period under review	*Risk based*	*Random sample approach*	*Rotation approach*	*Other*	*Total*
2014 annual reports					
2015 interim reports					
2015 annual reports					

43.18 Of the examinations selected as set out in q.43.17, how many of those examinations were completed (an issuer should count only once, and so follow-up reviews should not be included as separate examinations)?

Period under review	*Risk based*	*Random sample approach*	*Rotation approach*	*Other*	*Total*
2014 annual reports					
2015 interim reports					
2015 annual reports					

43.19 Does your NCA distinguish between 'desk-top' examinations and more intensive examinations? y/n[32]

If yes, how many (%) of the issuers selected for examination are selected for intensive examinations?

If yes, how is the decision to select an issuer for more intensive examination arrived at?

43.20 Are ESMA's common enforcement priorities taken into account when applying relevant criteria for selection for examination? y/n

If so, when and how?

43.21 Are your NCA's priorities taken into account when applying relevant criteria for selection for examination? y/n

43.22 Has your NCA communicated to ESMA

(a) factors used in selection method? y/n

(b) any amendments made subsequently? y/n

43.23 Are you aware of instances where, during period under review in this peer review, issuers not selected for examinations in accordance with your selection model (subject to your EFI jurisdiction) had material accounting errors? Please provide summary details.

43.24 Are you aware of instances where issuers that were examined by your NCA during the period under review, had material accounting errors not discovered by your examination? Please provide summary details.

43.25 Are you aware of any situations where other authorities (e.g. SEC) have, during the period under review, uncovered instances of material accounting errors in the financial statements of issuers under your NCA's jurisdiction? If yes, please describe the issue and how it was addressed.

43.26 Please provide any comments that you would like to add to elaborate on the answers given to the questions in relation to the selection methods.

H. Actual examination of financial statements

44. Describe the workflow in your NCA regarding the examination of financial statements:

44.1Is there a procedure in place regarding the examination of financial statements? y/n

If yes, please provide a description of the process detailing the main stages of the process.

If yes, has this been published or otherwise made available to issuers/their advisers? y/n

44.2 Is there a procedure in place regarding the submission of emerging issues to EECS? y/n

[32] Desk-top examinations are those carried out solely by an analysis of the published financial information without having any recourse to the issuer. If NCAs analyse management reports (which accompany financial statements) / press-releases with financial information, and do not ask questions to the issuer, this should be assessed as being included in the desk-top review as well.

If yes, please provide a description of the process detailing the main stages of the process.

44.3 Who decides on, and what is, the basis (criteria) for the allocation of financial statements to be examined between your EFI staff?

44.4 Are examiners specialised (e.g. a dedicated team is set up or specific knowledge of examiner(s) results in allocation of task) in dealing with certain types of issuer/industry/accounting standards? y/n

If yes, what are the criteria used for according specialisation?

44.5 How are issues emerging during the examination process resolved (e.g. dealt with by the examiner, consultation with colleagues, escalation process, etc.)? Please describe the methodology.

44.6 Who is responsible for decisions taken with regard to financial statements under examination (please tick more than one if necessary)

Individual
Committee (formal or informal)
Board of your NCA
Other

If 'other', please describe.

Please describe the decision making process in your NCA for decisions following examinations of financial statements.

44.7 If an individual takes the decisions, please describe the level of seniority, indicating the criteria for allocation of the decisions to be made.

44.8 Do you have a precedent database on decisions made and actions taken (e.g. excel file)?

44.9 Do you have a checklist containing considerations for financial statements examination and instructions for the practice of examination financial statements?

44.10 Is the internal working instruction subject to periodic review?

44.11 Do you have regular meetings at which information is exchanged among examiners about new decisions of principle concerning examination of financial statements?

44.12 Do you exchange information in written format among examiners (e.g. minutes, emails) about new decisions of principle concerning examining financial statements?

44.13 Are comments prepared by the examiner reviewed by another person with a view of ensuring that similar comments are raised on similar or all financial statements?

