Guidelines

ESMA Guidelines on enforcement of financial information

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List of abbreviations and acronyms used in this report

CP	Consultation Paper
CESR	Committee of European Securities Regulators
EC	European Commission
EEA	European Economic Area
EECS	European Enforcers Coordination Session
EU	European Union
ESMA	European Securities and Markets Authority
GAAP	Generally Accepted Accounting Principles
IASB	International Accounting Standards Board
IFRS	International Financial Reporting Standards
IFRS IC	International Financial Reporting Standards Interpretation Committee
MTF	Multilateral Trading Facilities
SMSG	Securities and Markets Stakeholder Group

I. Scope

Who?

1. These guidelines apply to all competent authorities of Member States of the European Union (EU) undertaking enforcement of financial information under the Transparency Directive. They are also designed to apply to competent authorities of countries from the European Economic Area (EEA), which are not EU Member States, insofar as the Transparency Directive is applicable in these countries.

What?

2. These guidelines apply in relation to the enforcement of financial information under the Transparency Directive to ensure that financial information in harmonised documents provided by issuers whose securities are admitted to trading on a regulated market comply with the requirements resulting from the Transparency Directive.

3. This includes financial information of issuers already listed on a regulated market who are subject to the Transparency Directive, as required by that Directive. As the case may be, this may also include financial information of issuers from third countries who use financial reporting frameworks which have been declared equivalent to IFRS, according to Commission Regulation no 1569/2007.

4. 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.

When?

5. These guidelines will become effective two months after their publication on ESMA's website in all the official languages of the EU.

II. References and definitions

Legislative references

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[1]

[1] The Accounting Directive and the Consolidated Accounts Directive have been repealed by 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

Insurance annual accounts Directive	Council Directive 91/674/EEC on annual accounts and consolidated accounts of insurance undertakings
Banks and other financial institutions accounts Directive	Council Directive 86/635/EEC on annual accounts and consolidated accounts of banks and other financial institutions
IAS Regulation	Regulation (EC) No 1606/ of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards
ESMA Regulation	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing an European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC
Markets in Financial Instruments Directive or MiFID	Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC[2]
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[3]

Abbreviations

CESR	Committee of European Securities Regulators
EEA	European Economic Area
EECS	European Enforcers Coordination Sessions
EU	European Union
ESMA	European Securities and Markets Authority
GAAP	Generally Accepted Accounting Principles
IASB	International Accounting Standards Board

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. According to the provisions of Directive 2013/34/EU, references to the Accounting Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex VII. Until the time for transposition of Directive 2013/34/EU has run out (20 July 2015) all references in these guidelines may still be read in accordance with the provisions of the Accounting Directive.

[2] The Markets in Financial Instruments Directive or MiFID will be repealed with effect from 3 January 2017 by Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments. As from this date references to MiFID shall be construed as references to Directive 2014/65/EU or to Regulation (EU) No 6000/2014 and shall be read in accordance with the correlation table set out in Annex IV of Directive 2014/65/EU.

[3] as last amended by Directive 2013/50/EU. Insofar as relevant, until the time for transposition of Directive 2013/50/EU has run out, references to the Transparency Directive shall be read in accordance with its provisions as in force before their amendment by Directive 2013/50/EU.

IFRS	International Financial Reporting Standards
IFRS IC	International Financial Reporting Standards Interpretation Committee

Definitions

Unless otherwise specified, terms used and defined in the Transparency Directive 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:

Accounting Directives	The Accounting Directives refer to Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, Council Directive 91/674/EEC on annual accounts and consolidated accounts of insurance undertakings as well as Council Directive 86/635/EEC on annual accounts and consolidated accounts of banks and other financial institutions
Corrective note	Issuance by an enforcer or an issuer, as initiated or required by an enforcer, of a note making public a material misstatement with respect to particular item(s) included in already published financial information and, unless impracticable, the corrected information
Enforcement of financial information	Examining the compliance of financial information with the relevant financial reporting 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
Enforcer/European enforcer	Competent authorities or bodies acting on their behalf in the EEA in accordance with the rules applicable under the Transparency Directive
Financial statements	Annual and interim financial statements prepared in accordance with the relevant financial reporting framework as defined below
Issuer	An issuer as defined in article 2.1(d) of the Transparency Directive with the exclusion of 'natural persons'
Harmonised documents	Documents whose publication is required by the Transparency Directive
Home Member State	The home Member State as defined in article 2.1(i) of the Transparency Directive
Host Member State	The host Member State as defined in article 2.1(j) of the Transparency Directive

