

Guidelines

On Enforcement of Sustainability Information



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1 Scope

Who?

1. These guidelines apply to all competent authorities undertaking supervision (referred to as enforcement in these guidelines, see section 2.3 Definitions) of sustainability information under the Transparency Directive.

What?

2. These guidelines apply in relation to the enforcement of sustainability information under Article 24(4) of the Transparency Directive to ensure that sustainability information provided by issuers, who have securities admitted to trading on a regulated market and who are required to publish sustainability information under the Accounting Directive, complies with the requirements of the Transparency Directive.
3. This means sustainability information of issuers already listed on a regulated market. It includes issuers from third countries using the European Sustainability Reporting Standards as well as issuers from third countries using sustainability reporting requirements which have been declared equivalent to the European Sustainability Reporting Standards.
4. The guidelines are principles-based and define enforcement of sustainability information and its scope under the Transparency Directive, set out what characteristics enforcers should possess, describe selection techniques that should be followed and other aspects of enforcement methodology, describe as well as the types of enforcement actions that enforcers should make use of and explain how enforcement activities are coordinated within ESMA.

When?

5. These guidelines shall apply to enforcement of sustainability information published from 1 January 2025.

2 Legislative references, abbreviations and definitions

6. Unless otherwise specified, terms used and defined in the Transparency Directive, the Accounting Directive and the Taxonomy Regulation have the same meaning in these guidelines. Some of the terms defined in the Transparency Directive are recalled hereunder for the ease of reference. In addition, the following definitions, legislative references and abbreviations apply:

2.1 Legislative references

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| Transparency Directive | Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC ¹ |
| Accounting Directive | Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC ² |
| European Sustainability Reporting Standards (ESRS) | Commission Delegated Regulations issued pursuant to Article 29b and Article 29c of the Accounting Directive |
| Taxonomy Regulation | Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 ³ |
| Disclosures Delegated Act | Commission Delegated Regulation (EU) 2021/2178 of 6 July 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally |

¹ OJ L 390, 31.12.2004, p. 38–57.

² OJ L 182, 29.6.2013, p. 19–76.

³ OJ L 198, 22.6.2020, p. 13–43.

sustainable economic activities, and specifying the methodology to comply with that disclosure obligation⁴

Markets in Financial
Instruments Directive II

Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU⁵

ESMA Regulation

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), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC⁶

Corporate Sustainability
Reporting Directive

Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting⁷

Non-Financial Reporting
Directive

Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups⁸

⁴ OJ L 443, 10.12.2021, p. 9–67.

⁵ OJ L 173, 12.6.2014, p. 349–496.

⁶ OJ L 331, 15.12.2010, p. 84–119.

⁷ OJ L 322, 16.12.2022, p. 15–80.

⁸ OJ L 330, 15.11.2014, p. 1–9.

2.2 Abbreviations

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|------|---|
| ESMA | European Securities and Markets Authority |
| SRWG | Sustainability Reporting Working Group |
| EU | European Union |

2.3 Definitions

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|---|---|
| Enforcement of sustainability information | <p>Supervision of sustainability information, including sustainability reporting as referred to in Article 28d of the Transparency Directive. In particular, enforcement of sustainability information consists of examining whether sustainability information is prepared in accordance with the sustainability information framework, taking appropriate measures where infringements are discovered during the enforcement process, in accordance with the rules applicable under the Transparency Directive, and taking other measures relevant for the purpose of enforcement.</p> <p>These guidelines refer to ‘enforcement’ instead of ‘supervision’, as referenced in Article 28d of the Transparency Directive, to ensure consistency with the wording used in ESMA’s Guidelines on Enforcement of Financial Information⁹.</p> |
| Sustainability information | Information required by the sustainability information framework |
| Issuer | An issuer as defined in Article 2(1)(d) of the Transparency Directive with the exclusion of ‘natural persons’ |
| Regulated market | A regulated market as defined in Article 4(1), point (21) of the Markets in Financial Instruments Directive II |
| Enforcer | National competent authority |
| Sustainability information framework | Articles 19a, 29a and 29d of the Accounting Directive along with the European Sustainability |

⁹ [ESMA32-50-218](#) Guidelines on enforcement of financial information, 4 February 2020.

Reporting Standards and Article 8 of the Taxonomy Regulation along with the Disclosures Delegated Act

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| Infringement | A material omission or a material misstatement in an issuer's sustainability information |
| Greenwashing | Practice where sustainability-related statements, declarations, actions, or communications do not clearly and fairly reflect the underlying sustainability profile of an entity, a financial product, or financial services. This practice may be misleading to consumers, investors, or other market participants ¹⁰ |
| Home Member State | The home Member State as defined in Article 2(1)(i) of the Transparency Directive |
| Market operator | A market operator as defined in Article 4(1), point (18) of the Markets in Financial Instruments Directive II |
| Immaterial departure | An immaterial omission or an immaterial misstatement in an issuer's sustainability information |
| Corrective note | Issuance by an enforcer or an issuer, as initiated or required by an enforcer, of a note making public an infringement with respect to particular item(s) included in already published sustainability information and, unless impracticable, the corrected information |
| Double materiality | Double materiality has two dimensions: impact materiality and financial materiality. A sustainability matter meets the criterion of double materiality if it is material from the impact perspective or the financial perspective or both. The definitions of "Financial materiality", "Impact materiality" and "Sustainability matters" are set out in the European Sustainability Reporting Standards. |

Types of selection

¹⁰ Common definition by the European Supervisory Authorities as published in [ESMA30-1668416927-2498](#) Progress Report on Greenwashing – Response to the European Commission's request for input on "greenwashing risks and the supervision of sustainable finance policies", 31 May 2023, paragraph 13 with core characteristics of greenwashing listed in paragraph 14. See also [ESMA36-287652198-2699](#) – Final Report on Greenwashing.