44.14 Does your NCA issue alerts or other publications to assist issuers in preparing financial statements? y/n

44.15 Is there a date by which an examination must be opened, or concluded? y/n

If yes, please explain.

44.16 Does your NCA use

(a) unlimited scope examination? y/n

(b) focussed examination? y/n

44.17 Which factors are taken into account by your NCA when deciding whether an issuer should be subject to unlimited or a focussed examination?

44.18 If your NCA uses a combination of unlimited scope examinations and examinations focussed on a particular topic/issue, please answer the following questions:

44.18.1 Are unlimited scope examinations applied to a number/list of issuers determined in advance? y/n

44.18.2 Are focussed examinations applied to a number/list of issuers determined in advance? y/n

44.18.3 In the table below, please indicate the number of issuers subject to examination that were/will be subject to an unlimited scope examination?

44.18.4 In the table below, please indicate the number of issuers subject to examination that were/will be subject to a focussed examination only?

Period under review	*Unlimited scope examination*	*Focussed examination*	*Total*
2014 annual reports			
2015 interim reports			
2015 annual reports			

44.18.5 How are the proportions determined?

44.19 What financial statements are subject to examination by your NCA (please tick as necessary)?

- annual consolidated financial statements
- interim consolidated financial statements
- annual separate financial statements
- interim separate financial statements

44.20 In what ways is the examination of financial statements carried out in practice? Please select one or more from the following:

- Asking questions of issuer in:
  (a) in writing
  (b) at meetings
  (c) other (please describe).
- Referring issues to:
  (a) the Board of the issuer
  (b) the management of the issuer
  (c) the audit committee within in the issuer
  (d) other (please describe)
- Identification of industry-relevant accounting issues
- Engaging external experts to assist examination
- Exchanging information with other regulatory units (a) in-house or (b) in another competent authority
- On-site inspections
- Review of other relevant financial information of issuer
- Review of media
- Comparison of issuer with competitors
- Comparison of financial statements with prior years
- Analysis of key financial relationships and trends within the issuer's financial reports under review and for prior years

-Follow up examinations

- Other? Please specify

For those ways selected, please also provide information about the frequency of the foregoing: ((1) always; (ii) frequently; (ii) sometimes; (iii) rarely)

44.21 Have you submitted any emerging issues to the EECS database in 2014 or 2015?

44.22 If you answered yes to question 44.21, how was the outcome of the discussion of emerging issues in EECS taken into account in the enforcement examination procedure/documentation?

44.23 Have you submitted any decisions to the EECS database in 2014 or 2015 (where the members of the EECS opposed the decision)? y/n

44.24 If you answered yes to question 44.23, how was the outcome of the discussion of a decision in EECS (if members opposed to it) taken into account in the enforcement examination procedure/documentation?

44.25 How is the examination work done documented, notably (i) findings; (ii) the assessment made by the examiners (iii) the conclusions reached (iv) the communication to issuers (v) the follow up of the decisions taken (when it is required that the issuer should correct or supplement other information)?

45 Please describe the procedure in place in case of disagreement between the issuer and any designated/delegated competent authority responsible for examining the financial information.

G: Actions taken following review of financial statements

46 To assess what is done by NCAs following the examination of an issuer's financial statements, please answer the following questions:

46.1Does the conclusions of the examination process of your NCA include

(a) a decision that no further examination is needed y/n

(b) a decision whereby an enforcer accepts that a specific accounting treatment is in accordance with the relevant financial reporting framework and no enforcement action is required y/n and

(c) a decision whereby an enforcer finds that a specific accounting treatment is not in accordance with the relevant financial reporting framework, whether it constitutes a material misstatement or an immaterial departure where an enforcement action is required y/n

46.2 Does your NCA's procedures permit conclusions of the scrutiny process other than (a) to (c) above. y/n?

If yes, please describe.

46.3 Please indicate in the table below, the number and type of actions[33] directed by your NCA as a result of the examination of the financial statements[34].

