

Response Form to the Consultation Paper

Draft Guidelines on Enforcement of Sustainability Information (GLESI)

Responding to this paper

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

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

ESMA will consider all comments received by 15 March 2024.

All contributions should be submitted online at www.esma.europa.eu under the heading “Open consultations” → “Consultation on draft Guidelines on Enforcement of Sustainability Information”.

Instructions

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

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA_QUESTION_GLESI_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA_GLESI_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_GLESI_ABCD_RESPONSEFORM.
5. Upload the form containing your responses, **in Word format**, to ESMA’s website (www.esma.europa.eu under the heading “Open consultations” → “Consultation on draft Guidelines on Enforcement of Sustainability Information”).

Publication of responses

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

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading '[Data protection](#)'.

Who should read this paper?

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

General information about respondent

Name of the company / organisation	Deutsches Aktieninstitut e.V.
Activity	Non-financial counterparty
Are you representing an association?	<input checked="" type="checkbox"/>
Country / region	Germany

Questions

Q1 Do you have comments on the proposed scope of the GLESI? If yes, please explain your views and provide alternative suggestions where needed.

<ESMA_QUESTION_GLESI_1>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GLESI_1>

Q2 Should any further legislative references be added to section 2.1 of the GLESI? If yes, please explain which ones and why.

<ESMA_QUESTION_GLESI_2>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GLESI_2>

Q3 Should any other abbreviations be added to section 2.2 of the GLESI? If yes, please explain which ones and why.

<ESMA_QUESTION_GLESI_3>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GLESI_3>

Q4 Do you agree with the definitions ESMA proposes for inclusion in section 2.3 of the GLESI? Has ESMA covered all the concepts that need to be defined? If not, please explain your concerns and propose how to address them.

<ESMA_QUESTION_GLESI_4>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GLESI_4>

Q5 Do you agree with the proposed purpose of the GLESI? If not, please explain why and make a proposal for what should change.

<ESMA_QUESTION_GLESI_5>

We basically agree. However, it must be ensured that enforcement is limited to the question of whether an issuer complies with the ESRS and the EU Taxonomy Regulation. See also our general remarks to Q 25.

<ESMA_QUESTION_GLESI_5>

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

<ESMA_QUESTION_GLESI_6>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GLESI_6>

Q7 Do you agree with the proposed objective of the enforcement of sustainability information? If not, please explain why and provide suggestions for amendments.

<ESMA_QUESTION_GLESI_7>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GLESI_7>

Q8 Do you agree with the draft Guideline 2 on how enforcers should ensure that they have an effective process for enforcing sustainability information? If not, please explain why and provide suggestions for amendments.

<ESMA_QUESTION_GLESI_8>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GLESI_8>

Q9 Do you agree with the draft Guideline 3 on enforcement of sustainability information prepared under equivalent third country sustainability reporting requirements? If not, please explain why and provide suggestions for amendments.

<ESMA_QUESTION_GLESI_9>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GLESI_9>

Q10 Do you agree with the draft Guideline 4 on the independence of enforcers? If not, please explain why and provide suggestions for amendments.

<ESMA_QUESTION_GLESI_10>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GLESI_10>

Q11 Do you agree with the draft Guideline 5 on the mixed selection model? If not, please explain why and provide suggestions for amendments.

<ESMA_QUESTION_GLESI_11>

We understand that ESMA's proposal is flexible with regard to the enforcement model which we strongly support. In particular, the guidelines must not prohibit an integrated model according to which financial and sustainability information would be enforced at the same time in an integrated process. Otherwise issuers would most likely face additional burden, as e.g. in year t financial information could be enforced and the same issuer could be selected for sustainability information in year t+1. See also our remarks to Q 25.]

<ESMA_QUESTION_GLESI_11>

Q12 Do you agree with the draft Guideline 6 on the timing of the selection model? If not, please explain why and provide suggestions for amendments.

<ESMA_QUESTION_GLESI_12>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GLESI_12>

Q13 Do you agree with the proposed Guideline 7 on the selection universe? If not, please explain why and provide suggestions for amendments.