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| Risk-based selection | When an enforcer identifies issuers whose sustainability information meets certain risk criteria and subjects the sustainability information of all or some of those issuers to examination |
| Rotation-based selection | When an enforcer selects an issuer's sustainability information for examination once within a specific period |
| Randomised selection | When an enforcer selects an issuer's sustainability information for examination from a wider group of issuers without reference to the risk profile of the sustainability information or to when the issuer's sustainability information was last examined, so that all issuers have an equal chance of being selected |

Types of examination

| | |
|---|---|
| Interactive unlimited examination of sustainability information | An enforcer's evaluation of the entire content of an issuer's sustainability information in order to identify issues / areas that, in the enforcer's opinion, need further analysis, and the enforcer's subsequent assessment of whether the sustainability information regarding those issues / areas is in accordance with the sustainability information framework. The interactive unlimited examination entails an interaction between the enforcer and the issuer. Based on the examination procedures it has undertaken and the information it has received from the issuer, the enforcer concludes whether it has discovered infringements in relation to the issues / areas it has analysed. |
| Interactive focused examination of sustainability information | An enforcer's assessment of whether pre-defined issues / areas in an issuer's sustainability information are in accordance with the sustainability information framework. The interactive focused examination entails an interaction between the enforcer and the issuer. Based on the examination procedures it has undertaken and the information it has received from the issuer, the enforcer concludes whether it has discovered infringements in relation to the pre-defined issues / areas it has analysed. |

Desktop unlimited examination of sustainability information

An enforcer's evaluation of the entire content of an issuer's sustainability information in order to identify issues / areas that, in the enforcer's opinion, need further analysis, and the enforcer's subsequent assessment of whether the sustainability information regarding those issues / areas is in accordance with the sustainability information framework. The desktop unlimited examination does not entail any interaction between the enforcer and the issuer. Based on the examination procedures it has undertaken, the enforcer concludes whether there are indications that infringements exist in relation to the sustainability information it has analysed.

Desktop focused examination of sustainability information

An enforcer's assessment of whether pre-defined issues / areas in an issuer's sustainability information are in accordance with the sustainability information framework. The desktop focused examination does not entail any interaction between the enforcer and the issuer. Based on the examination procedures it has undertaken, the enforcer concludes whether there are indications that infringements exist in relation to the pre-defined issues / areas it has analysed.

3 Purpose

7. These guidelines are based on Article 28d of the Transparency Directive and on Article 16 of the ESMA Regulation. The objectives of the guidelines are to establish consistent, efficient and effective supervisory practices in relation to, and ensuring the common, uniform and consistent application of, Article 24(4) of the Transparency Directive in relation to the inclusion of a sustainability statement within the management report (Article 4(1) and 4(2), point b of the Transparency Directive) of issuers who have securities admitted to trading on a regulated market and are required to publish sustainability information under the Accounting Directive. In particular, the guidelines aim to ensure that enforcers carry out the enforcement of sustainability information in a converged manner and to make sure that this enforcement also closely resembles the enforcement which is undertaken in relation to financial information. The guidelines also assist enforcers in discovering potential infringements within issuers' sustainability information, for example in relation to greenwashing. While the sustainability information framework applies to a larger scope of undertakings than undertakings listed on regulated markets, these guidelines only apply to the supervision of listed undertakings.

4 Compliance and reporting obligations

4.1 Status of the guidelines

8. In accordance with Article 16(3) of the ESMA Regulation, competent authorities must make every effort to comply with these guidelines.
9. Competent authorities to which these guidelines apply should comply by incorporating them into their national legal and / or supervisory frameworks, as appropriate.

4.2 Reporting requirements

10. Within two months of the date of publication of the guidelines on ESMA's website in all EU official languages, competent authorities to which these guidelines apply must notify ESMA whether they (i) comply, (ii) do not comply, but intend to comply, or (iii) do not comply and do not intend to comply with the guidelines.
11. In case of non-compliance, competent authorities must also notify ESMA within two months of the date of publication of the guidelines on ESMA's website in all EU official languages of their reasons for not complying with the guidelines.
12. A template for notifications is available on ESMA's website. Once the template has been filled in, it shall be transmitted to ESMA.

