Follow-up Report to the Peer Review on Guidelines on Enforcement of Financial Information

22 March 2022 | ESMA/42/111/6889

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List of Acronyms and Terms Used

EFI	Enforcement of Financial Information
EECS	European Enforcers Coordination Sessions
FTE	Full Time Equivalent
GAAP	Generally Accepted Accounting Principles
GLEFI	Guidelines on enforcement of financial information (ESMA32-50-218)
IFRS	International Financial Reporting Standards
MS	Member State
NCA	National Competent Authority
ECEP	European Common Enforcement Priorities
NFI	Non-Financial information
TD	Transparency Directive (Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC)

1 – Introduction

1. This report provides an update on the actions National Competent Authorities (NCAs) have undertaken further to the 2017 peer review report (“Report”) on Guidelines on enforcement of financial information (ESMA42-111-4138)[1].

2. High quality financial reporting is core to investor trust in capital markets. ESMA issued the Guidelines on enforcement of financial information (GLEFI) in 2014, on its own initiative, to promote consistent and effective application and supervision of International Financial Reporting Standards (IFRS) as part of its work to address the limitations of the minimum harmonisation of the Transparency Directive (TD) whose transposition varies across the European Union (EU). In 2017, ESMA carried out a peer review to assess the compliance by NCAs with some of the GLEFI.

3. Peer reviews are an important part of ESMA’s regulatory toolkit. The objective of any peer review is to assess the degree of convergence within an existing supervisory framework and suggest actions for NCAs to take where more effective and consistent supervision is required. Follow-ups aim to monitor developments and provide an update on how NCAs have taken on board the peer review’s findings.

4. The peer review report covered the following topics:

   - Sufficiency of human and financial resources allocated to enforcement of financial information (EFI) (Guideline 2);
   - Assessment of the model in place to select an issuer for review and whether it considered a combined risk-based and sampling and/or rotation approach (Guideline 5) ;
   - Assessment of the scope of the examinations performed, including their relevance and effectiveness (Guideline 6).

5. The exercise encompassed all NCAs[2] through a questionnaire, further completed by on-site visits to some of these NCAs (Germany, Italy, Malta, Norway, Portugal, Romania and the United Kingdom).

6. As a conclusion of this peer review, the report noted that there was a wide divergence of practices amongst NCAs, due to the fact that the Guidelines are principles-based. The report made recommendations to several NCAs on Guidelines 2 and 5. It also concluded that some further work was needed in the corporate reporting area to promote more detailed and therefore more convergent guidance from ESMA. This led to partly amend the Guidelines, by

[1] https://www.esma.europa.eu/sites/default/files/library/esma42-111-4138_peer_review_report.pdf

[2] With the exception of HR and LI that did not participate to the exercise, due to the fact that there was no issuer of securities traded in the regulated market in the country (LI) or because the NCA stated that the Guidelines were not yet implemented in the country (HR).

complementing the text of Guideline 5 and by adding new Guidelines 6a and 6b (ESMA32-50-218)[3].

Follow-up process

7. This follow-up to the 2017 GLEFI peer review has been conducted in accordance with Article 30 ESMA Regulation (Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010) and, for consistency purposes, the process follows the same peer review methodology as applied during the 2017 peer review. The assessment remains within the assessment framework set by the original peer review and was carried out as a desk-based information gathering exercise which sought to determine progress in addressing the weaknesses identified in the 2017 peer review.

8. The follow-up to the 2017 peer review was agreed in the ESMA 2020 Annual Work Programme but postponed due to the fast-track peer review on the application of the GLEFI by BaFin and FREP in the context of Wirecard[4]. Thus, the follow-up to the GLEFI peer review has been included in the ESMA 2021 Annual Work Programme.

9. This follow-up does not intend to assess compliance with the Guidelines for all NCAs but aims at checking the progress made by the NCAs where weaknesses were identified in the 2017 peer review, taking as a reference point the version of the GLEFI applicable in 2017.

10. The follow-up work was launched in September 2021 through letters by ESMA's Chair addressed to those NCAs for which findings have been identified in the 2017 report:

    - Greece, Hungary, Latvia, Malta, Portugal, Romania, Sweden for Guideline 2; and
    - Malta, Portugal, Romania, Sweden for Guideline 5.[5]

11. Some NCAs are <u>not</u> in the scope of this follow-up exercise (i) the two NCAs that had not participated to the 2017 peer review (Croatia and Liechtenstein)[6], (ii) the NCAs that had declared themselves non-compliant with Guidelines 2, 5 or 6 in 2017[7]: Austria (GL2), Ireland (GL2), Slovenia (GL2) and Bulgaria (GL2 & 5), as well as (iii) the German authorities that have been recently assessed separately by ESMA through the above-mentioned Wirecard peer review.

12. The follow-up focused on assessing the application of 2014 GLEFI. Taking into account that this report will be published after the entry into force of the 2020 GLEFI, some of the recom-

[3] New version will be applicable as of 1st January 2022: https://www.esma.europa.eu/sites/default/files/library/esma32-50-218_guidelines_on_enforcement_of_financial_information.pdf
[4] esma42-111-5349_fast_track_peer_review_report_-_wirecard.pdf (europa.eu)
[5] There were no specific recommendations to follow-up upon related to Guidelines 6.
[6] Since the peer review, both jurisdictions have declared compliance with the Guidelines following modifications to their legislation.
[7] Ireland and Slovenia have declared compliance with the 2014 GLEFI after the 2017 peer review.

mendations also refer to the new (or amended) principles applicable as of 2022, where relevant. This is the case, in particular, in the area of resources, where the revised GLEFI increase the expectations vis-à-vis supervisors and may aggravate the existing concerns.

13. This follow-up report has been submitted to the ESMA Corporate Reporting Standing Committee and the Management Board for consultation. [It will be ultimately approved by the Board of Supervisors.]

Table 1 – Country codes and acronyms of Competent Authorities participating in the ESMA follow-up survey.

Country Code	Country	Competent Authority	Acronym
EL	Greece	Hellenic Capital Market Commission	HCMC
HU	Hungary	Magyar Nemzeti Bank	MNB
LV	Latvia	Finanšu un kapitāla tirgus komisija	FCMC
MT	Malta	Malta Financial Services Authority	MFSA
PT	Portugal	Comissão do Mercado de Valores Mobiliários	CMVM
RO	Romania	Autoritatea de Supraveghere Financiară	ASF
SE	Sweden	Finansinspektionen	FI

2 – Executive summary

14. The follow-up report identifies that most NCAs have made improvements in allocating more resources to EFI. This is reflected in most cases in the number and type of examinations carried out. However, some NCAs still have staffing difficulties, in one case severe, with obvious impact on the accomplishment of the EFI work plan and, more generally, on the allocation of time and skills to the topic.

15. In the same vein, several NCAs raised the issues related to the recruitment of staff with the appropriate technical skills and experience. ESMA takes note of the difficulties and highlights the efforts made by those NCAs that have made recruitments (even though not always sufficient) or managed to upgrade the technical profile of their staff members, including through trainings and qualifications thereby showing commitment to improvement.

