Response Form to the Consultation Paper

Draft Guidelines on Enforcement of Sustainability Information (GLESI)

Responding to this paper

ESMA invites comments on all matters in *Consultation Paper – Draft Guidelines on Enforcement of Sustainability Information* (ESMA32-992851010-1016) and in particular on the specific questions summarised in Annex III of the Consultation Paper and included in this response form. Comments are most helpful if they:

* respond to the question stated;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

ESMA will consider all comments received by 15 March 2024.

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading “Open consultations” 🡪 “Consultation on draft Guidelines on Enforcement of Sustainability Information”.

**Instructions**

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA\_QUESTION\_GLESI\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA\_GLESI\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_GLESI \_ABCD\_RESPONSEFORM.
5. Upload the form containing your responses, **in Word format**, to ESMA’s website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading “Open consultations” 🡪 “Consultation on draft Guidelines on Enforcement of Sustainability Information”).

**Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

**Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘[Data protection](https://www.esma.europa.eu/about-esma/data-protection)’.

**Who should read this paper?**

This consultation paper will be of interest to listed undertakings required to publish sustainability information by the Corporate Sustainability Reporting Directive and Article 8 of the Taxonomy Regulation, to investors and other users of sustainability information and to auditors and independent assurance services providers.

General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | Confederation of Danish Industry |
| Activity | Non-financial counterparty |
| Are you representing an association? |  |
| Country / region | Denmark |

Questions

1. Do you have comments on the proposed scope of the GLESI? If yes, please explain your views and provide alternative suggestions where needed.

<ESMA\_QUESTION\_GLESI\_1>

We are concerned about the scope of the GLESI and the failure to both recognise and specifically address the fact that the scope of the CSRD reporting requirements expands well beyond those being listed and/or covered be the transparency directive. It is briefly addressed in the introduction, but the reality is that the GLESI in the absence of other guidelines in effect will apply to all the entities covered by the CSRD. Therefore, we believe the enforcement guidance structure needs to address firstly the expectations to the general level of reporting (and enforcement) for the full scope of CSRD-reports and then more specifically address the specific expectations/guidelines applicable to listed entities and the enforcement of their reporting requirements. As the sustainability reporting standards - contrary to the financial reporting standards – are identical for the listed and unlisted entities the consequences of the GLESI are significantly broader to the GLEFI. Failure to cater for theses difference will significantly increase the reporting obligations for all the unlisted and in effect make them obliged to report as listed entities. The requirement on national enforcers needs to reflect and address this difference.

Furthermore, the application of the GLESI will not only be retrospective for the enforcement agencies, but also for the reporting entities. Hence, we believe the application should focus on financial reporting years rather than publication dates in order to also support and guide the preparers or at least be clearer on the implications for the preparers.

The guidelines should clearly indicate when they are addressing information issued as part of the annual report and when they are addressing information related to the capital markets. The scope of GLESI and GLEFI should be clear in tear of which of these that apply to information incorporated by reference between section in the annual report as well as how they apply to information provided in the management review supporting/covering both the financial statements and the sustainability report.

Furthermore, we would like to highlight that we believe ESMA needs to have a broader perspective in the consultation process as it currently seems to focus only on financial markets in the categorisation of respondents, when the reality is that the impact is primarily on all the non-financial reporting entities. Hence, it is for instance not possible to identify the respondent as “preparers”

It is unclear how the enforcement mechanism and the GLEFI and GLESI guidelines apply to the digital XBRL reporting of the sustainability report for non-listed entities. The spill-over effect should be considered, especially in terms of linkage between the CSRD required digital reporting of sustainability data and nationally required digital reporting of the financial statements/annual reports. The guidelines should clearly address how and to which extend they apply to the digital reporting.

Lastly, we suggest, the scope definition in GLEFI section I.4 is updated to reflect the interconnectivity between GLEFI and GLESI, including the taxonomy reporting required by Article 8 of the Taxonomy Regulation

<ESMA\_QUESTION\_GLESI\_1>

1. Should any further legislative references be added to section 2.1 of the GLESI? If yes, please explain which ones and why.

<ESMA\_QUESTION\_GLESI\_2>

We agree with the legal references

<ESMA\_QUESTION\_GLESI\_2>

1. Should any other abbreviations be added to section 2.2 of the GLESI? If yes, please explain which ones and why.

<ESMA\_QUESTION\_GLESI\_3>

We agree with the abbreviations, but would suggest to add a reference, link or explanation to the SRWG as the reader may not be familiar with this.