5 Guidelines on Enforcement of Sustainability Information

5.1 Basic concepts

Guideline 1: Objective of enforcement

13. **The objective of enforcement of sustainability information is to contribute to a consistent application of the sustainability information framework and, thereby, to the transparency of sustainability information. This will help make the status of sustainability information comparable to that of financial information. Through enforcement of sustainability information, enforcers contribute to the protection of investors and the promotion of market confidence as well as to the avoidance of regulatory arbitrage.**
14. To enable a comparison of the sustainability information of different issuers, it is important that this information is based on a consistent application of the sustainability information framework, in the sense that if facts and circumstances are similar, the disclosures will be similar to the extent required by the sustainability information framework.
15. To ensure that enforcement of sustainability information throughout the Union is carried out in a similar way, enforcers should share the same understanding of the principles set out in these guidelines and of the sustainability information framework.
16. Enforcement of sustainability information implies the examination of sustainability information to assess whether it is in accordance with the sustainability information framework. An enforcer's work differs from assurance on scope as the enforcer performs a priority-based examination in which, based on screening the sustainability information and monitoring issuers and markets, it chooses certain topics for further examination. An enforcer's work also differs from assurance on objective as the enforcer does not issue an opinion with a positive or negative assurance on the sustainability information. Instead, the enforcer should, based on the information gathered and the examination procedures undertaken in accordance with Guidelines 8 and 9, be able to conclude whether infringements of the sustainability information framework were discovered in relation to the issues / areas which it has assessed. Furthermore, the enforcer largely examines information that has already been subject to (limited or reasonable) assurance and published, while the auditor / independent assurance services provider examines the sustainability information when it is prepared for publication.
17. In order for enforcement of sustainability information to be effective, enforcers should take appropriate actions in accordance with these guidelines, where infringements of the sustainability information framework are detected, to ensure that, whenever necessary, information prepared in accordance with the sustainability information framework is provided. Enforcers should react in a consistent manner if infringements of the sustainability information framework are detected.

18. This is intended not only to promote consistent application of the sustainability information framework, contributing to the efficient functioning of the internal market, which is also important for financial stability, but also to avoid regulatory arbitrage.
19. Enforcers may also seek to encourage compliance by issuing alerts and other publications to assist issuers in preparing their sustainability statement in accordance with the sustainability information framework as well as by engaging in regular dialogue, as appropriate, with issuers, auditors / independent assurance services providers or users of the sustainability information. Such dialogue enables enforcers to receive relevant information on market developments, current or prospective issues relating to the application of the sustainability information framework, as well as to share informal views and recommendations. Unless otherwise specified by the enforcers, such dialogue does not constitute part of a pre-clearance process (see Guideline 10).

5.2 Enforcers' internal organisation

Guideline 2: Ensuring an effective enforcement process

20. **Enforcers should ensure the effectiveness of the enforcement of sustainability information. In order to do so, they should have sufficient human and financial resources to carry out their activities in an effective manner as well as the necessary powers in accordance with Article 24(4) of the Transparency Directive. The human resources should be professionally skilled, experienced with the sustainability information framework, able to assess interactions between sustainability and financial information and sufficient in number, taking into account the number of issuers subject to enforcement of sustainability information, their characteristics, the complexity of their sustainability statements and their ability to apply the sustainability information framework. When enforcers delegate tasks relating to the enforcement of sustainability information in accordance with Article 24(2) of the Transparency Directive, the delegated entity should be supervised by the enforcer and responsible to it.**
21. To ensure effective enforcement of sustainability information, enforcers should have sufficient resources. When considering the level of human resources required, the number of issuers within the scope of enforcement, the complexity of the sustainability information as well as the ability of those who prepare the sustainability information and of the auditors / independent assurance services providers to apply the sustainability information framework play important roles.¹¹ The probability of being

¹¹ Due to the phase-in provisions in the Corporate Sustainability Reporting Directive and the European Sustainability Reporting Standards, enforcers will likely need less human resources (most notably, skills and number of staff) in 2025 compared to subsequent years. The need for human resources will gradually increase as more issuers are required to publish sustainability information under the Accounting Directive and as all disclosure requirements of the European Sustainability Reporting Standards become applicable. Enforcers will also have limited experience with the ESRS at first, however, this experience will grow from 2025 onwards. Particularly, the first year of enforcing sustainability information under the Corporate Sustainability Reporting Directive and the European Sustainability Reporting Standards may improve enforcers' ability to assess the resources they need to fulfil their enforcement mandate. This may lead to changes to the adequacy assessments which enforcers made prior to the first application of the guidelines, resulting in adjustments to the teams responsible for enforcement of sustainability information. A notable example of this situation may be enforcers who did not have powers to enforce the content of the non-financial information under the Non-Financial Reporting Directive who have new powers to enforce sustainability information under the Corporate Sustainability Reporting Directive.

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.

22. There should be sufficient financial resources to ensure that the necessary amount of human resources and services can be used in enforcement of sustainability information. The financial resources should also be sufficient to ensure that the human resources are professionally skilled and experienced.
23. Enforcers should have the necessary powers to effectively carry out their enforcement tasks, as required by Article 24(4) of the Transparency Directive.
24. When enforcers delegate tasks related to the enforcement of sustainability information in accordance with Article 24(2) of the Transparency Directive, the final responsibility for enforcement, including the responsibility for the establishment and maintenance of an appropriate process for enforcement, remains with the enforcer.