Market operator	A market operator as defined in article 4.1.13 of the MiFID Directive
Regulated market	A regulated market as defined in article 4.14 of the MiFID Directive
Regulated information	Regulated information as defined in the Transparency Directive, i.e. all information which the issuer, or any other person who has applied for the admission of securities to trading on a regulated market without the issuer's consent, is required to disclose under the Transparency Directive, under Article 6 of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)[4], or under the laws, regulations or administrative provisions of a Member State adopted under Article 3(1) of the Transparency Directive
Relevant financial reporting framework	IFRS and financial reporting frameworks deemed equivalent with IFRS based on the EC Regulation 1569/2007[5] as well as national generally accepted accounting principles (national GAAPs) used in the EEA. This also includes requirements for management reports resulting from the Directive on the annual financial statements
Unlimited scope examination of financial information	The evaluation of the entire content of the financial information in order to identify issues / areas that need further analysis and to assess whether the financial information is compliant with the relevant financial reporting framework
Focused examination of financial information	The evaluation of pre-defined issues in the financial information and the assessment of whether the financial information is compliant with the relevant financial reporting framework in respect of those issues

III. Purpose

6. ESMA may issue guidelines under Article 16 of the ESMA Regulation in relation to the acts referred to in Article 1(2) of the ESMA Regulation, which includes the Transparency Directive, with a view to establish consistent, efficient and effective supervisory practices in relation to, and

[4] Directive 2003/6/EC will be repealed with effect from 3 July 2016 by Regulation(EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014. As from this date references to MiFID shall be construed as references to Regulation (EU) No 596/2014 and shall be read in accordance with the correlation table set out in Annex II to Regulation(EU) No 596/2014.

[5] Commission Regulation (EC) No 1569/2007 of 21 December 2007 establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities pursuant to Directives 2003/71/EC and 2004/109/EC of the European Parliament and of the Council, as amended by Commission Delegated Regulation No. 310/2012 of 21 December 2011

ensuring the common, uniform and consistent application of, such acts. Based notably on the objectives underlying the Transparency Directive, to ensure effective and consistent enforcement, and on the provisions requiring competent authorities to be empowered to examine that financial information published under the Transparency Directive is drawn up in accordance with the relevant reporting framework, ESMA considers that these guidelines serve such purposes.

7. More precisely, the purpose of these guidelines is to establish consistent, efficient and effective supervisory practices and to ensure the common, uniform and consistent application of Union law reinforcing a common approach, as noted in recital 16 of the IAS Regulation, to the enforcement of financial information under the Transparency Directive in view of achieving a proper and rigorous enforcement regime to underpin investors' confidence in financial markets and to avoid regulatory arbitrage. These guidelines are principles-based and define enforcement of financial 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 the types of enforcement actions that should be made use of by enforcers and explain how enforcement activities are coordinated within ESMA.

IV. Compliance and reporting obligations

Status of these guidelines

8. This document contains guidelines issued under Article 16 of the ESMA Regulation addressed to competent authorities. In accordance with Article 16(3) of the ESMA Regulation, competent authorities shall make every effort to comply with them.

9. Competent authorities to whom these guidelines apply should comply by incorporating them into their supervisory practices. ESMA notes that enforcement responsibilities covered by these guidelines are carried out by the competent authorities designated in each Member State or by entities which have received a delegation for this purpose[6]. However, final responsibility for compliance with the provisions of the Transparency Directive remains with the designated competent authority. Irrespective of the entity that in practice carries out enforcement, competent authorities remain under the obligation to make every effort to comply with these guidelines.