[33] "actions" in this table (4th column) includes actions not reported to ESMA in the activity report.

[34] An issuer should only be counted once in relation to the same financial statements examined. So, if more than one issue is raised with an issuer's financial statements, the correction(s) should only count once.

Period under review	*No. of reissuance of financial statements*	*No. of corrective notes published*	*No. of corrections in future financial statements*	*No. of letters to issuers about immaterial departures that might become significant in future (p.59)*	*Total*
2014 annual reports					
2015 interim reports					
2015 annual reports[35]					

46.4Does your NCA communicate its assessment of the materiality of an issue to the issuer?

H. Final questions

47 Does your NCA follow the Guidelines on Enforcement of Financial Information when enforcing financial information based on other national law requirements i.e. other than those covered by the Guidelines? y/n

If yes, please describe.

48 Does your NCA take into account in the selection process, the CESR document: "Enforcement of Standards on Financial Information – CESR Guidelines on Application of Selection Methods." y/n

49 Are there any features of the legal or organisational structure of your NCA, or of the environment in which your NCA works, which impact on the ability of the EFI unit to fulfil its function in an effective manner, which impact on the independence of the NCA, or restrict the ability of your NCA to respond to market developments? y/n

If yes, please describe.

50 Does an NCA/authority in your jurisdiction have powers to take measures (as described for example in q.51) against issuers for failing to comply with relevant accounting standards? y/n

51 If yes, please indicate which of the following measures can be taken against issuers:

- criminal prosecution
- administrative fines
- fit and proper (fitness to practice) cases[36]
- other administrative measures/sanctions

If other, please describe.

52 Apart from the actions taken referred to in 46.3, what other measures have been taken by your NCA (sanctions, fines, administrative measures etc.) in relation to the examination of financial statements?

[35] If the final figure for the review of the 2015 annual financial statements is not available yet, please indicate how many actions are planned.

[36] 'fitness and probity' and 'fitness to practice' cases refer to actions taken by an NCA against an individual to reassess that individual's entitlement to practice a profession or occupy a specific role in certain issuers (not always available as a power). The questions relate to such cases taken solely on the basis of breach of relevant accounting standards.

Period under review	*Criminal*	*Administrative Fines*	*Fit and proper/fitness to practice assessments (arising from IFRS misstatements)*	*Other administrative measures/sanctions*	*Total*
2014 annual reports					
2015 interim reports					
2015 annual reports[37]					

Please provide any comments or observations that you would like to add.

53 Against what criteria/KPIs do you assess the EFI unit in your jurisdiction to be effective?

54 How do you assess the sanctioning in the area of EFI in your jurisdiction to be effective?

55 Is there anything further you wish to comment on concerning the examination and enforcement of financial information that has not been covered by the questions above, including possible improvements to the Guidelines (2, 5 and 6)?

56 Are there any practices adopted by your NCA that you consider could be relevant as good practices for other jurisdictions?

[37] If the final figure for the review of the 2015 annual financial statements is not available yet, please indicate how many issuers are scheduled for review.

Annex 3

Compliance Table for the Guidelines

Date: 21 April 2017
ESMA 32-67-142

Guidelines compliance table

Guidelines on the enforcement of financial information (ESMA/2014/1293)

The following competent authorities have informed us that they comply, do not comply or intend to comply with the ESMA's guidelines on the enforcement of financial information:

Member State		Competent authority	Complies	Comments
AT	Austria	Financial Market Authority (FMA)	**No**	FMA does not comply with Guidelines 1 and 2 due to a lack of provisions related to the powers of the enforcer and inability to seek sanction for additional personnel. There is an unclear split of responsibility between FMA and a private review panel (AFREP), to whom some enforcement responsibilities are delegated. Discussions are currently taking place to clarify the relationship, the delegation procedure and the transmission of enforcement reports between FMA and FREP. Furthermore, a lawsuit is pending on the delegation of task to conduct regular inspections.
BE	Belgium	Financial Services and Markets Authority (FSMA)	**Yes**	
BG	Bulgaria	Financial Supervision Commission (FSC)	**No**	FSC does not comply with Guidelines 2, 10 and 11 due to a lack of adequate resources and budgetary constraints.