<ESMA\_QUESTION\_GLESI\_3>

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

<ESMA\_QUESTION\_GLESI\_4>

We would suggest to add the following definition:

**Other preparers**: Preparers covered by the scope of the CSRD, but not covered by art 2(1)(d) of the Transparency Directive.

The rationale for this definition is the fact that the ESRS’s are directly applicable for more than 50.000 European preparers and therefore any decision taken on the interpretation/enforcement of the ESRS will have a much broader effect than decisions taken in regard of interpretation and/or enforcement of IFRS. Hence, this needs to be factored in – both in terms of stakeholder involvement and in terms of evaluation of the consequences and framing of decisions.

<ESMA\_QUESTION\_GLESI\_4>

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

<ESMA\_QUESTION\_GLESI\_5>

We generally agree with the purpose, but the purpose should also address the fact that enforcement of the taxonomy related information and information under the CSRD/ESRS is not only under the competence of ESMA, as the interpretation and reporting needs to be aligned with the broader application of the CSRD. Hence ESMA needs to recognise this in the purpose and find a way to ensure that the broader application of the reporting requirements is both factored in and that the stakeholders impacted by the decisions have a fair chance of being heard and/or consulted.

<ESMA\_QUESTION\_GLESI\_5>

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

<ESMA\_QUESTION\_GLESI\_6>

ESMA needs to address the relationship with enforcement for all the non-listed entites and their reports – and reflect on the key difference between sustainability reporting standards with a significantly broader mandatory scope and financial reporting, where the IFRS have a more limited mandatory scope.

<ESMA\_QUESTION\_GLESI\_6>

1. Do you agree with the proposed objective of the enforcement of sustainability information? If not, please explain why and provide suggestions for amendments.

<ESMA\_QUESTION\_GLESI\_7>

Paragraph 14 should also reflect on the link to all the non-listed entities and potentially on whether there is a difference between those covered by the transparency directive and those not covered but covered by the CSRD. A reflection on the supervisory setup for these unlisted and the interrelationship needs to be considered and factored in. If the ESMA competence does not cover unlisted, then can a national competent authority rule differently for unlisted compared to listed or for instance differentiate on materiality?

<ESMA\_QUESTION\_GLESI\_7>

1. Do you agree with the draft Guideline 2 on how enforcers should ensure that they have an effective process for enforcing sustainability information? If not, please explain why and provide suggestions for amendments.

<ESMA\_QUESTION\_GLESI\_8>

We generally agree, but the consequences of the spill-over effects need to be addressed. In particular, understanding about the consequences for all the unlisted needs to be available in order to balance – and if needed clearly state – where a ruling/decision/enforcement is different for the listed compared to the unlisted preparers and/or their assurance providers

<ESMA\_QUESTION\_GLESI\_8>

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

<ESMA\_QUESTION\_GLESI\_9>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_GLESI\_9>

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

<ESMA\_QUESTION\_GLESI\_10>

We generally agree with the independence requirements, but need to highlight the need for consultation and communication with the enforcement for the unlisted segments and stakeholders if necessary. Please note, that we believe consultation does not impair the independence, but rather ensures that the enforcer can take an informed decision.

<ESMA\_QUESTION\_GLESI\_10>

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

<ESMA\_QUESTION\_GLESI\_11>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_GLESI\_11>

1. Do you agree with the draft Guideline 6 on the timing of the selection model? If not, please explain why and provide suggestions for amendments.

<ESMA\_QUESTION\_GLESI\_12>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_GLESI\_12>

1. Do you agree with the proposed Guideline 7 on the selection universe? If not, please explain why and provide suggestions for amendments.

<ESMA\_QUESTION\_GLESI\_13>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_GLESI\_13>

1. Do you agree with the draft Guideline 8 on the four types of examination enforcers can use when they examine sustainability information? If not, please explain why and provide suggestions for amendments.