Reporting requirements

10. Competent authorities to whom these guidelines apply shall notify ESMA whether they comply or intend to comply with the guidelines, stating their reasons in case they do not comply or intend not to comply, within two months of the date of publication of the guidelines on ESMA's website in all the official languages of the EU, to corporate.reporting@esma.europa.eu. In the absence of a response by this deadline, competent authorities will be considered as non-compliant. A template for notifications is available on the ESMA website. Any change in the status of compliance must also be reported to ESMA.

[6] Article 24 of the Transparency Directive

V. Guidelines on enforcement

Background

11. Recital 16 of the IAS Regulation provides: "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 on European Union, are required to take appropriate measures to ensure compliance with international accounting standards. The Commission intends to liaise with Member States, notably through the Committee of European Securities Regulators (CESR), to develop a common approach of enforcement."

12. To this end, CESR, the predecessor of ESMA, established the European Enforcers Coordination Sessions (EECS), a forum in which national enforcers exchange views and discuss experiences relating to the enforcement of financial reporting requirements. The EECS is a permanent working group which reports to the Corporate Reporting Standing Committee (CRSC) of ESMA.

13. As indicated in its terms of reference which were revised in 2013, the main activities of the EECS are the following:

- Discuss emerging issues submitted by European enforcers or by ESMA
- Discuss decisions and actions taken by European enforcers submitted to the EECS database
- When relevant issues have been identified as not being covered by financial reporting standards or as being subject to conflicting interpretations, prepare the issues for referral to standard setting or interpretive bodies such as the IASB and the IFRS IC
- Share and compare practical experiences in the field of enforcement such as selection, risk assessment, review methodology, contacts with issuers and auditors
- Select and prepare communication of common enforcement priorities
- Provide advice on enforcement issues and draft ESMA statements, opinions or guidelines,
- Assist ESMA in conducting studies or reviews on how IFRS is applied in practice
- Advise ESMA on the publication of selected decisions
- Organise educational sessions for enforcers.

14. CESR developed Standards No. 1 and 2 on the enforcement of financial information in Europe in April 2003 and April 2004 respectively (CESR/03-073 and CESR/03-317c). These standards provided for a common approach by establishing principles defining enforcement, its scope, characteristics of the enforcer, the selection techniques and other enforcement methods applicable, actions and coordination of enforcement.

15. The use of the standards and discussions in the EECS on enforcement decisions and other experiences with enforcement led to the creation of a group under the CRSC to conduct a fact finding study on actions taken. This resulted in a decision taken by CRSC in June 2010 to revise the CESR Standards on Enforcement, taking into account the experiences gained through the use of the standards since 2005.

16. These guidelines are the result of this work. They are principles based with the main principles in black lettering and explanatory, elaborating and exemplifying paragraphs in grey lettering. In order to comply with these guidelines an enforcer has to comply with the guidelines as a whole, black lettering as well as grey lettering.

Objective of enforcement

17. **The objective of enforcement of financial information included in harmonised documents is to contribute to a consistent application of the relevant financial reporting framework and, thereby, to the transparency of financial information relevant to the decision making process of investors and other users of harmonised documents. Through enforcement of financial information, enforcers contribute to the protection of investors and the promotion of market confidence as well as to the avoidance of regulatory arbitrage.**

18. In order for investors and other users of harmonised documents to be able to compare the financial information of different issuers, it is important that this information is based on a consistent application of the relevant financial reporting framework, in the sense that if facts and circumstances are similar, the recognition, presentation, measurement and/or disclosures will be similar to the extent required by that financial reporting framework.

19. To ensure that enforcement of financial information throughout the EEA is carried out in a similar way, enforcers should share the same understanding of the principles as set out in these guidelines and react in a consistent manner if departures from the relevant financial reporting framework are detected.

20. This is intended not only to promote consistent application of the relevant financial reporting framework, contributing to the efficient functioning of the internal market, which is also important for financial stability, but also to avoid regulatory arbitrage.

Concept of enforcement

21. **For the purpose of these guidelines, enforcement of financial information is defined as examining the compliance of financial information with the relevant financial reporting 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.**

22. Enforcement of financial information implies the examining of financial information to assess whether it is in accordance with the relevant financial reporting framework. In order for enforcement of financial information to be effective, enforcers should also take appropriate actions in accordance with these guidelines, where departures from the relevant financial reporting framework are detected, to ensure that, whenever necessary, the market participants are provided with accurate information compliant with the relevant financial reporting framework.