16. The table below provides an overview on how the NCAs in scope perform on the main resources indicators.

Table 2 – Issuers under TD supervision, allocated FTEs and examinations closed in 2021

	HCMC (EL)	MNB (HU)	FCMC (LV)	MFSA (MT)	CMVM (PT)	ASF (RO)	FI (SE)
Total issuers under supervision	150	47	22	72	47	94	411
FTE allocated to EFI	4.4	0.6	1	0.8	2.5	0.7	5.8
Issuers/FTE[8]	34	78	22	90	19	134	71
Total examinations closed	19	1	4	7	5	7	44

17. ESMA emphasises that the below report aims to assess the progress made by NCAs in the implementation of the GLEFI, in comparison with the 2017 Peer review report. Therefore, this follow-up does not aim at assessing compliance with the revised GLEFI, as they have created more detailed obligations on some aspects that will imply additional scrutiny from the supervisors.

18. On several occasions, although ESMA considered that the improvements made were sufficient to address the weaknesses previously identified, it also stressed that the revised GLEFI will create extra-pressure on the teams in charge of the enforcement of financial information. Moreover, in several cases, the EFI team is also in charge of the enforcement of non-financial information. While supervision in this area is only starting, its scope and significance, also from a market expectation perspective, is expected to increase. NCAs should carefully take into consideration those evolutions when preparing their work plans, calculating their resource needs and adjusting the skillset/profile of such resources.

19. In terms of selection methods, ESMA observed that most NCAs concerned materially changed their selection model, beyond the ESMA recommendations made in the 2017 Peer review report (and in two cases the role of the NCA EFI team was significantly amended). In the context of this follow-up exercise, ESMA took note of the changes made but could not assess in depth all aspects of the new models. Instead, ESMA focused its review on the issues identified in 2017, taking into consideration the overall structure of the new models in place and making recommendations when appropriate.

20. Overall, ESMA considers that NCAs' selection methods have improved and seem to be compliant with the GLEFI. Still, difficulties remain notably in relation to the implementation of those methods, in a context where resources can be scarce.

21. ESMA stresses the need to adequately calibrate the selection models in order to comprehensively identify the issuers which should be examined based on risk, rotation and to incorporate random examinations to ensure that an issuer cannot estimate when its financial

[8] The NCAs average calculated in the 2017 peer review report was of 50 issuers per FTE (43 IFRS issuers per FTE)

statements will be selected,[9] with the view to ensure that the rotation cycle is both realistic in view of the resources available to implement it and with sufficient market coverage.

22. As EFI remains key for supervisory convergence in the EU, ESMA reiterates the importance of continued and meaningful supervisory efforts to reach the objective of high-quality financial reporting. Indeed, only regular and pro-active supervision can ensure the proper application of Union Law and maintain investors' confidence in the financial reporting regime.

3 – Overview of follow-up assessment

3.1 – Guidelines assessed and approach used

23. The Guidelines that have been taken into consideration to assess the progress made by NCAs (of which the relevant extracts are in annex to this report) reflect the text applicable at the date of the 2017 peer review report. One should note that, since then, changes have been introduced as a follow-up to the peer review, notably in Guideline 5, with the view to provide additional details. Those changes do not contradict the preceding version of the GLEFI.

24. The assessment of appropriate resources needs to rely on information that can be quantified and compared across jurisdictions. For this reason, this follow-up relies on the methodology established in 2017 to evaluate the sufficiency of resources and the progress made by each NCA in comparison with the 2017 peer-review report.

25. In the 2017 peer review report, the assessment made as regards the sufficiency of resources took into consideration the following criteria:

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

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

    c) number of examinations completed per FTE; and

    d) number of actual persons fully dedicated to the function of EFI.

26. Furthermore, and consistent with the analysis made in the 2017 peer review report, ESMA also analysed:

[9] As required by the revised Guidelines on enforcement of financial information.

e) Whether, during the period under analysis, there were significant divergences between the number of examinations planned in comparison with the number of examinations concluded as this could indicate that staff allocated to enforcement was insufficient to carry out the planned activities.

f) The market coverage given the examinations closed. That is, assuming issuers are not examined twice, how many years the NCA would require to examine all issuers under its supervision. This factor is particularly relevant given the changes made to the GLEFI which now require that all issuers are examined in a given period of time.

27. ESMA notes that the number of examinations reported for the purpose of this exercise may differ from the number of examinations reported in the report on enforcement and regulatory activities of European enforcers (European enforcers activity report) in each year because the examinations closed in relation to a sample of the selection model of a given year may be completed in subsequent periods (i.e., after the cut-off date which is set out for the purpose of the European enforcer activity report).

28. Those various elements are detailed for each NCA in a table entitled "Issuers under TD supervision, examinations planned and performed for [NCA name]".

29. The assessment of the progress made by each NCA in relation to Guideline 5 on selection methods focused on the weaknesses identified in the 2017 peer review report, which varied across NCAs, and on the implementation of the selection model (i.e., if the issuers selected based on the risk model were effectively examined).

3.2 – Overview of progress made

30. The table below provides an overview of the conclusions reached per NCA in the context of the follow-up work.

NCA	Findings of the 2017 peer review	Findings of the follow-up	Conclusions of the follow-up
EL	**Resources** Insufficient resources to perform examinations of issuers' financial statements effectively during the review period. Notably, the number of IFRS issuers per FTE was a significant outlier when compared to the participants' average.	Deficiency addressed	The resources allocated to the EFI function increased significantly between 2017 and 2021. Those improvements are reflected: - in the number of FTEs (from 2.05 to 4.4), - in the ratio Issuers/FTE (from 112 to 34), - in the annual coverage of the market (circa 10% each year). Despite the above, ESMA note that HCMC had difficulties to complete the examinations plan when ad hoc issues emerged during the year. In this respect, ESMA considers that HCMC should strive to align the number of FTEs allocated to EFI to its ambition as regards to EFI activities. ESMA emphasises that the resources currently at the disposal of HCMC to carry out EFI may be put under pressure taking into consideration: (i) the need to submit relevant cases to the EECS, (ii) the revised GLEFI that increase the expectations vis-à-vis supervisors for tasks that are resource consuming, and (iii) the NFI role that HCMC, and consequently the EFI team, may be entrusted with.
HU	**Resources** Insufficient resources to perform examinations of issuers' financial statements effectively during the review period. Notably, the time allocated to enforcement of financial information was inferior	No progress made	ESMA notes that, overall, the resources allocated to EFI functions has remained low. This situation is reflected: - in the allocated FTE (0.6 FTE in 2017, unchanged in 2021, despite the increase in IFRS qualified staff), - in the difficulty to complete the examinations plan (except for 2020), - in the low number of annual examinations planned, leading to a calculated rotation period of 18 years,

NCA	Findings of the 2017 peer review	Findings of the follow-up	Conclusions of the follow-up
	to 1 FTE[10], which was deemed insufficient considering the number of issuers.		It is acknowledged however that the number of issuers under the scope of GLEFI has decreased. ESMA takes positive note of the intention to further increase the number of qualified experts and recommends taking the following into consideration: (i) the need to submit relevant cases to the EECS, (ii) the revised GLEFI that increase the expectations vis-à-vis supervisors for tasks that are resource consuming.
LV	**Resources** Insufficient resources to perform examinations of issuers' financial statements effectively during the review period. Notably, the time allocated to enforcement of financial information was inferior to 1 FTE, which was deemed insufficient considering the number of issuers.	Deficiency addressed	The resources allocated to the EFI function increased significantly between 2017 and 2021. Those improvements are reflected: - in the number of FTEs (from 0.4 to 1), - in the ratio Issuers/FTE (now 22, far below the NCAs' average of 2017), - in the ability to complete the examinations plan, - in the annual coverage of the market (at least 25% per year since 2018). Given that the time allocated to EFI has varied in the period under analysis and has just reached 1 FTE, ESMA recommends that FCMC monitors the resources allocated to EFI in order to ensure that they remain sufficient over time. Nevertheless, ESMA emphasises that the resources currently at the disposal of FCMC to carry out EFI may be put under pressure taking into consideration (i) the revised GLEFI that increase the expectations vis-à-vis supervisors for tasks that are resource consuming, and (ii) the role that the EFI team will play on NFI, which is a topic of increasing importance.