				FSC intends to comply with Guideline 5 subject to necessary national legislative or regulatory proceedings.
CZ	Czech Republic	Czech National Bank (CNB)	**Yes**	
DK	Denmark	Erhvervsstyrelsen	**Yes**	
		Finanstilsynet	**Yes**	
DE	Germany	Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)	**No**	BaFin does not comply with Guidelines 7 and 17 due to its inability, for legal reasons, to request some enforcement actions and to authorize publication of decisions extracted from the EECS database.
EE	Estonia	Estonian Financial Supervision Authority	**Yes**	
IE	Ireland	Irish Accounting and Auditing Supervisory Authority (IAASA)	**Intends to comply**	IAASA currently does not comply with Guideline 2 due to a lack of sufficient human resources. As recruitment proceedings have been initiated, IAASA intends to comply with all the Guidelines by 31 December 2017.
EL	Greece	Hellenic Capital Market Commission (HCMC)	**Yes**	
ES	Spain	Comisión Nacional del Mercado de Valores (CNMV)	**Yes**	
FR	France	Autorité des Marchés Financiers (AMF)	**Yes**	
HR	Croatia	Hrvatska agencija za nadzor financijskih usluga (HANFA)	**Intends to comply**	HANFA currently does not comply with the Guidelines due to a lack of final enforcement responsibility and authority. As relevant national legislative proceedings have been initiated, HANFA intends to comply with all the

				Guidelines by 31 December 2017.
IT	Italy	Commissione Nazionale per le Società e la Borsa (CONSOB)	**Yes**	
CY	Cyprus	Cyprus Securities and Exchange Commission (CySEC)	**Yes**	
LV	Latvia	Financial and Capital Market Commission (FCMC)	**Yes**	
LT	Lithuania	Bank of Lithuania	**Yes**	
LU	Luxembourg	Commission de Surveillance du Secteur Financier (CSSF)	**Yes**	
HU	Hungary	Magyar Nemzeti Bank (MNB)	**Yes**	
MT	Malta	Malta Financial Services Authority (MFSA)	**Yes**	
NL	Netherlands	Netherlands Authority for the Financial Markets (AFM)	**Yes**	
PL	Poland	Komisja Nadzoru Finansowego (KNF)	**Intends to comply**	KNF currently does not comply with Guideline 17 due to a lack of availability of the relevant legislative provisions. As relevant national legislative proceedings have been initiated, KNF intends to comply with Guideline 17 by 1 July 2017.
PT	Portugal	Comissão do Mercado de Valores Mobiliários (CMVM)	**Yes**	
RO	Romania	Romanian Financial Supervisory Authority (CNVM)	**Yes**	
SI	Slovenia	Securities Market Agency (SMA)	**No**	SMA does not comply with Guidelines 4, 10-17 due to a lack of adequate resources as well as regulatory and legal provisions.
SK	Slovakia	National Bank of Slovakia (NBS)	**Yes**	
FI	Finland	Finanssivalvonta	**Yes**	
SE	Sweden	Finansinspektionen	**No**	Finansinspektionen does not comply with Guideline 3 due to a lack of independence from market operators who are currently in charge for the enforcement of financial information in Sweden.
UK	United Kingdom	Conduct Committee of the Financial Reporting Council	**Yes**	
		Financial Conduct Authority	**Yes**	

EEA EFTA State[38]		Competent authority	Complies	
IS	Iceland	Register of Annual Accounts	**Yes**	
NO	Norway	Finanstilsynet	**Yes**	

Notes

Article 16(3) of the ESMA Regulation requires national competent authorities to inform us whether they comply or intend to comply with each guideline or recommendation we issue that applies to them within two months of the guideline or recommendation being issued. If a competent authority does not comply or does not intend to comply it must inform us of the reasons. We decide on a case by case basis whether to publish these reasons.