23. Enforcers may also seek to encourage compliance by issuing alerts and other publications to assist issuers in preparing their financial statements in accordance with the relevant financial reporting framework.

Scope of enforcement

24. **These guidelines apply to the enforcement of financial information in harmonised documents provided by issuers. They may also be followed when enforcing financial information based on other requirements which issuers must comply with under national law.**

25. As indicated in the introduction to these guidelines, they may apply in relation to any relevant financial reporting framework applied by EEA listed issuers because the need for protection of investors does not depend on which financial reporting framework the issuer is using. IFRS is mandatory for all issuers whose registered office is situated in the EEA in their consolidated accounts while Member States may allow or require that local GAAP is used in individual financial statements.

26. **Guideline 1: When enforcing financial information released by issuers whose registered office is situated outside the EEA (issuers from third countries) in accordance with the provisions applicable under the Transparency Directive, European enforcers should ensure that they have access to appropriately skilled resources or otherwise should coordinate the enforcement of financial information with ESMA and other European enforcers to ensure that they have the appropriate resources and expertise. European enforcers should coordinate enforcement of financial information with ESMA in order to ensure consistency of treatment of financial information of such issuers.**

27. In accordance with the Transparency Directive, financial information of issuers from third countries is subject to enforcement by the enforcer in the home Member State within the EEA. In such cases, financial information of an issuer may be prepared using, instead of IFRS as endorsed in the EU, another Generally Accepted Accounting Principles (GAAP) which has been declared equivalent according to EC Regulation No 1569/2007. These guidelines apply also to the enforcement of financial information of issuers with registered office in third countries that use financial reporting frameworks which have been declared equivalent to IFRS, according to the above mentioned Regulation and further amendments.

28. In such cases, if the European enforcer determines that it is not efficient or possible to carry out the enforcement of financial information itself, the enforcer may by agreement refer the task of examination of compliance with the relevant financial reporting framework by agreement to another enforcer or to a centralised team to be organised by ESMA at the request of enforcers. Nevertheless, the responsibility for the enforcement decision always remains with the enforcer of the home Member State within the EEA.

29. According to the Transparency Directive[7] 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.

European enforcers

30. Under the Transparency Directive, enforcement responsibilities are carried out by the competent authorities designated in each Member State and/or in some cases by other entities which have received a delegation for this purpose.

31. Under the Transparency Directive, Member States shall designate a central competent administrative authority responsible for carrying out the obligations provided for in the directive and for ensuring that the provisions adopted pursuant to the directive are applied. However, when it comes to examining whether information referred to in the Transparency Directive is drawn up in accordance with the relevant reporting framework and taking appropriate measures in case of discovered infringements, the Member States may designate a competent authority other than the central competent authority.

32. Member States may also allow their central competent authority to delegate tasks. The designated competent authority is responsible for enforcement, whether it carries out enforcement itself or whether it has delegated the task to another entity. Any such delegated entity should be supervised by the delegating authority and be responsible to it. The final responsibility for supervising compliance with the provisions of the Transparency Directive, including the responsibility for the establishment and maintenance of an appropriate process for enforcement remains, in any case, with the designated competent authorities of the relevant Member States.

33. Under the Transparency Directive[8], powers at the disposal of an enforcer for the enforcement of financial information include at least:
    a) the power to examine compliance of financial information in the harmonised documents with the relevant financial reporting framework,
    b) the right to require any information and documentation from issuers and their auditors,
    c) the ability to carry out on-site inspections; and
    d) the power to ensure that investors are informed of material infringements discovered and provided with timely corrected information.

34. In order to ensure that all relevant information can be obtained as part of the enforcement process, when performing their functions, enforcers have, in accordance with the Transparency Directive, the power to require information from the holders of shares or other persons exercising voting rights over an issuer and the persons that control them or are controlled by them.

[7] See Article 25(4)
[8] See Article 24(4) of the Transparency Directive

35. In performing their function, enforcers should require necessary information irrespective of whether an indication exists or not in relation to the non-compliance of financial information with the relevant financial reporting framework.