[10] The 2017 peer review emphasised that for NCAs with a ratio issuers per FTE above the calculated NCAs average, the FTE allocated to the EFI should be at least 1.

NCA	Findings of the 2017 peer review	Findings of the follow-up	Conclusions of the follow-up
MT	**Resources** Insufficient resources to perform examinations of issuers' financial statements effectively during the review period. Notably, the time allocated to enforcement of financial information work was deemed insufficient considering the fact that the resources allocated to EFI is limited and that the EFI team is integrated in a multifunctional department, which affected the type of examinations performed.	Partial progress made	ESMA notes that, overall, the resources allocated to EFI functions has slightly increased but remain insufficient. This situation is reflected: - in the increased number of issuers, - in the number of FTEs (from 0.4 to 0.8, including qualified finance and accounting experts), - in the ratio Issuers/FTE (90, far above the NCAs' average of 2017), - in the decreasing number of planned examinations. Despite the above, the annual coverage of the market remained of at least 10% per year. ESMA emphasises, in this context of increasing number of issuers and low resources, that the resources currently at the disposal of MFSA to carry out EFI may be put under pressure taking into consideration: (i) the need to submit relevant cases to the EECS, (ii) the revised GLEFI that increase the expectations vis-à-vis supervisors for tasks that are resource consuming, and (iii) the role that the EFI team will play on NFI, which is a topic of increasing importance. ESMA also commends MFSA for following ESMA's recommendation to terminate the outsourcing of EFI activities to a third party and for taking measures to fully transfer it in-house and build expertise.
	Selection of financial statements for examinations The selection model did not capture the intrinsic risk profile of an issuer.	Deficiency addressed	ESMA commends the MFSA for the changes made to the selection model as it considers that the risk model implemented provides valuable insights to depict the intrinsic risk profile of an issuer, thereby addressing the recommendation from the 2017 peer review report. ESMA also notes the following positive elements: - the model is re-run during the year to promptly address material risks that could appear during the year,

NCA	Findings of the 2017 peer review	Findings of the follow-up	Conclusions of the follow-up
			- the issuers selected via the risk-based approach are effectively examined and enforced against where necessary, - MFSA communicated on the changes to its EFI approach to the supervised entities, thereby raising awareness on the topic.
PT	**Resources** Insufficient resources to perform examinations of issuers' financial statements effectively during the review period. Notably, the time allocated to enforcement of financial information work was deemed insufficient considering the fact that the resources allocated to EFI is limited and that the EFI team is integrated in a multifunctional department, which affected the number of examinations performed.	Progress made	The resources allocated to the EFI function increased between 2017 and 2021 This situation is reflected: - in the number of FTEs (from 1.05 to 2.5), - in the ratio Issuers/FTE (from 55 to 19), - in the organisational changes made in CMVM to upgrade the profile of the EFI team within the department, and the appointment of a coordinator, - in the annual coverage of the market (above 10%), Despite the above, the resources remain slightly insufficient, which reflects as follows: - the number of experts composing the EFI team (6 IFRS experts in 2017, 4 in 2021) and their time allocated to EFI activities (from 70% in 2020 to 50% in 2021) have decreased between 2018 and 2021, - the number of unlimited scope examinations planned and concluded has been in constant decline since 2018, - changes to the rotation cycles have been decided twice since 2018 due to resource constraints and - the difficulty to complete the examinations plan when ad hoc issues emerge during the year (2018 and 2021). ESMA considers that CMVM should strive to align the number of FTEs allocated to EFI to its ambitions as regards EFI, rather than decrease

NCA	Findings of the 2017 peer review	Findings of the follow-up	Conclusions of the follow-up
			the number of planned examinations. ESMA emphasises that the resources currently at the disposal of CMVM to carry out EFI may be put under pressure taking into consideration: (i) the revised GLEFI that increase the expectations vis-à-vis supervisors for tasks that are resource consuming, and (ii) the role that the EFI team will play on NFI, which is a topic of increasing importance. Nevertheless, ESMA commends CMVM for the quality and relevance of the cases brought to EECS which demonstrated improvements in the quality of the assessments.
	Selection of financial statements for examinations The selection model in place was not effective in practice as the execution rate reached only 35%.	Progress made	ESMA considers that progress was made on the implementation of the selection model, as currently almost all issuers selected for an examination are effectively examined (except for 2021). In addition, the model is re-run during the year to promptly address material risks that could appear during the year, and CMVM has introduced the requirement to examine all issuers in a given period of time (as per the revised GLEFI). Nevertheless, despite CMVM's deeply revised selection model, ESMA makes the following observations which may prompt a revision of the selection model on some aspects: - the combination of the risk and rotation criteria in a single sample, may not be fully aligned with the revised GLEFI, - the structure and weight of the risks scores related to the auditors' reports/opinions or to grounded complaints may not always trigger an examination, but other types of analysis, which would need to be further formalised in the supervisory manual,

NCA	Findings of the 2017 peer review	Findings of the follow-up	Conclusions of the follow-up
			- given how the risk and rotation criteria are implemented, greater riskiness of an issuer does not have an impact on the frequency of examination.
RO	**Resources** Insufficient resources to perform examinations of issuers' financial statements effectively during the review period. Notably, the time allocated to enforcement of financial information was inferior to 1 FTE, which was deemed insufficient considering the number of issuers.	No progress made	ESMA acknowledges the efforts made by ASF and the difficulties it may have to recruit skilled personnel. Nevertheless, ESMA notes that, overall, the resources allocated to EFI functions has remained insufficient. This situation is reflected: - in the decreasing allocated FTE (from 0.9 to 0.7), - in the higher ratio Issuers/FTE (from 108 to 134), - in the difficulty to complete the examinations plan, which makes it impossible to meet the rotation cycle planned by the supervisory procedure (6 years). ESMA takes positive note of the intention to further increase the number of qualified experts and recommends taking into consideration in this respect: (i) the recruitment needs in light of the revised ASF supervisory manual (ii) the need to submit relevant cases to the EECS, (iii) the revised GLEFI that increase the expectations vis-à-vis supervisors for tasks that are resource consuming, and (iv) the role that the EFI team will play on NFI, which in a topic of increasing importance.
	Selection of financial statements for examinations The selection model did not capture the intrinsic risk profile of an issuer.	Progress made	ESMA considers that the revised supervisory manual adopted by ASF is aligned with the requirements arising from GLEFI and the Supervisory briefing. In this respect, ESMA commends ASF for having requested technical assistance to the World Bank and the European Commission regarding the supervision of compliance of financial information with IFRS and for the early adoption of ESMA's Supervisory Briefing on selection methods. In addition, ESMA takes positive note of the increased number of actions taken by ASF in the context of EFI. Nevertheless, ESMA notes that:

NCA	Findings of the 2017 peer review	Findings of the follow-up	Conclusions of the follow-up
			- the lack of resources has created severe constraints in ASF's ability to implement the new supervisory manual, notably on the number of examinations effectively carried-out, - the way auditors' reports/opinions or grounded complaints trigger an examination (unlimited or focused) needs to be further formalised.
SE	**Resources** Insufficient resources to perform examinations of issuers' financial statements effectively during the review period. Notably, the number of IFRS issuers per FTE was a significant outlier when compared to the participants' average.	Deficiency addressed	The organisation of enforcement of financial information in Sweden has been deeply reorganised and now involves a new authority, the Council. Resources allocated to the EFI function increased significantly between 2017 and 2021. Those improvements are reflected: - in the number of FTEs (from 2.7 to 5.8), - in the lower ratio Issuers/FTE (from 121 to 71), - in the high number of examinations performed (at least 44 interactive examinations per year). ESMA highlights however that the above figures combine the time allocation of both FI and the Council and that recruitment took place in January 2022. Nevertheless, ESMA emphasises a high number of examinations were carried out in a short timeframe in 2021 and recommends that FI and the Council further investigate if the current Council EFI composition is sufficient to ensure that well-constructed EFI examinations are performed and concluded in a timely manner. ESMA also recommends taking into consideration in the assessment of the resources needs the role that the Council and the EFI function in FI will play on NFI, which is a topic of increasing importance.
	Selection of financial statements for examinations	Deficiency addressed	ESMA considers that the risk model approach used takes into account the risk of a misstatement as well as the impact of a misstatement on

NCA	Findings of the 2017 peer review	Findings of the follow-up	Conclusions of the follow-up
	The selection model did not take into account the potential impact of misstatements on the financial markets.		the financial markets, thereby addressing the recommendation from the 2017 peer review report. Nevertheless, ESMA notes that the Council implemented a selection model that deeply revised Nasdaq's previous selection model. ESMA also notes the following positive elements: - the approach taken by the Council is aligned with the principles included in the revised GLEFI, - most of the issuers selected for an examination have effectively been examined, - the Council intends to implement a more data driven monitoring model for financial data.

4 – Findings of the Follow-up

31. The following section presents the detailed findings of the follow-up and the related recommendations on an NCA per NCA basis.

4.1 – HCMC (Greece)

32. The 2017 peer review Report noted insufficient resources to perform examinations of issuers' financial statements effectively during the review period; notably, the number of IFRS issuers per FTE was a significant outlier when compared to other NCAs' average.

4.1.1 – HCMC Response

33. HCMC mentioned in response to the ESMA Chair letter that the headcount of the EFI unit has been increased from 5.50 as at 30/09/2016 to 8.00 as at 31/10/2021, out of which 4.35 (54%) is now dedicated to the enforcement of financial information (to be compared with the previous 2.05 dedicated FTE, i.e. 37%). In parallel, the number of IFRS issuers under HCMC supervision has decreased from 229 at 31/12/2015 to 170 at 31/12/2020 and further to 150 at 31/12/2021.

34. Consequently, the number of IFRS issuers per FTE in HCMC has improved from 112 to 34, bringing it below the participants average highlighted by the peer review of 43.[11] According to the information received from HCMC, all issuers under its supervision prepare financial statements in accordance with IFRS. Therefore, there is no difference in the ratios Issuers/FTE and IFRS issuers/FTE.

35. In addition, HCMC provided the detailed number and type of examinations performed in the last 3 years and planned for 2021, as further detailed below in table 3.

36. HCMC also provided an update on its intention to comply with the updated version of the GLEFI that will come into force in 2022 and the fact that it may lead to reorganising HCMC's structure, notably to separate some of the EFI unit's tasks that are not strictly linked with EFI with a positive impact on the EFI-dedicated FTEs.

4.1.2 – Assessment analysis & conclusion

37. The table below provides an overview on how HCMC performs on the resource indicators.

[11] For the purpose of the 2017 Peer-review report, an adjusted average of the total issuers and IFRS issuers per FTE performing the EFI function was determined which excluded the three top and bottom outliers. The adjusted average of 50 issuers per FTE (43 IFRS issuers per FTE) was then compared with the individual figures presented by each Member State. These figures excluded the UK, which was considered an outlier in 2017.

Table 3 – Issuers under TD supervision, examinations planned and performed by HCMC

	2018	2019	2020	2021
Total n. Issuers under supervision (A)	190	179	170	150
N. IFRS Issuers (B)[12]	190	179	170	150
FTE allocated to EFI			**4.6**	**4.4**
Examinations planned				
Unlimited scope examinations	16	15	14	24
Focused examinations	0	0	0	0
Total of examinations planned	**16**	**15**	**14**	**24**
Examinations closed				
Unlimited scope Examinations	9	11	9	13
Focused Examinations	9	18	4	6
Total examinations closed (C)	**18**	**29**	**13**	**19**
Coverage of the market % (C/B)	**9%**	**16%**	**8%**	**13%**
Completion rate (planned vs closed)	**113%**	**193%**	**93%**	**79%**
Issuers / FTE			**37**	**34**
IFRS Issuers / FTE			**37**	**34**

38. On average, the number of examinations concluded per FTE in 2021 was 4.4 (2.8 in 2020).

39. The assessment appreciates that, as referred by HCMC, the time allocated to the function of EFI increased significantly between 2017 and 2021, from 2.05 to 4.4 FTE. Based on this information, the ratio Issuers/FTE in 2021 is currently estimated at 34 which is below the overall NCAs' average of 50 issuers/FTE calculated in 2017 (43 IFRS issuers/FTE). [13]

40. The increase in the time allocated to the function of EFI was also observed in the number of examinations concluded. ESMA notes that, in the period under analysis, HCMC carried out annual examinations which covered around 10% of the total number of supervised issuers. Furthermore, with an exception in 2020-2021, HCMC was always able to carry out more examinations than the ones planned in the beginning of the year.

41. ESMA notes however that throughout the years HCMC was not able to complete all unlimited scope examinations planned because, according to HCMC, it had to prioritise examinations arising from unexpected public offers (initial or secondary capital increases). ESMA considers that HCMC should strive to plan its annual activities in order to allow for additional examinations to be carried out, if the need arises, without deprioritising or postponing examinations following the risk model. ESMA considers that it is key that issuers selected (in particular when this is due to their risk score) are effectively examined.

[12] According to HCMC, all issuers under supervision apply IFRS to their financial statements.
[13] For the purpose of the 2017 Peer-review report, an adjusted average of the total issuers and IFRS issuers per FTE performing the EFI function was determined which excluded the three top and bottom outliers. The adjusted average of 50 issuers per FTE (43 IFRS issuers per FTE) was then compared with the individual figures presented by each Member State. These figures excluded the UK, which was considered an outlier in 2017.