Guideline 3: Sustainability information prepared under equivalent third country sustainability reporting requirements

25. **When enforcing sustainability information prepared under equivalent third country sustainability reporting requirements in accordance with the provisions applicable under the Transparency Directive, enforcers should ensure that they have access to appropriately skilled resources or otherwise should coordinate the enforcement of sustainability information with ESMA and other enforcers to ensure that they have the appropriate resources and expertise. Enforcers should discuss enforcement of sustainability information prepared under equivalent third country sustainability reporting requirements with ESMA in order to ensure consistency of treatment of such sustainability information.**
26. In accordance with the Transparency Directive, sustainability information of issuers from third countries is subject to enforcement by the enforcer in the home Member State. In such cases, provided that the conditions set out in Article 23 of the Transparency Directive are met, the issuer's sustainability information may be prepared under third country sustainability reporting requirements which have been declared equivalent to the sustainability information framework. These guidelines apply also to the enforcement of sustainability information of third country issuers that use sustainability reporting requirements which have been declared equivalent in this way.
27. In such cases, if the enforcer determines that it is not efficient or possible to carry out the enforcement of sustainability information itself, the enforcer may by agreement refer the task of examining whether the sustainability information is prepared in accordance with the equivalent third country sustainability reporting requirements to another enforcer or to a centralised team to be organised by ESMA at the request of the enforcer. Without prejudice to Article 28(3) of the ESMA Regulation, the responsibility for the enforcement decision always remains with the enforcer of the home Member State.

28. According to the Transparency Directive, Member States may conclude cooperation agreements providing for the exchange of information with the competent authorities of third countries enabled by their respective legislation to carry out any of the tasks assigned by the Directive.

Guideline 4: Independence

29. **Enforcers should ensure adequate independence from government, issuers, holders of securities, auditors / independent assurance services providers, other market participants, regulated market operators and other stakeholders. Independence from government implies that government cannot unduly influence the decisions taken by enforcers. Independence from issuers, holders of securities, auditors / independent assurance services providers, other market participants and other stakeholders should, amongst other things, be achieved through codes of ethics and through the composition of the Board of the enforcer.**
30. In order to ensure appropriate investor protection and avoid regulatory arbitrage, it is important that the enforcer is not unduly influenced either by members of the political system or by issuers and their auditors / independent assurance services providers, holders of securities, other market participants and other stakeholders. Enforcement responsibilities should not be delegated to market operators as this would create conflict of interest issues because the issuers subject to enforcement are at the same time customers of the market operators.
31. Enforcers should not be unduly influenced by government when taking decisions as part of the enforcement process, be it in relation to ex-ante or ex-post enforcement of sustainability information. In addition, it should not be possible to change the composition of the board or other decision-making bodies of the enforcer through government intervention before the end of the period for which its members have been appointed, unless there are exceptional circumstances which require such actions, as this may make the enforcement process less independent.
32. In relation to the independence from issuers, holders of securities, auditors / independent assurance services providers, other market participants and other stakeholders, enforcers should avoid conflicts of interest, whether real, potential or perceived, by taking the required actions to ensure adequate independence, including, but not limited to:
- a. the establishment of codes of ethics for those involved in the enforcement process,
 - b. cooling off periods,
 - c. requiring assurance that staff involved in the enforcement of sustainability information do not breach any independence requirements because of relationships with either the issuer or the audit firm / independent assurance services provider involved, and

- d. ensuring that representatives of issuers and auditors / independent assurance services providers are not able, together or individually, to have a majority of votes in the decision-making bodies of enforcers.

5.3 Selection

Guideline 5: A mixed selection model

33. **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 a rotation approach. A risk-based approach should consider the risk of an infringement as well as the impact of an infringement on the financial markets.**
34. Selection models should be formalised and should be based on a combination of a risk-based approach, random sampling and rotation. A pure risk-based approach would mean that those issuers not fulfilling the risk criteria determined by the enforcer would never be subject to examination. There should always be a possibility of an issuer being selected for examination. A pure random system could mean that issuers with high risk were 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 sustainability statement was likely to be selected.
35. Risk-based selection takes account of the issuer's specific situation and characteristics, including, for example, aspects relating to the sector and geographies in which issuers operate. It is generally expected that detection of infringements in sustainability information is more likely when using risk-based selection than when using rotation-based and randomised selection. Therefore, enforcers should on average use risk to select at least 50% of the issuers whose sustainability information they examine. Conversely, the proportion of issuers selected based on rotation and randomisation should on average be no more than 50%, with rotation-based selection accounting for the largest portion and randomised selection permitted to account for even a small percentage of the selection.
36. If the enforcer decides to integrate its risk-based selection of issuers whose sustainability information will be examined with the risk-based selection of issuers whose financial information will be examined, the enforcer should ensure that the selection model is balanced so the issuers selected for the purpose of risk-based examinations of sustainability information ultimately possess a risk of infringement in the sustainability information.
37. Determination of risk should be based on the combination of the probability of infringements in the issuer's sustainability information and the potential impact of an infringement on the financial markets. In determining the risk of infringements, selection models take into account, as appropriate, the sustainability information framework and the principle of materiality in accordance with Guideline 13. The complexity of the sustainability statement should be taken into account. The enforcer should also take account of the risk profile of the issuer, including its management, and, as far as possible, of:

- a. management's ethical standards,
 - b. management's experience with applying, and their ability or willingness to apply, the sustainability information framework correctly,
 - c. the level of experience of the issuer's auditors / independent assurance services providers with the sustainability information framework.
38. While larger issuers are typically faced with more complex reporting issues, fewer resources and less experience with preparing sustainability information could be more prevalent among smaller and / or new issuers.
39. Indications of infringements from the auditors / the independent assurance services providers, whether in their reports or otherwise, and from regulatory bodies should normally trigger a selection of the sustainability information in question for examination. On the other hand, when the auditor / independent assurance services provider has expressed an unmodified¹² (limited or reasonable) assurance conclusion, this should not be considered as proving the absence of risk of an infringement. Grounded complaints which, after preliminary scrutiny, contain concrete indications of infringements and appear reliable, should normally trigger a selection of the sustainability information in question for examination.
40. 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.
41. Selection models should comply with ESMA's guidance on sustainability information. Enforcers should discuss factors used as part of their national selection method in the SRWG and thus contribute to the convergence of selection methods.

Guideline 6: Timing of selection model

42. **Enforcers should select issuers for examination sufficiently often (i.e., annually). The selection model should ensure that each issuer is examined at least once during a period selected by the enforcer in line with ESMA's guidance on sustainability information.**

Guideline 7: Selection universe

43. **Enforcers should undertake risk-based and randomised selection from the full universe of issuers who are required to publish sustainability information under the Accounting Directive. Enforcers should undertake rotation-based selection from a universe which excludes the issuers that were examined within the period selected by the enforcer.**

¹² [Proposed International Standard on Sustainability Assurance 5000 – General Requirements for Sustainability Assurance Engagements](#), International Auditing and Assurance Standards Board, 2 August 2023.

44. For the purpose of selection, enforcers should keep a list of the issuers within their enforcement remit who are required to publish sustainability information under the Accounting Directive.
45. The goal of risk-based selection is to select the issuers whose sustainability information is most likely to contain an infringement and for whom an infringement would have the largest impact on the financial markets. Therefore, risk-based selection should always be done from the full universe of issuers who are required to publish sustainability information under the Accounting Directive, including issuers who were examined in recent previous years.
46. The goal of randomised selection is to ensure that it is not possible for issuers to calculate when they will next be examined. Therefore, randomised selection should always be done from the full universe of issuers who have securities admitted to trading on a regulated market and are required to publish sustainability information under the Accounting Directive, including issuers who were examined in recent previous years.
47. The goal of rotation-based selection is to guarantee that all issuers who have securities admitted to trading on a regulated market and are required to publish sustainability information under the Accounting Directive are examined at least once within a defined period. Therefore, once an issuer has been examined, the enforcer should not include that issuer in the universe from which rotation-based selection is done until the period within which the enforcer examines all issuers in accordance with Guideline 6 has passed.

5.4 Examination

Guideline 8: Types of examination

48. **Enforcers should identify the most effective way to enforce sustainability information. As part of the ex-post activities regarding enforcement of sustainability information of issuers selected for examination, enforcers can use:**
 - a. **interactive unlimited examinations,**
 - b. **interactive focused examinations,**
 - c. **desktop unlimited examinations, and**
 - d. **desktop focused examinations.**
49. **Interactive unlimited examinations should generally constitute at least 33% of all examinations undertaken within any given year or cover at least 10% of the total amount of issuers under the enforcer's supervision at the beginning of the year.**
50. Interactive examinations entail an exchange of information between the issuer and the enforcer regarding the sustainability information under examination. The interaction between the issuer and the enforcer may occur, for example, when the enforcer poses

questions to the issuer, requires supporting documents or carries out on-site inspections. Enforcers should require necessary information irrespective of whether an indication exists in relation to the non-compliance of sustainability information with the sustainability information framework. The enforcer may also contact the issuer's auditor / independent assurance services provider.

51. Interactive examinations should be the primary procedure used for enforcement of sustainability information, therefore the use of desktop examinations should be limited. Furthermore, the sole use of interactive focused examinations should not be considered as satisfactory for enforcement purposes.
52. Where an enforcer meets neither of the thresholds set out in paragraph 49 within a given year, it should be able to explain why it was unable to meet these thresholds.

Guideline 9: The examination process

53. **An enforcer's examination process should aim at assessing whether sustainability information of issuers is in accordance with the sustainability information framework. In addition, enforcers should examine if the sustainability information contained in the sustainability statement is consistent with the information included elsewhere in the annual financial report, where relevant.**
54. Assessing whether sustainability information is in accordance with the sustainability information framework does not result in the enforcer giving a positive or negative assurance to the issuer that the sustainability information complies with the sustainability information framework, as explained under Guideline 1. However, if, in the course of its examination, the enforcer concludes that it has encountered an infringement or an immaterial departure as set out in paragraph 65 of Guideline 12¹³, the enforcer should apply the enforcement actions set out in paragraph 64 of Guideline 12¹⁴.
55. The conclusions of an enforcer following an examination can take one of the following forms:
 - a. Following a desktop examination
 - i. A decision that there are no indications of infringements in the sustainability information, or in relation to the issues / areas of the sustainability information which the enforcer analysed, and that no further examination is therefore needed.
 - ii. On rare occasions when infringements are obvious without interaction with the issuer, a decision that the enforcer has discovered

¹³ Guideline 12, paragraph 65: "Where an immaterial departure from the sustainability information framework is left intentionally uncorrected to achieve a particular presentation of the issuer, the enforcer should take appropriate action as if it was material."