<ESMA\_QUESTION\_GLESI\_14>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_GLESI\_14>

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

<ESMA\_QUESTION\_GLESI\_15>

We generally agree, but the examination process also needs to consider the spill-over effects. In particular, understanding about the consequences for all the unlisted needs to be available during the examination process and explicitly documented. This may require the need for consultation and communication with the enforcement for the unlisted segments and stakeholders in order to balance – and if needed clearly state – where an examination differs for the listed compared to the unlisted preparers and/or their assurance providers

<ESMA\_QUESTION\_GLESI\_15>

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

<ESMA\_QUESTION\_GLESI\_16>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_GLESI\_16>

1. Do you agree with the draft Guideline 11 which requires enforcers to undertake quality reviews of their enforcement processes? If not, please explain why and provide suggestions for amendments.

<ESMA\_QUESTION\_GLESI\_17>

Quality reviews should also factor in the broader application of the reporting standards (and taxonomy reporting) for all the unlisted entities

<ESMA\_QUESTION\_GLESI\_17>

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

<ESMA\_QUESTION\_GLESI\_18>

We generally agree with the approach, but need to both point on the implications for all the unlisted preparers (spill-over effects) and also refer to the introduction part of the guidelines in terms of maturity and learning curve for all involved. Hence, for a transition period, more emphasis should be on guidance and thus the softer reactions in order to stimulate the reporting.

<ESMA\_QUESTION\_GLESI\_18>

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

<ESMA\_QUESTION\_GLESI\_19>

We generally agree with the approach, but need to both point on the implications for all the unlisted preparers (spill-over effects) and also refer to the introduction part of the guidelines in terms of maturity and learning curve for all involved. Hence, for a transition period, more emphasis should be on guidance and thus the softer reactions in order to stimulate the reporting.

<ESMA\_QUESTION\_GLESI\_19>

1. Do you agree with the draft Guideline 14 which establishes that enforcers should check whether issuers took appropriate action when they were subject to an enforcement action? If not, please explain why and provide suggestions for amendments.

<ESMA\_QUESTION\_GLESI\_20>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_GLESI\_20>

1. Do you agree with the proposed requirements for how to coordinate enforcement of sustainability information at a European level in draft Guidelines 15, 16, 17, 18, 19 and 20? If not, please explain why and provide suggestions for amendments.

<ESMA\_QUESTION\_GLESI\_21>

We support the efforts to coordinate enforcement of sustainability information, but believe ESMA needs to have a broader mindset than only entities covered by the transparency directive. Thus, the SRWG should be required to consult/interact with the enforcement for the unlisted segments and stakeholders (including listed and unlisted) due to the broader impact. Furthermore, we believe interaction between SRWG and EFRAG Sustainability Reporting Board on a yearly basis is needed to foster the development of the reporting standards, the reporting in practice and the enforcement. The SRWG should also be required to consider, whether decisions/rulings etc. only apply for listed or have broader consequences/impacts, including broader impact on the internal market.

<ESMA\_QUESTION\_GLESI\_21>

1. Do you agree that it is useful to publish extracts of decisions taken by enforcers, as required by draft Guideline 21, and to report on enforcement activities at national and European level, as required by draft Guideline 22? If not, please explain why and provide suggestions for amendments.

<ESMA\_QUESTION\_GLESI\_22>

We fully support the publication of extracts and enforcement activities

<ESMA\_QUESTION\_GLESI\_22>

1. Do you agree that the proposed policy option 1 is preferable from a cost-benefit perspective? If not, please explain. If yes, have you identified other benefits and costs which are not mentioned above?

<ESMA\_QUESTION\_GLESI\_23>

We support Policy option 1, but need to refer to the above comments regarding the significant different impact in the sustainability area because the standards are mandatory for a much broader scope of preparers than the financial reporting standards. Therefore, the spill-over effects are significantly different and this needs to be recognised and factored in in all the enforcements steps.

We also believe the GLESI should include a transitional provision highlighting the fact that the reporting standards are new and that everyone is on a steep learning curve, where focus on guidance rather than hard enforcement is key for the successful implementation.

<ESMA\_QUESTION\_GLESI\_23>

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

<ESMA\_QUESTION\_GLESI\_24>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_GLESI\_24>

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

<ESMA\_QUESTION\_GLESI\_25>

We would like to highlight again the need for ESMA to recognise the preparers and the spill-over effects on all the unlisted preparers in this area. As a consequence, we believe ESMA need to consider how they ensure that comments are also received from preparers/auditors/enforcers not under the ESMA mandate, but directly impacted by the ESMA decisions as ESMA

<ESMA\_QUESTION\_GLESI\_25>