Recommendations

42. Without prejudice of the above, ESMA would like to highlight that the following may put under pressure the resources currently at the disposal of HCMC to carry out the EFI:

a) ESMA considers that the planning must be realistic by taking into account the team composition. ESMA notes that throughout the years HCMC has planned number unlimited examinations which were not concluded. Therefore, ESMA considers that HCMC should strive to align the number of FTEs allocated to EFI to its ambition as regards to EFI activities.

b) ESMA notes that GLEFI requires NCAs to submit cases to EECS in order to gather other members' views on the accounting topics with the overall objective of promoting consistent application of IFRS in the EU. Despite the high number of issuers under supervision and of examinations concluded, in the last four years HCMC has not submitted any cases (emerging issues or decisions) to EECS. ESMA understands that the submission of cases to EECS has implications on resources, as the cases need to be translated into English and need to follow a pre-determined format. ESMA considers it is key that HCMC shares the EFI cases that meet the criteria set out in the guidelines with other members in the EECS. Therefore, ESMA recommends that HCMC investigate whether the reason for the non-submission of cases to EECS is linked to resource constraints and, if so, to take the necessary actions.

c) The revised GLEFI entering into force in 2022 require that enforcers should (i) carry out a certain percentage of unlimited interactive examinations, (ii) challenge on a regular basis measurement and recognition principles in addition to presentation and disclosures and (iii) perform quality reviews. Although this follow-up exercise does not intend to check compliance with the revised GLEFI, it acknowledges that these modifications should put extra pressure on resources in that they may require more time to be allocated to EFI and/or may require some form of internal reorganisation. ESMA takes note of the fact that an internal reorganisation is underway and that, according to HCMC, 68% of the unlimited examinations concluded in 2021 were already interactive.

d) The FTE resources responsible for carrying out the function of EFI are also responsible for checking if the requirements related to non-financial information (NFI) are met. According to HCMC, at the moment, these tasks are limited to merely checking the existence of such disclosures given that HCMC does not currently have the power, under national legislation to, review NFI.[14] While ESMA acknowledges that tasks carried out by HCMC are linked to the powers and responsibilities enshrined in national legislation, it also highlights that there is increased interest and demand from investors and from the market in general as regards the disclosures related to NFI. This may require HCMC to react, analyse in-

[14] In this respect, in 2022, in light of the ongoing supervision reform, HCMC has sent a proposal to the Ministry of Finance to change the relevant law in order to have the power to review and enforce NFI.

depth and enforce the content of these requirements in the future. Although ESMA considers it is paramount that NFI is examined and enforced against, provided that the necessary powers exist at HCMC's disposal, it also considers that this work should not deter from an effective EFI. Consequently, HCMC should consider if and to which extent, an increase in the tasks allocated to enforcement of NFI may affect the work carried out when examining financial information and adjust the resources appropriately (eventually increasing them).

43. ESMA recommends that HCMC closely monitors current developments to ensure that EFI is not neglected, and that the time and resources allocated remain relevant.

4.2 – MNB (Hungary)

44. The 2017 peer review Report noted insufficient resources to perform examinations of issuers' financial statements effectively during the review period; notably, the time allocated to enforcement of financial information was inferior to 1 FTE (0.6), which was deemed insufficient considering the number of issuers.

4.2.1 – MNB Response

45. MNB mentioned in response to the ESMA Chair letter that, at the time of the peer review, only one person had appropriate IFRS qualification in the EFI unit, while there are currently three experts in the department dealing directly with EFI, although they also fulfil other tasks (which do not include enforcement of NFI).[15] It is MNB's intention to further expand the number of qualified experts in the EFI unit. In practical terms, the number of FTEs dedicated to the EFI function was of 0.4 in 2020 and of 0.6 in 2021.

46. In parallel, the number of issuers falling under the scope of the GLEFI has slightly decreased from 63 (of which 42 IFRS issuers) when the peer-review was conducted in 2017 (figures at end 2016) to 47 in 2021 (of which 34 IFRS issuers). Consequently, the number of issuers per FTE has improved from 105 in 2017 to 78 in 2021. The number of IFRS/FTE has also improved from 70 in the 2017 peer review report (based on 2016 figures) to 57 in 2021. This is closer to the averages determined in 2017 of 50 issuers per FTE and 43 IFRS issuers/ FTE.[16]

47. In addition, MNB provided the detailed number and type of examinations performed in the last 3 years and planned for 2021, as further detailed below in table 4.

[15] It is important however to note that, in accordance with national law, at the moment, MNB has no formal power to enforce NFI in connection with NFRD.

[16] For the purpose of the 2017 Peer-review report, an adjusted average of the total issuers and IFRS issuers per FTE performing the EFI function was determined which excluded the three top and bottom outliers. The adjusted average of 50 issuers per FTE (43 IFRS issuers per FTE) was then compared with the individual figures presented by each Member State. These figures already excluded the UK, which was considered an outlier in 2017.

48. MNB also highlighted that it pays close attention to the training and qualification of its experts: it offers them the possibility to attend trainings and workshops in order to keep their knowledge up to date and all experts have high level academic qualifications in accounting and professional certifications as accountant or auditor or CFA certification for the Unit manager.

4.2.2 – Assessment analysis & conclusion

49. The table below provides an overview on how MNB performs in the resource indicators.

Table 4 – Issuers under TD supervision, examinations planned and performed by MNB

	2018	2019	2020	2021
Total n. Issuers under Supervision	49	46	44	47
N. IFRS Issuers (A)	35	34	33	34
FTE allocated to EFI			**0.4**	**0.6**
Examinations planned				
Unlimited scope Examinations	4	4	3	3
Focused Examinations	0	0	0	0
Total of examinations planned	**4**	**4**	**3**	**3**
Examinations closed				
Unlimited scope Examinations	2	2	3	1
Focused Examinations	0	0	0	0
Total examinations closed (B)	**2**	**2**	**3**	**1**
Coverage of the market % (B/A)	**6%**	**6%**	**9%**	**3%**
Completion rate (planned vs closed)	**50%**	**50%**	**100%**	**33%**
Issuers / FTE			**110**	**78**
IFRS Issuers / FTE			**83**	**57**

50. The assessment concludes that despite the increase in the number of IFRS qualified personnel since the publication of the 2017 peer-review report (from one expert to three IFRS experts in 2021), the time allocated to the function of EFI remains insufficient. In fact, from 2017 to 2021 no progress was made in this respect. According to the information reported by MNB in 2017, the time allocated to EFI was 0.6 FTE and this remained unchanged in 2021. Furthermore, ESMA refers to the 2017 peer review where it was recommended that all NCAs should have, where possible, at least one member of staff fully dedicated to EFI work, in particular, those NCAs with an above average ratio of issuers to FTEs (which was the case in HU).

51. Although there was an improvement of the ratios Issuers /FTE and IFRS issuers/FTE, this improvement was not due to an increase of the time dedicated to EFI activities, but rather due to a decrease in the number of issuers under MNB supervision.

52. The lack of time allocated to EFI functions is also reflected in the number of examinations effectively closed, which remains limited and below the number of planned examinations.

MNB was able to conclude all examinations planned only in 2020. According to MNB, in 2021, all examinations planned were effectively started. However, not all were concluded by the end of the year.

53. Finally, the number of examinations planned remains particularly low compared to the total number of issuers under MNB's supervision. In order to examine all issuers under its supervision, MNB would require, on average, around 18 years.[17] ESMA considers that a rotation period of such length is not reasonable.

Recommendations

54. ESMA takes positive note of MNB's intention to further expand the number of qualified experts in the EFI unit. In this respect, ESMA recommends MNB to:

a) consider the GLEFI requirements regarding the submission of emerging issues and decisions. Given the low number of examinations performed during the period analysed, no emerging issues or decisions have been submitted. However, ESMA considers possible that an increase in the number of EFI examinations may lead to submit cases to EECS. ESMA understands that the submission of cases to EECS also have implications on resources, as the cases need to be translated into English and need to follow a pre-determined format.

b) take into account the changes made to GLEFI when determining recruitment needs (either internal or external) to ensure that the resources allocated to EFI are sufficient to respond to the new requirements of the revised GLEFI. Notably, the revised GLEFI requires enforcers to (i) carry out a certain percentage of unlimited interactive examinations, (ii) challenge on a regular basis measurement and recognition principles in addition to presentation and disclosures and (iii) perform quality reviews.