¹⁴ Guideline 12, paragraph 64: "An enforcer should use the actions indicated below, at the enforcer's initiative. Whenever an infringement is detected, the enforcer should in a timely manner take at least one of the following actions in accordance with the considerations described in paragraph 68: a) require a reissuance of the sustainability statement, b) require a corrective note, or c) require a correction in the future sustainability statement with restatement of comparatives, where relevant."

infringements in the sustainability information and which enforcement action is required to address those infringements.

b. Following an interactive examination:

- i. A decision that the enforcer has not discovered infringements in relation to the issues / areas of the sustainability information it has analysed and that no enforcement action is required.
- ii. A decision that the enforcer has discovered infringements in the sustainability information and which enforcement action is required to address those infringements.

56. Enforcers should ensure that the examination procedures undertaken are sufficient in order to achieve an effective enforcement process and that the examination and its conclusion are documented appropriately.
57. Without prejudice to the application of paragraph 55.a, should an enforcer detect potential infringements during a desktop examination which are not considered to be obvious, it is expected to investigate those further by contacting the issuer and, as appropriate, its auditors with questions. This would then re-categorise the examination as an interactive examination. The enforcer may also contact the issuer's auditor / independent assurance services provider.

Guideline 10: Pre-clearance

58. **Where pre-clearance is permitted, it should be part of a formal process, and provided only after the issuer and its auditor / independent assurance services provider have finalised their position on the sustainability information concerned.**
59. Enforcement of sustainability information normally takes published sustainability information as its starting point. Hence, by nature, it is an ex-post activity which is carried out in accordance with the examination procedures indicated in Guidelines 8 and 9 and applied to the sustainability information selected based on the criteria set out in the selection methods indicated in Guidelines 5, 6 and 7.
60. However, some enforcers have a well-developed pre-clearance system where issuers are able to secure an enforcement decision ex-ante, i.e., before they publish the relevant sustainability information. Certain conditions should be in place when enforcers are using pre-clearance. In particular, the issuer and its auditor / independent assurance services provider should have a final position on the issues / areas of the sustainability information in relation to which pre-clearance is sought as this will enable a pre-clearance decision to be based on the same level of information as an ex-post decision. This will avoid pre-clearance decisions becoming general interpretations.
61. Pre-clearance should be part of a formal process, meaning that a proper decision is taken by the enforcer in a way similar to that in which ex-post decisions are taken. This implies that the enforcer should not reverse its position after the sustainability information has been published unless facts and circumstances have changed

between the date the enforcer expressed its position and the date the sustainability information is issued, or there are other substantial grounds for doing so. This does not preclude other discussions between enforcers and issuers and their auditors / independent assurance services providers on the sustainability information as long as the outcome does not constitute a decision.

Guideline 11: Quality review

62. **In order to ensure that the examination procedures used and the related conclusions are robust, enforcers should put in place quality reviews of the examinations performed.**
63. Quality reviews should be performed by staff that has relevant experience and expertise in the sustainability information framework and in the reporting issues which are being examined. Discussions on the results of quality reviews should also be conducted amongst staff with such experience and expertise.

5.5 Enforcement actions

Guideline 12: Choice of enforcement action

64. **An enforcer should use the actions indicated below, at the enforcer's initiative. Whenever an infringement is detected, the enforcer should in a timely manner take at least one of the following actions in accordance with the considerations described in paragraph 68:**
 - a. **require a reissuance of the sustainability statement,**
 - b. **require a corrective note, or**
 - c. **require a correction in the future sustainability statement with restatement of comparatives, where relevant.**
65. **Where an immaterial departure from the sustainability information framework is left intentionally uncorrected to achieve a particular presentation of the issuer, the enforcer should take appropriate action as if it was material.**
66. **Where an immaterial departure from the sustainability information framework is detected but there is a significant risk that it might become material in the future, the enforcer should inform the issuer about the departure.**
67. **Similar actions should be used where similar infringements are detected, after consideration has been taken of materiality.**
68. When deciding between the types of action to be applied, enforcers should take into account the following considerations:
 - a. Subject to the existing powers of the enforcer and consistent with Guideline 1, when deciding between requiring a reissuance of the sustainability statement or a corrective note, the final objective is that the best possible information is

provided, and an assessment should be made of whether the original sustainability statement and a corrective note provide sufficient clarity or whether a reissuance of the sustainability statement is the best solution.