36. **Guideline 2: 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.**

37. 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.

38. 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.

39. **Guideline 3: Enforcers should ensure adequate independence from government, issuers, auditors, other market participants and regulated markets operators. Independence from government implies that government cannot unduly influence the decisions taken by enforcers. Independence from issuers and auditors should, amongst other things, be achieved through codes of ethics and through the composition of the Board of the enforcer.**

40. 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. 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.

41. 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 financial 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.

42. In relation to the independence from issuers and auditors, enforcers should take the required actions to ensure adequate independence, including, but not limited to: the establishment of

codes of ethics for those involved in the enforcement process, cooling off periods and requiring assurance that staff involved in the enforcement of financial information do not breach any independence requirements because of relationships with either the issuer or the audit firm involved. Representatives of issuers and auditors should not be able, together or individually, to have a majority of votes in the decision making bodies of enforcers.

Pre-clearance

43. **Guideline 4: Where pre-clearance is permitted, it should be part of a formal process, and provided only after the issuer and its auditor have finalised their position on the accounting treatment concerned.**

44. Enforcement of financial information normally takes published financial information as its starting point. Hence, by nature, it is an ex-post activity which is carried out according to the examination procedures indicated in these guidelines and applied to the financial information selected based on the criteria set out in the selection methods indicated in these guidelines.

45. 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 financial information. These guidelines provide that certain conditions should be in place when enforcers are using pre-clearance. In particular, the issuer and its auditor should have determined the accounting treatment to be applied based on all specific facts and circumstances as this will enable 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.

46. 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 be able to reverse its position after the financial information has been published unless facts and circumstances have changed between the date the enforcer expressed its position and the date the financial 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 on accounting matters as long as the outcome does not constitute a decision.

Selection methods

47. **Guideline 5: 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.**

48. 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.

49. 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.

50. 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.

51. 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.

52. 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.

Examination procedures

53. **Guideline 6: 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.**

54. 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.

55. 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.

56. 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.

Enforcement actions

57. **Guideline 7: An enforcer should use the actions indicated below, at the enforcer's initiative. Whenever a material misstatement is detected, the enforcer should in a timely manner take at least one of the following actions according to the considerations described in paragraph 61:**
    a) require a reissuance of the financial statements,
    b) require a corrective note, or
    c) require a correction in future financial statements with restatement of comparatives, where relevant.

58. **Where an immaterial departure from the financial reporting framework is left intentionally uncorrected to achieve a particular presentation of an issuer's financial position, financial performance or cash flows, the enforcer should take appropriate action as if it was material.**

59. **Where an immaterial departure from the financial reporting 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.**

60. **Similar actions should be used where similar infringements are detected, after consideration has been taken of materiality.**

61. When deciding between the type of action to be applied, enforcers should take into account the following considerations:
    a) Subject to the existing powers of the enforcer, when deciding between requiring a reissuance of the financial statements or a corrective note, the final objective is that investors should be provided with the best possible information and an assessment should be made whether the original financial statements and a corrective note provide users with sufficient clarity necessary for taking decisions or whether a reissuance of the financial statements is the best solution;
    b) When deciding to require either a correction in future financial statements or the publication of a corrective note or reissuance of the financial statements at an earlier moment, different factors should be considered, namely:

        - the timing of the decision: for instance, where the decision is very close to the date of the publication of the financial statements, a correction in future financial statements might be appropriate;

        - the nature of the decision and the surrounding circumstances:

            - where the market is sufficiently informed at the moment the decision is taken, the enforcer could opt for a correction in future financial statements;

            - where the decision relates merely to the way information was presented in the financial statements rather than to the substance (e.g. information is

clearly presented in the notes whereas the relevant accounting framework requires the presentation on the face of the primary financial statements), the enforcer could also opt for a correction in future financial statements.

The reason for the publication in future financial statements should be stated clearly in the decision.