4.3 – FCMC (Latvia)

55. The 2017 peer review Report noted insufficient resources to perform examinations of issuers' financial statements effectively during the review period; notably, the time allocated to enforcement of financial information was inferior to 1 FTE, which was deemed insufficient considering the number of issuers.

4.3.1 – FCMC Response

56. FCMC mentioned in response to the ESMA Chair letter that major structural changes took place in the FCMC, also including an increase of resources devoted to examinations of issuers' financial statements.

[17] Based on the assumption that issuers are reviewed only once. ESMA however points out that risky issuers may require more than one examination over a given period. This fact should extend the length of the examination cycle.

57. Despite the size of the market and the available resources (in Latvia issuers do not directly pay for the supervision), since 2021, the FCMC has managed to devote more employee working hours to the examination of financial statements, with 2 additional employees partly devoted to the topic in 2021 and a further increase planned for 2022. In comparison to data submitted for the purposes of the Peer Review, the number of FTEs has increased from 0.4 to 0.8 at the date of submission of this information, and it is planned to reach 1 FTE in 2022.

58. The number of issuers in Latvia has been decreasing, from 38 issuers at the end of 2017, to 22 currently, of which 16 are IFRS issuers and 6 local GAAP issuers. As three issuers are currently in the process of delisting or of liquidation, it is expected that in 2022 there would be 18 issuers of which 13 would be IFRS issuers and 5 local GAAP issuers.

59. In addition, FCMC provided the detailed number and type of examinations performed in the last 3 years and planned for 2021, as further detailed below in table 5.

60. FCMC also raised the point that revision and improvement of requirements/ regulations for auditors or their oversight bodies is of importance to enhance the quality of financial statements that are reported to be audited thus reducing inaccuracies in audited financial statements and would help to eliminate the problem of poor-quality financial statements being disseminated.

4.3.2 – Assessment analysis & conclusion

61. The table below provides an overview on how FCMC performs in the resource indicators.

Table 5 – Issuers under TD supervision, examinations planned and performed by FCMC

	2018	2019	2020	2021
Total n. Issuers under Supervision (A)	32	29	27	22
N. IFRS Issuers (B)	21	20	18	16
FTE allocated to EFI			**0.4**	**1**
IFRS Examinations planned				
Unlimited scope Examinations	12	11	8	5
Focused Examinations	0	0	0	0
IFRS Total of examinations planned	**12**	**11**	**8**	**5**
IFRS Examinations closed				
Unlimited scope Examinations	8	9	8	4
Focused Examinations	0	0	0	0
IFRS Total examinations closed (C)	**8**	**9**	**8**	**4**
IFRS Coverage of the market % (C/B)	**38%**	**45%**	**44%**	**25%**
Completion rate (examinations planned vs closed)	**67%**	**82%**	**100%**	**80%**
Issuers (A) / FTE			**68**	**22**
IFRS Issuers (B) / FTE			**45**	**16**

62. The number of examinations concluded in 2021 per FTE were 4 (8 in 2020).

63. The assessment concludes that, given the evolution in the number of FTEs, particularly in 2021, FCMC has progressed with regards to the application of Guideline 2 (in 2017 the FCMC allocated 0.4 FTE to EFI activities whereas in 2021 the time allocated to EFI increased to 1 FTE). ESMA highlights that the efforts made by FCMC in 2021 significantly reduced the ratios Issuers/FTE (22 FTE) and IFRS Issuers/FTE (16 FTE) bringing them far below the average of all NCAs in 2017 (which represented Issuers /FTE of 50 and IFRS Issuers/ FTE of 43 respectively).[18] ESMA also highlights the notable number of examinations carried out by the NCA each year (more than 25%) which enables FCMC to cover a significant portion of the market annually and ensures that all issuers are examined within a short timeframe.

64. According to the information received, the type of examination performed varied over the period under analysis. While in 2021 unlimited interactive examinations[19] represented around 25% of the total examinations concluded on 31/12/2021, in 2020 unlimited interactive examinations covered around 63% of the total examinations. Furthermore, FCMC reported that the differences identified in the figure for examinations planned vs. examinations concluded were due to the delisting of issuers. ESMA considers such an explanation to be acceptable.

Recommendations

65. Given that the time allocated to EFI has varied throughout in the period under analysis (between 0.4 FTE in 2020, 0.8 in end October 2021 and 1 FTE at the end of 2021) and has just reached 1 FTE as suggested in the 2017 peer-review, ESMA recommends that FCMC monitors the resources allocated to EFI in order to ensure that they remain sufficient over time.

66. ESMA emphasises that while the figure 'FTEs allocated to EFI' seems sufficient, the changes made to GLEFI could put pressure on FCMC's resources. Notably, the revised GLEFI requires enforcers to (i) more frequently challenge the application of measurement and recognition principles, (ii) carry out a certain number of unlimited interactive examinations and (ii) undertake quality reviews following the four eyes principle.

67. Finally, ESMA recommends that FCMC consider the expected increase in the work related to the enforcement of NFI when assessing how best to strengthen and support its personnel because it is ESMA's understanding that the EFI staff is also responsible for examining if issuers are also complying with NFI requirements. Whilst ESMA recognises that synergies can be identified when the same team carries out both tasks (supervision of financial and

[18] For the purpose of the 2017 Peer-review report, an adjusted average of the total issuers and IFRS issuers per FTE performing the EFI function was determined which excluded the three top and bottom outliers. The adjusted average of 50 issuers per FTE (43 IFRS issuers per FTE) was then compared with the individual figures presented by each Member State. These figures excluded the UK, which was considered an outlier in 2017.

[19] Unlimited interactive examinations entail that issuers are contacted to provide clarifications or to deliver documentation to FCMC and the full content of the annual or half year financial report is analysed.

non-financial information), it also considers that both tasks are equally relevant and thus both require sufficient time allocation.

4.4 – MFSA (Malta)

68. The 2017 peer review Report noted:

a) Insufficient resources to perform examinations of issuers' financial statements effectively during the review period; notably, the time allocated to enforcement of financial information work was deemed insufficient considering the fact that the resources allocated to EFI is limited and that the EFI team is integrated in a multifunctional department, which affected the type of examinations performed.

b) The selection model for financial statements to be examined did not capture the intrinsic risk profile of an issuer.

4.4.1 – MFSA Response

69. MFSA mentioned in response to the ESMA Chair letter that, following the 2017 Peer review, it took several initiatives to change its process on EFI, including the selection methodology, the focus of examinations, the way MFSA communicates with issuers and auditors and the type of enforcement actions to be taken. It also informed issuers about this new approach in a letter dated 12 September 2017 (a copy of which was provided to ESMA).

70. The area of Governance Culture and Conduct was treated as a priority and led to organisational changes in MFSA, mainly completed by the end of 2019, notably through the creation of an Executive Committee and Risk Management Committee. The EFI tasks are undertaken by the Continuing Obligations Team, belonging to the broader Capital Markets Team, under the Securities and Markets Supervision function.