- b. When deciding whether to require either a correction in the future sustainability statement or the publication of a corrective note / reissuance of the sustainability statement at an earlier moment, different factors should be considered, namely:
 - i. the timing of the decision: for instance, where the decision is very close to the date of the publication of the next sustainability statement, a correction in the future sustainability statement might be appropriate;
 - ii. the nature of the decision and the surrounding circumstances: for instance, where the correct information has made it to the public sphere at the moment the decision is taken, the enforcer could opt for a correction in the future sustainability statement.

69. When the enforcer decides to require a correction in the future sustainability statement, the reason for selecting this enforcement action should be stated clearly in the enforcer's conclusion.

Guideline 13: Materiality

70. **When determining materiality, where applicable, of an omission or misstatement for the purpose of enforcement of sustainability information, this should be assessed taking into account the part of the sustainability information framework used for the preparation of the sustainability information.**
71. When the sustainability information framework relies on a double materiality perspective, this should be the basis for the enforcer's materiality assessment of an omission or misstatement.

Guideline 14: Follow-ups

72. **Enforcers should ensure that actions are appropriately acted on by the issuers against which the actions were taken.**
73. As infringements could, by definition, have an impact on the decisions made on the basis of sustainability information, it is important that the corrected information is published, unless impracticable, on a timely basis. Therefore, when actions a) or b) mentioned in Guideline 12 are taken, the relevant sustainability information and the action taken should be made available, unless impracticable, directly by the issuer and/or by the enforcer.

5.6 European coordination

Guideline 15: European common enforcement priorities

74. **In order to achieve a high level of harmonisation in enforcement, enforcers should discuss and share experience on the application and enforcement of the**

sustainability information framework during meetings of the Sustainability Reporting Working Group (SRWG). On that basis, enforcers under ESMA coordination should identify common enforcement priorities on a yearly basis.

75. In order to achieve a high level of harmonisation in enforcement, ESMA has set up the SRWG in which all enforcers should be members and should participate.
76. To promote supervisory convergence, enforcers under ESMA coordination should identify common reporting matters for enforcement of sustainability information in the Union which should be made public sufficiently in advance of the end of the reporting period. While most of the areas should be common, some of them might not be relevant for all Member States or might be specific to some industries. Definition of areas should be done sufficiently in advance in order to allow enforcers to include these in their enforcement programme as areas for examination.

Guideline 16: Coordination in SRWG

77. **Although the responsibility for enforcement rests with enforcers, in order to promote harmonisation of enforcement practices and to ensure a consistent approach among enforcers to the application of the sustainability information framework, coordination of ex-ante and ex-post decisions should take place in the SRWG. Enforcers, under ESMA's coordination, should also identify reporting matters and provide technical input for the preparation of ESMA statements and/or opinions.**
78. Although actions are taken at national level, the creation of a single securities market implies the existence of similar investor protection in all Member States. Consistent enforcement of sustainability information in the Union requires coordination and a high level of harmonisation of actions among enforcers. In order to ensure proper and rigorous enforcement of sustainability information and avoid regulatory arbitrage, ESMA will promote harmonisation of enforcement approaches through coordination of ex-ante and ex-post decisions taken by enforcers.
79. The adoption of the sustainability information framework and interpretations of its application are reserved for standard setters. Therefore, ESMA and enforcers do not issue any general application guidance to issuers on the sustainability information framework. Nevertheless, as part of the enforcement activities, enforcers apply their judgement in order to determine whether reporting practices are considered as being within the accepted range as permitted by the sustainability information framework.
80. When the sustainability information framework is applied, ESMA will convey material controversial reporting issues, as well as ambiguities and any lack of specific guidance, discovered during the enforcement process, as appropriate, to the body responsible for standard setting and interpretation (namely, the European Commission) or its advisory body (namely, EFRAG). This is also the case for any other issues identified which create enforceability constraints during the enforcement process.

Guideline 17: Emerging issues

81. **Discussion of cases at the SRWG can take place either before the enforcer draws a conclusion to its examination (emerging issues) or after the enforcer draws a conclusion to its examination (decisions). Except in rare circumstances where the deadline imposed on an enforcer makes it impossible to prepare, present and discuss with the SRWG before a decision is taken, a reporting issue should be submitted as an emerging issue in any of the following situations:**
- a. **Where no decision has yet been taken by an enforcer on the reporting issue at hand or where the SRWG has had no prior discussion of the issue. This does not apply to matters presenting little technical merit or where the sustainability information framework is clear and where the infringement is obvious;**
 - b. **Where the reporting issue at hand is identified by enforcers or ESMA as of significant importance for the internal market;**
 - c. **Where the enforcer disagrees, or intends to take a decision that appears not to be in accordance, with:**
 - i. **An earlier decision on the same or a similar reporting issue; or**
 - ii. **The outcome of a discussion of an emerging issue on the same or a similar reporting issue.**

Submitting the case as an emerging issue in these situations has the goal of establishing whether differences in facts and circumstances justify a decision which is different from the precedent.
 - d. **Where the enforcer identifies a risk of significantly different reporting practices by issuers across Europe.**
82. **Enforcement decisions taken on the basis of an emerging issue should take into account the outcome of the discussion in the SRWG.**
83. Reporting issues encountered by an enforcer, other than those when the sustainability information framework is clear, the infringement obvious and a decision has already been taken, should be brought to the attention of ESMA and discussed in the SRWG to ensure that a consistent enforcement approach is taken. In order to do so, enforcers should present such issues for discussion before they take a decision and take into account the outcome of the discussion in the SRWG. The outcome should also be taken into account by other enforcers. ESMA may also bring emerging issues to the SRWG in case reporting issues are of significant importance to the internal market.
84. In addition to the situations presented in paragraph 81, a reporting issue may be presented as an emerging issue where the enforcer is looking for further guidance from other enforcers, for example because of the complex nature of the reporting issue or where the enforcer is looking for further guidance because the issue might raise an enforceability issue.