<ESMA_QUESTION_GLESI_13>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GLESI_13>

Q14 Do you agree with the draft Guideline 8 on the four types of examination enforcers can use when they examine sustainability information? If not, please explain why and provide suggestions for amendments.

<ESMA_QUESTION_GLESI_14>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GLESI_14>

Q15 Do you agree with the draft Guideline 9 which addresses the enforcer's examination process? If not, please explain why and provide suggestions for amendments.

<ESMA_QUESTION_GLESI_15>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GLESI_15>

Q16 Do you agree with the draft Guideline 10 which presents the conditions which enforcers should apply when they offer their issuers pre-clearance of sustainability information? If not, please explain why and provide suggestions for amendments.

<ESMA_QUESTION_GLESI_16>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GLESI_16>

Q17 Do you agree with the draft Guideline 11 which requires enforcers to undertake quality reviews of their enforcement processes? If not, please explain why and provide suggestions for amendments.

<ESMA_QUESTION_GLESI_17>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GLESI_17>

Q18 Do you agree with the draft Guideline 12 which presents the considerations enforcers should apply when they identify an infringement in the sustainability information and have to determine which enforcement action to use? If not, please explain why and provide suggestions for amendments.

<ESMA_QUESTION_GLESI_18>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GLESI_18>

Q19 Do you agree with the draft Guideline 13 which clarifies the approach to materiality in the enforcement of sustainability information? If not, please explain why and provide suggestions for amendments.

<ESMA_QUESTION_GLESI_19>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GLESI_19>

Q20 Do you agree with the draft Guideline 14 which establishes that enforcers should check whether issuers took appropriate action when they were subject to an enforcement action? If not, please explain why and provide suggestions for amendments.

<ESMA_QUESTION_GLESI_20>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GLESI_20>

Q21 Do you agree with the proposed requirements for how to coordinate enforcement of sustainability information at a European level in draft Guidelines 15, 16, 17, 18, 19 and 20? If not, please explain why and provide suggestions for amendments.

<ESMA_QUESTION_GLESI_21>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GLESI_21>

Q22 Do you agree that it is useful to publish extracts of decisions taken by enforcers, as required by draft Guideline 21, and to report on enforcement activities at national and European level, as required by draft Guideline 22? If not, please explain why and provide suggestions for amendments.

<ESMA_QUESTION_GLESI_22>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GLESI_22>

Q23 Do you agree that the proposed policy option 1 is preferable from a cost-benefit perspective? If not, please explain. If yes, have you identified other benefits and costs which are not mentioned above?

<ESMA_QUESTION_GLESI_23>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GLESI_23>

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

<ESMA_QUESTION_GLESI_24>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GLESI_24>

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

<ESMA_QUESTION_GLESI_25>

First of all, we would like to express our general support for the guidelines. We find it commendable that the new GLESI are consistent with the existing guidelines on the enforcement of financial information (GLEFI), representing a coherent continuation of these policies. We find that the consistency between the guidelines for the enforcement of financial and sustainability information is crucial for creating a transparent and not overly burdensome enforcement framework for companies.

Against this background, we particularly welcome that the GLESI proposal appears to be open for an integrative enforcement approach regarding financial and sustainability information (see p. 27, point v.). From our perspective, the enforcement should indeed be carried out in a combined process. This allows for lean approach that does not overburden companies with a too high frequency of enforcement processes that to our experiences significantly draw on personal and other resources which – often at the same time – need to be committed to regular

accounting and reporting processes (such as the preparation of the yearly financial report). We therefore appreciate the apparent openness of the guidelines with respect to the enforcement model. However, this openness and flexibility could also be confirmed explicitly.

Regarding the issue of avoiding greenwashing which is mentioned explicitly as an objective of the enforcement of sustainability information (see p. 16f.), it is crucial that the objective of enforcement is only to ensure compliance with the European Sustainability Reporting Standards (ESRS) and the EU Taxonomy Regulation. That also holds true against the background that the ESAs are currently working on a final report on the definition of greenwashing. No additional or new compliance obligation should be introduced via GLESI (or other guidance of ESMA) on the basis of a vague and broad greenwashing definition.

<ESMA_QUESTION_GLESI_25>