71. The Continuing Obligations Team has been growing from 2 officials in 2017 to 5 in 2021. Following ESMA's recommendation to carry-out examinations in-house, MFSA terminated its outsourcing arrangement with the local service provider and built in-house expertise to work on the examination of financial information, through recruitments and IFRS trainings.

72. The Continuing Obligations Team was relieved from its tasks on market abuse monitoring to better focus on the GLEFI requirements and GLEFI examinations. Nevertheless, the main responsibilities of the team primarily include EFI as well as other non-EFI tasks such as issuers' compliance with the Transparency Directive, implementation of the European Single Electronic Format and enforcement of non-financial information.

73. In addition, in comparison with 2017, MFSA has employed 3 additional experts (2 accountants and 1 banking and finance specialist, in addition to the 2 accountants already in place in 2017), all experienced and knowledgeable in the area of IFRS. This has allowed for the

introduction of a new role, dedicated to quality reviews, to comply with the revised Guidelines. Overall, specialists with accounting expertise primarily conduct the GLEFI examinations while the banking and finance specialist is mainly entrusted with risk management issues related to EFI. Thereby, while 0.4 FTEs were allocated to the EFI in 2017, this number doubled to reach 0.8 in 2020 and 2021 (despite the impact of COVID).

74. The Continuing Obligations Team has strengthened communication and collaboration with other MFSA teams such as the Listing Team, the Market oversight Team or the other Banking Supervision or Insurance and Pensions Supervision functions where relevant.

75. MFSA has amended its EFI procedures Manual (extracts of which were provided to ESMA) following the amendments to the GLEFI. MFSA (i) updated the selection process following the launch of an internal EFI risk model that identifies the high-risk issuers and (ii) launched an EFI database planning tool to centralise and organise the EFI examinations, to ensure that issuers are subject to an examination at least every 10 years.

76. The number of issuers amounted to 66 (all IFRS) at the end of 2020 and to 72 on 30 November 2021.

77. In addition, MFSA provided the detailed number and type of examinations performed in the last 3 years (considering also COVID-19 impact on MFSA work in 2020) and planned for 2021, as further detailed below in table 6.

78. Moreover, enforcement actions have also been reinforced, with an increasing number of enforcement actions per examination (6 actions out of 18 examinations in 2018, 7 out of 13 in 2019, 5 out of 7 in 2020). MFSA also flagged that a request for public corrective note was made for the first time in 2020. All other enforcement actions were requests for correction in future financial statements.

79. On whether the selection model captures the intrinsic risk profile of an issuer, MFSA indicates that a new formalised risk model was developed following the 2017 Peer Review and implemented since 2020. It is integrated in the internal procedures as part of the new selection methodology and has been reviewed by MFSA's Risk Management function. The Selection model is considered one of the main improvements to the internal manual of procedures and builds on a risk-based approach combined with rotation and random sampling. The internal manual has also been reviewed by the Supervisory Quality Assurance function.

80. MFSA also highlighted that all issuers under the GLEFI scope are also supervised by the Market Oversight Team through on-site inspections and from a market abuse perspective. In addition, as the Continuing Obligations Team is not limited to EFI tasks vis-à-vis issuers it has a broader and deeper understanding of the issuers' business models.

4.4.2 – Assessment analysis & conclusion

Guideline 2 Sufficiency of human resources

81. The table below provides an overview on how MFSA performs in the resource indicators.

Table 6 – Issuers under TD supervision, examinations planned and performed by MFSA

	2018	2019	2020	2021
Total n. Issuers under Supervision (A)	55	63	66	72
N. IFRS Issuers (B)	55	63	66	72
FTE allocated to EFI			**0.8**	**0.8**
IFRS Examinations planned				
Unlimited scope Examinations	2	2	3	3
Focused Examinations	16	11	4	4
IFRS Total of examinations planned	**18**	**13**	**7**	**7**
IFRS Examinations closed				
Unlimited scope Examinations	2	2	3	3
Focused Examinations	16	11	4	4
IFRS Total examinations closed (C)	**18**	**13**	**7**	**7**
IFRS Coverage of the market % (C/B)	**33%**	**21%**	**11%**	**10%**
Completion rate (examinations planned vs closed)	**100%**	**100%**	**100%**	**100%**
Issuers (A) / FTE			**83**	**90**
IFRS Issuers (B) / FTE			**83**	**90**

82. The number of examinations concluded in 2021 and 2020 per FTE was of 7.

83. ESMA commends MFSA for following ESMA's recommendation to terminate the outsourcing contract with a third party which was partially responsible for the examination of financial information. ESMA considers it is key that EFI is carried out by independent organisations to ensure that conflicts of interest are avoided. ESMA also commends MFSA for investing in-house and developing an internal EFI team dedicated to the EFI. In this respect, ESMA takes positive note of the recruitment of personnel with an accounting or finance background (the EFI team composition evolved from two persons in 2017 to five persons in 2021) following the 2017 peer-review.

84. Nevertheless, the assessment concludes that despite the increase in IFRS-qualified personnel since the publication of the 2017 peer-review report, the time allocated to the EFI activities remains insufficient. This is mainly due to the fact that none of the EFI team members are fully dedicated to EFI activities as they are also responsible for other tasks. Although from 2017 to 2021 the time allocated to the function of EFI doubled (from 0.4 to 0.8 FTE), it remains below 1 FTE.

85. ESMA noted a slight improvement in the ratio Issuers/FTE (IFRS issuers/FTE) from 108 issuers per FTE in 2017 to 90 issuers per FTE in 2021. This improvement is the result of the increase in the time allocated to the EFI function which was partially offset by an increase in the number of issuers under supervision. As a proxy, the ratio Issuers/ FTE remains at a high level (90), almost the double that of the NCAs average determined in 2017 of 50 Issuers per FTE and more than double (43 issuers per FTE) when considering IFRS issuers. [20]

86. ESMA notes that despite limited time allocated to EFI (0.8 FTE), MFSA was able to carry out a sufficient number of examinations (around 10% of the issuers under supervision). ESMA understands that most examinations concluded were interactive (i.e., requiring further clarifications from issuers and including a thorough analysis of the documentation received). However, although MFSA met its annual planning objectives, ESMA notes that the number of planned examinations significantly decreased in 2020-2021 (compared to 2018-2019). ESMA takes positive note that, according to MFSA, some of these interactive examinations address issuers' application of IFRS recognition and measurement principles.

87. Finally, ESMA also notes that GLEFI requires NCAs to submit cases and decisions when these meet certain criteria. Despite the significant number of issuers under supervision and of examinations concluded, in the last four years MFSA has not submitted any cases (emerging issues or decisions) to EECS. ESMA understands that the submission of cases to EECS also has implications on resources.

Recommendations

88. Taking into account that the number of issuers under supervision of MFSA has increased throughout the years (55 in 2018 to 72 in 2021), ESMA recommends that MFSA consider reinforcing the EFI team or the time allocated to EFI activities to ensure that it is sufficient to respond to the respective increase in EFI activities. To this end, ESMA refers to the 2017 peer review where it was recommended that all NCAs should have, where possible, at least one member of staff fully dedicated to EFI work, in particular, those NCAs with an above average ratio of issuers to FTEs (which was the case in MFSA).

89. Furthermore, ESMA strongly believes that it is key that MFSA shares the EFI cases that meet the criteria set out in the guidelines with other members in EECS. ESMA recommends that MFSA investigates whether the reasons for the non-submission of cases to EECS are linked to resource constraints and, if so, take the necessary actions.