Guideline 18: Decisions

85. **A decision should be submitted to the SRWG if the decision fulfils one or more of the following criteria:**
- a. **The decision refers to reporting matters with technical merit;**
 - b. **The decision has been discussed as an emerging issue, unless it was decided otherwise during the discussion in the SRWG meeting;**
 - c. **The decision will be of interest for other reasons to other enforcers (this judgement is likely to be informed by SRWG discussions);**
 - d. **The decision indicates to an enforcer that there is a risk of significantly different reporting practices being applied by issuers;**
 - e. **The decision is likely to have a significant impact on other issuers;**
 - f. **The decision is taken on an issue not directly addressed by a specific provision in the sustainability information framework;**
 - g. **The decision has been overruled by an appeals committee or Court; or**
 - h. **The decision appears to be in contradiction with an earlier decision on the same or a similar reporting issue.**
86. Emerging issues and decisions discussed in the SRWG normally refer to sustainability information prepared under the sustainability information framework but could also cover sustainability information prepared under equivalent third country sustainability reporting requirements.

Guideline 19: Taking earlier decisions into account

87. **Enforcement decisions by enforcers should take into account earlier decisions on the same reporting issue where similar facts and circumstances apply. Enforcement decisions include both ex-ante and ex-post decisions, as well as the outcome of discussions at the SRWG on a decision on whether or not a piece of sustainability information is in accordance with the sustainability information framework and the action related to it. Irrespective of the outcome of the SRWG discussion, the final decision is the responsibility of the enforcer.**
88. In order to ensure a consistent enforcement regime throughout the Union, enforcers should, before taking an enforcement decision, look for decisions taken by other enforcers in the relevant database mentioned in Guideline 20 and take them into account, as they should take into account the enforcer's own earlier decisions on the same reporting issue. This is the case irrespective of whether the decision is taken as pre-clearance or as a decision based on a published sustainability statement.

Guideline 20: Submission of emerging issues and decisions

89. **All emerging issues that meet any of the submission criteria as mentioned in Guideline 17 should be submitted to ESMA with the relevant details normally within two weeks before the SRWG meeting in which they are going to be discussed. All enforcement decisions that meet any of the submission criteria as mentioned in Guideline 18 should be submitted to ESMA with the relevant details normally within three months of the decision being taken.**
90. To ensure effective and efficient discussions, emerging issues and decisions should be clear and concise yet include all relevant facts, the issuer's arguments, the basis for the enforcer's rationale and the conclusion.
91. Coordination in the SRWG should be facilitated by the existence of an enforcement database. The objective of the database is to constitute a platform for sharing information on a continuous basis. The time frame for submission of decisions is set to avoid too many situations where already taken decisions that should have been taken into account in relation to later decisions are not known to other enforcers. ESMA will review all submissions for internal consistency, sufficiency of information and use of correct terminology and may require resubmission or the provision of additional information. After a completed review, ESMA will log the enforcement decision into the database. The enforcement database contains the outcome of the discussion that took place during the meeting. ESMA is responsible for the technical maintenance of the database.

Guideline 21: Publication of decisions

92. **In order to promote consistency of application of the sustainability information framework, enforcers should decide which decisions included in the database can be subject to publication on an anonymous basis.**
93. A selection of decisions to be published should be made by enforcers under ESMA coordination. The decisions selected for publication should fulfil one or more of the following criteria:
- a. The decision refers to a complex reporting issue or an issue that has led or could lead to different applications of the sustainability information framework; or
 - b. The decision relates to a relatively widespread issue among issuers or in a certain type of business and, thereby, may be of interest to other enforcers or third parties; or
 - c. The decision relates to an issue on which there is no experience or on which enforcers have inconsistent experiences; or
 - d. The decision has been taken on an issue not directly addressed by a specific provision in the sustainability information framework.

Guideline 22: Reporting on enforcement activities

94. **Enforcers should report periodically on their enforcement activities at national level and provide ESMA with the necessary information for the reporting and coordination of the enforcement activities carried out at Union level.**
95. Enforcers should periodically report to the public on the enforcement policies and decisions taken in individual cases. It is up to the enforcer whether to report on an anonymous or a non-anonymous basis on these matters.
96. Enforcers should report to ESMA findings and enforcement decisions relating to the common enforcement priorities, as identified in accordance with Guideline 15. These, together with other activities relevant to European coordination, are published by ESMA in its report on corporate reporting enforcement and regulatory activities.