62. **Guideline 8: When determining materiality for the purpose of enforcement of financial information, this should be assessed according to the relevant financial reporting framework used for the preparation of the financial information as of its reporting date.**

63. For instance under IFRS, omissions or misstatements of items are material if they could, individually or collectively, influence the economic decisions that users make on the basis of the financial statements. Materiality depends on the size and nature of the omission or misstatement judged in the surrounding circumstances. The size or nature of the item, or a combination of both, could be the determining factor.

64. **Guideline 9: Enforcers should ensure that actions taken are appropriately acted on by the issuers against which the actions were taken.**

65. As material misstatements could, by definition, have an impact on the decisions of investors and other users of harmonised documents, it is important that these are not only informed that there is a misstatement but are also provided with the corrected information, unless impracticable, on a timely basis. Therefore, when actions mentioned in Guidelines 7 a) or b) are taken, the relevant financial information and the action taken should be made available, unless impracticable, either directly by the issuer and/or by the enforcer to market participants.

European coordination

66. **Guideline 10: In order to achieve a high level of harmonisation in enforcement, European enforcers should discuss and share experience on the application and enforcement of the relevant financial reporting framework, mainly IFRS, during meetings of the EECS. In addition, European enforcers under ESMA coordination should identify common enforcement priorities on a yearly basis.**

67. In order to achieve a high level of harmonisation in enforcement, ESMA has set-up regular meetings of the EECS in which all European enforcers are represented and should participate.

68. To promote supervisory convergence, enforcers under ESMA coordination should identify common accounting matters for enforcement of financial information in the EEA 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 countries or are 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.

69. **Guideline 11: Although the responsibility for enforcement rests with national enforcers, in order to promote harmonisation of enforcement practices and to ensure a consistent approach among enforcers to the application of the relevant financial reporting framework, coordination on ex-ante and ex-post decisions should take place in the EECS. European enforcers under ESMA coordination should also identify accounting matters and provide technical advice for the preparation of ESMA statements and/or opinions.**

70. 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 financial information in the EEA requires coordination and a high level of harmonisation of actions among enforcers. In order to ensure proper and rigorous enforcement of financial information and avoid regulatory arbitrage, ESMA will promote harmonisation of enforcement approaches through coordination on ex-ante and ex-post decisions taken by enforcers.

71. The issuance of accounting standards and interpretations of their application is reserved to standard setters. Therefore ESMA and enforcers do not issue any general IFRS application guidance to issuers. Nevertheless, as part of the enforcement activities, enforcers apply their judgement in order to determine whether accounting practices are considered as being within the accepted range as permitted by the relevant financial reporting frameworks.

72. When IFRS are applied, material controversial accounting issues, as well as ambiguities and any lack of specific guidance, discovered during the enforcement process will be conveyed by ESMA to the bodies responsible for standard setting and interpretation (namely, the IASB and IFRS IC). This is also the case for any other issues identified which create enforceability constraints during the enforcement process.

Emerging issues and decisions

73. **Guideline 12: Discussion of cases at the EECS can take place on either an ex-ante (emerging issues) or an ex-post (decisions) basis. Except in rare circumstances where the deadline imposed on an enforcer makes it impossible to prepare, present and discuss with the EECS before a decision is taken, an accounting issue should be submitted as an emerging issue in any of the following situations:**
    - **Where no prior decision has yet been taken by an enforcer or where there has been no prior discussion on a particular accounting issue. This does not apply to matters presenting little technical merit or where the accounting standard is clear and where the infringement is obvious;**
    - **Where the financial reporting issues are identified by European enforcers or ESMA as of significant importance for the internal market;**
    - **Where the enforcer disagrees with an earlier decision on the same accounting issue; or**
    - **Where the enforcer identifies a risk of significantly different treatments between issuers across Europe.**

Enforcement decisions taken on the basis of an emerging issue should take into account the outcome of the discussion in the EECS.

74. An accounting issue can be presented as an emerging issue where the enforcer is looking for further guidance from other enforcers because of the complex nature of the accounting issue or where the enforcer is looking for further guidance because the issue might raise an enforceability issue.

75. Accounting issues encountered by an enforcer, other than those when a standard is clear, the infringement obvious and on which no decision has yet been taken, should be brought to the attention of ESMA and discussed in the EECS 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 EECS. The outcome should also be taken into account by other enforcers. ESMA may also bring emerging issues to the EECS in case financial reporting issues are of significant importance to the internal market.