For further information on the current position of any competent authority, please contact that competent authority. Contact details can be obtained from our website (www.esma.europa.eu).

[38] The EEA States other than the Member States of the European Union are not currently required to notify their compliance with ESMA's Guidelines. This table is based on information provided from the authorities listed in those EEA States on a voluntary basis.

Annex 4

FREP selection model

1. FREP has a written selection procedure which has been published and is available at http://www.frep.info/pruefverfahren/verfahrensregelungen_en.php although only in German.

2. The model for sampling selected by the FREP the dual approach of a risk-based "with-cause" selection and a random sampling into consideration, as well as the principle that all listed companies should be reviewed within a defined period (aiming for full coverage - rotation).

3. The risk-based selection first focuses on the probability of a material error in the financial reporting. The possible impact of the error on the market is taken into account in the stratification of the general population for rotation and random sampling.

4. FREP currently seeks to select approximately 115 issuers per year for examination, planning/expecting to carry out about 100 of those due to the attrition of issuers from the selection (e.g. due to de-listing, insolvency, merger etc.).

5. FREP first identifies its capacity for a given year before making a selection. Then it starts the process of identifying the list of issuers to be examined, starting with the issuers selected but not examined in the previous year and carried over. If a selected issuer is not examined during a year, then that issuer is automatically included in the selection for the following year.

6. The examinations in a year are made up of issuers carried over, then those based on risk, then those randomly selected from two separate pools, and finally a random selection from the whole population.

   Risk-based selection

7. The risk-based selection accounts for between 15 – 20% of the total number of issuers selected for examination in a year. Although, this might be higher if sufficiently numerous problems were reported or there were sufficiently numerous concrete risk factors.

8. The first portion of issuers is identified when concrete indications of erroneous financial reporting exist (i.e. qualified audited opinion, concrete issues identified, examinations requested by BaFin). These will be focused reviews and are the only focused reviews that are carried out by FREP. All of these issuers are selected by FREP for examination. These are not taken out of the general population, but will potentially be looked at for unlimited scope examination if they qualify under the other parts of the selection model.

9. FREP will next identify a pool of issuers based on abstract risk conditions, e.g. industry based risk factors, enforcement priorities. There is a list of risk factors maintained by FREP for consideration of the abstract risk conditions:

a) IPO

b) Exceptional transactions (business acquisitions and sales, transactions with related parties)

c) Special facts and circumstances

d) Economic situation of the company

e) Loss situations

f) Change of CFO/CEO/Supervisory Board

g) Specific industry risks

h) Pressure due to high expectations

i) Delayed preparation/publication of the annual accounts

j) Risks identified in the ECEP or FREP annual priorities

k) Companies that have not been examined for a long time

l) Companies that stood out in the last enforcement examination

10. When this pool of issuers is identified, a purely random selection of 40% of this pool will be made. An unlimited scope examination is carried out on these selected issuers.

The selection by rotation and random-sample

11. The selection by rotation and random-sampling amounts to between 80 – 85% of the selection.

12. FREP makes a stratification of the market considering the impact of a material error in financial reporting on market confidence and on investor protection.

13. A sample is taken separately from two strata of companies. The remaining population of issuers (having taken out those carried forward and those selected from the risk-based pool) are divided into two categories or 'strata'. The first stratum is made up of those issuers who comprise the four stock indices in Germany: DAX, MDAX, SDAX, and TecDAX. This pool is about 160-strong. The second category/stratum is made up of all other issuers. The rotation system in place (not the risk-based approach) ensures that issuers with high potential impact of an infringement on the financial markets are examined within 4-5 years as these belong to Stratum 1 of the rotation.

14. Issuers are selected so that the issuers in Stratum 1 are examined by rotation every 4-5 years. Issuers in the second stratum (which are all other issuers) are examined by rotation every 8 to 10 years. So, a random selection is made of approximately $1/5^{th}$ of the issuers in Stratum 1, and approximately $1/10^{th}$ of the issuers in Stratum 2. When issuers are selected for examination in year 1, year 2 etc. they are excluded from the possible choice

thereafter until the end of the cycle. Such issuers may, nevertheless, qualify for a risk-based selection in any year.