76. **Guideline 13: A decision should be submitted to the EECS if the decision fulfils one or more of the following criteria:**
    - **The decision refers to accounting matters with technical merit;**
    - **The decision has been discussed as an emerging issue, unless it was decided otherwise during the discussion in the EECS meeting;**
    - **The decision will be of interest for other reasons to other European enforcers (this judgement is likely to be informed by EECS discussions);**
    - **The decision indicates to an enforcer that there is a risk of significantly different accounting treatments being applied by issuers ;**
    - **The decision is likely to have a significant impact on other issuers;**
    - **The decision is taken on the basis of a provision not covered by a specific accounting standard;**
    - **The decision has been overruled by an appeals committee or Court; or**
    - **The decision is apparently in contradiction with an earlier decision on the same or a similar accounting issue.**

77. Emerging issues and decisions discussed in the EECS normally refer to IFRS financial statements but could also cover, for instance, financial reporting prepared under a GAAP deemed equivalent with IFRS as endorsed in the EU.

78. To ensure effective and efficient discussions, emerging issues and decisions should be clear and concise yet include all relevant facts, issuer's arguments, the basis for the enforcer's rationale and the conclusion.

79. **Guideline 14: Enforcement decisions by enforcers should take into account earlier decisions on the same accounting 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 EECS on a decision on whether or not an accounting treatment is in accordance with the relevant financial reporting**

framework and the action related to it. Irrespective of the outcome of the EECS discussion, the final decision is the responsibility of the national enforcer.

80. In order to ensure a consistent enforcement regime throughout the EEA, enforcers should, before taking an enforcement decision, look for decisions taken by other European enforcers on the EECS database and take them into account, as they should take into account the enforcer's own earlier decisions on the same accounting issue. This is the case irrespective of whether the decision is taken as a pre-clearance or as a decision based on published financial statements.

81. If an enforcer intends to take a decision which apparently is not in accordance with an earlier decision or with the outcome of a discussion of an emerging issue on the same or a similar accounting issue, the enforcer should present it as an emerging issue. This is in order to establish whether differences in facts and circumstances justify a decision which is different from the precedent.

Reporting

82. **Guideline 15: All emerging issues that meet any of the submission criteria as mentioned in Guideline 12 should be submitted to ESMA with the relevant details normally within two weeks before the EECS meeting in which it is going to be discussed**.

83. **Guideline 16: All enforcement decisions that meet any of the submission criteria, as mentioned in Guideline 13, should be submitted to ESMA with the relevant details normally within three months of the decision being taken.**

84. Coordination in the EECS should be facilitated by the existence of a database. The objective of the database is to constitute a platform for sharing information on a continuous basis. The time frame for submission 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 logs the enforcement decision into the database.

85. The EECS database contains the outcome of the discussion that took place during the meeting. The data management ensures that decisions which become outdated because of changes to accounting standards are moved into a separate section and that decisions which are considered as being without technical merit are also classified in a separate section. ESMA is responsible for maintaining the database.

86. **Guideline 17: In order to promote consistency of IFRS application, European enforcers within ESMA should decide on which decisions included in the database can be subject to publication on an anonymous basis.**

87. A selection of IFRS enforcement 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:

- The decision refers to a complex accounting issue or an issue that could lead to different applications of IFRS; or
- 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
- The decision is on an issue on which there is no experience or on which enforcers have inconsistent experiences; or
- The decision has been taken on the basis of a provision not covered by a specific accounting standard.

88. **Guideline 18: European enforcers should report periodically on the enforcement activities at national level and provide ESMA with the necessary information for the reporting and coordination of the enforcement activities carried out at European level.**

89. Enforcers should periodically report to the public on the enforcement policies adopted and decisions taken in individual cases including accounting and disclosure matters. It is up to the enforcer whether to report on an anonymous or a non-anonymous basis on these matters.

90. European enforcers should report to ESMA findings and enforcement decisions relating to the common enforcement priorities, as identified in accordance with Guideline No. 10. These, together with other activities relevant to the European coordination, are published by ESMA in its activity report on enforcement.