15. The rotation cycle is not renewed automatically, i.e. companies in the first Stratum examined in year 1 will not automatically be examined in year 6.

16. The final stage of selection is a purely random selection from all issuers (not yet selected). 10 issuers are selected randomly. From that 10, three issuers are added to the yearly planned examinations. The three are selected based on judgment of a selection committee. So, for example, if any of the 10 issuers had been included in the pool of issuers identified by risk factors (but not thereafter selected), then FREP staff would put that issuer into the selection for examination. This final element was specifically added to ensure that there is no comfort given to any issuers that they would not be selected in any given year.

17. FREP looks at the make-up of the market indices each year to try and capture changes to the indices, and to identify any companies thereby falling out of consideration (but these issuers may be identified for the risk-pool).

18. In a stratified sample selection all companies within a stratum have the same probability of being examined. This should ensure that all companies are subject to examination within a specific timeframe. As such, each selected company will be removed from the stratum until the last year after which point all companies in the related stratum have been subject to examination. If new risk factors are identified with respect to a selected company, that company is returned to the sampling population. So, the Stratum 1 companies would total approximately 130 in year two, 100 in year three, etc.

Annex 5

Statement from visited National Competent Authorities

- Statement of the Financial Reporting Council (**FRC**) (UK)

The FRC would like to note that it does not accept the Peer Review Report's finding in respect of its suggested non-compliance with Guideline 5 of ESMA's 'Guidelines on Enforcement of Financial Information'. Nor does it accept that the FRC's approach to driving improvements in the quality of financial reporting is impaired by any limited nature of its powers.

Guideline 5 requires NCAs to adopt a selection methodology that combines a risk based approach with random or rotational elements. Risk is to be determined by considering both the probability of infringements and the potential impact of those infringements on financial markets. We note that the Guideline requires that "there should always be a possibility of an issuer being selected for review'. It does not articulate how this 'possibility' is to be assessed.

The FRC's chosen methodology for accounts selection combines risk - through rotation of the FTSE 350 and priority sector selection outside this index - with random sampling and encouragement of referrals and informed complaints. It also responds to concerns expressed in the media. The FRC focusses its efforts on the FTSE 350, which consists of the UK's largest listed companies and which has the most significant effect on market confidence. However, the statistics show that FRC also monitors smaller equity issuers with sufficient frequency for them to know that there is a realistic chance that their report and accounts may be selected for review. In the last five years we have reviewed in the order of 4%, 4%, 6%, 5% & 13% of the non FTSE350 equity issuers. In the FRC's view, the ESMA Guidelines allow NCAs the flexibility to select larger and smaller equity and bond issuers, in relative proportions that best reflect the particular characteristics of their market and their investor profile.

This is the basis on which the FRC has previously reported its compliance with Guideline 5.

The FRC notes that the Peer Review Assessment Group believes that the FRC's approach to corrective action is determined by its relative lack of powers. The FRC has the power to go to court to seek an order requiring a company to amend its accounts. It has not been necessary to utilise such power as the threat of so doing, and the related potential directors' liability, has always proved sufficient to ensure that companies take appropriate action in respect of the FRC's findings. The FRC's power to go to court combined with the FCA's power to require immediate announcement to the market in serious cases means that the UK, as a whole, has the necessary powers to comply with the Guidelines.

The Peer Review Assessment Group believes that the FRC's approach results in corrective action being too weighted towards future correction rather than immediate action. We do not agree. Where material issues are identified requiring a correcting response, the FRC requires such action to be taken on a timely basis. The point at which the matter is concluded and its assessed materiality will determine whether this is to be done immediately, for example through a press notice, or as part of the company's next report and accounts. A power to require corrections would not accelerate the point at which the correction would be made public.