90. ESMA also emphasises that while the figure 'FTE allocated to EFI' does not seem to create a significant impact in the number of examinations concluded, the changes made to GLEFI may create additional pressure on MSFA's resources. Notably, the revised GLEFI requires

[20] For the purpose of the 2017 Peer-review report, an adjusted average of the total issuers and IFRS issuers per FTE performing the EFI function was determined which excluded the three top and bottom outliers. The adjusted average of 50 issuers per FTE (43 IFRS issuers per FTE) was then compared with the individual figures presented by each Member State. These figures excluded the UK, which was considered an outlier in 2017.

enforcers to (i) more frequently challenge the application of measurement and recognition principles and (ii) carry out a certain number of unlimited interactive examinations. ESMA recommends that MFSA carefully plan its EFI activities and conduct periodic assessments to ensure that the resources allocated are sufficient to respond to the new requirements of the revised GLEFI. In this respect, it is important to note that MFSA has appointed an internal coordinator in-charge of coordinating the EFI activities and quality review.

91. Finally, ESMA recommends that MFSA considers the expected increase in the work related to the enforcement of NFI when assessing how best to strengthen and support its personnel because it is ESMA's understanding that the EFI staff is also responsible for examining if issuers comply with NFI requirements. Whilst ESMA recognises that synergies can be identified when the same team carries out both tasks (supervision of financial and non-financial information), it also considers that both tasks are equally relevant and thus both require sufficient time allocation.

Guideline 5 Selection Model

92. As regards the selection model in place, and in particular, the risk-based selection of issuers, ESMA takes note of the improvements made to the selection model to capture the intrinsic risk of an issuer. According to the current model in place, riskier issuers are selected based on quantitative risk metrics as well as on qualitative financial information.

93. With respect to quantitative risk metrics, ESMA takes positive note of the use of financial data extracted from financial reports which serve as inputs to determine the reporting quality of issuers and identify the likelihood of manipulation in a company's earnings by using the Beneish M model. MFSA also makes use of the Altman Z model to test issuers' likelihood of bankruptcy.

94. In relation to qualitative information which, together with specific quantitative information, serves as input to the risk-based selection, MFSA highlights that, throughout the year, the EFI function gathers input, amongst others, from (i) whistle-blowers or referrals from other authorities and/or departments, (ii) relevant data from media which include but are not limited to takeovers, group restructurings and discontinued operations, and (iii) data from auditors' opinions (emphasis of matter, qualifications). ESMA considers that these features are aligned with the principles included in GL 5.

95. According to MFSA the model is re-run throughout the year to ensure that no material changes in risk scores have occurred throughout the year.

96. ESMA commends the MFSA for the changes made to the selection model as it considers that the risk model implemented provides valuable insights to depict the intrinsic risk profile of an issuer. ESMA also considers it is positive that the model is re-run during the year to ensure that no other material risks are identified, and that, if such occur, additional examinations are performed.

97. Looking at the implementation of the model, ESMA acknowledges that the issuers selected via the risk-based approach are effectively examined and enforced against by MFSA, where necessary.

Table 7 – Implementation of the selection model (Issuers selected, examined and acted upon with regards to the risk-based sample) [21]

		Risk-based
2020	Issuers selected	7
	of the issuers selected, n. Issuers examined	7
	Actions taken (GL 7 - number of actions taken per examination)	5
2021	Issuers selected	7
	of the issuers selected, n. Issuers examined	7
	Actions taken (GL 7 - number of actions taken per examination)	4

98. Finally, as regards other aspects mentioned in the 2017 peer-review report, ESMA takes note that, in 2017, MFSA informed all supervised entities that (i) changes to the enforcement of financial information system were underway and (ii) more actions were taken when infringements were discovered. It is ESMA's understanding that some of these actions were corrective notes, requiring issuers to inform the market immediately of the findings of the examinations performed by MFSA. ESMA considers both actions positive as they enhance MFSA's profile in contributing to the quality of the financial information made available to the market and in increasing investors' confidence in financial markets.

Recommendations

99. Given the entering into force of the revised guidelines in 2022, ESMA recommends that MFSA further specify in the risk model in place the interaction between the risk-based approach selection and the selection based on rotation. ESMA understands that issuers which have been examined via risk or random sampling may be excluded from the rotation sampling since an examination has been carried out. However, it is important to ensure that, if new risks arise, risky issuers may be re-selected for an examination and that issuers are not able to predict when they will be re-examined.

4.5 – CMVM (Portugal)

100. The 2017 peer review Report noted:

a) Insufficient resources to perform examinations of issuers' financial statements effectively during the review period. Notably, the time allocated to enforcement of financial information work was deemed insufficient considering the fact that the resources allocated to

[21] Given that most weaknesses encountered in 2017, were related to risk-based selection, the table focus on the implementation of the model in relation to the risk-based approach.

EFI is limited and that the EFI team is integrated in a multifunctional department, which affected the number of examinations performed.

b) The selection model in place for financial statements to be examined was not effective in practice as the execution rate reached only 35%.

4.5.1 – CMVM Response

101. CMVM mentioned in response to the ESMA Chair letter that, following the 2017 Peer review, it took measures to address ESMA's recommendations as well as to improve effectiveness, efficiency, and substance of financial reporting supervision.

102. This led to reorganise the EFI Team and to define a strategic action plan, approved at CMVM management board level, in 2017 and reviewed in 2018. The restructuring aimed at elevating the EFI Team as a core area of issuers' supervision, and no longer a support area of the Issuers Department. Thus, the EFI team has specifically allocated resources and a team coordinator has been appointed. In parallel, procedures were adopted to limit the involvement of the EFI team experts in other areas and tasks. Still, the EFI team is integrated in the Issuers department, which is multifunctional and responsible for the supervision of regulated information disclosed by issuers, prospectuses and takeovers.

103. The first concern of the reorganisation was to ensure that the EFI team resources were primarily allocated to EFI, therefore its intervention in areas outside strictly EFI scope became managed under a combination of risk and added value perspective and aimed at ensuring that at least 50% of the time was allocated to EFI core activities (defined by CMVM as: risk model filling and analysis, examinations, supervision of financial information in real time, participation in ESMA CRSC and subgroups, monitoring of issuers' financial information affected by the COVID-19 situation). CMVM provided the below figures on its resources:

a) In 2020, 45 issuers fall under the GLEFI scope, with 5 FTEs in the EFI team and 3.454 FTE (69,1%) solely dedicated to EFI supervision;

b) In 2021, 47 issuers fall under the GLEFI scope, with 5 FTEs in the EFI team and 2.532 FTE (50,6%) solely dedicated to EFI supervision.

104. As regards the selection model, CMVM indicates that it was revised to address the weaknesses flagged during the peer review and formalised into internal procedures (CMVM provided the detailed plans it prepared to address the Peer review weaknesses, approved by its Management Board in 2017-2018). A rotation criterion was introduced in the selection model, thus the model now combines risk, rotation and random selection. In 2018, a 6-year review cycle was established for all issuers to be subject to EFI, together with a pluriannual plan for the coverage period. In 2019 though, some elements were adjusted: (i) extension of the rotation cycle duration to 8 years (due to reduction of resources and extension of

examination procedures), (ii) the weight of the probability and impact indicators in the selection model were rebalanced. In addition, the changes also aimed at implementing the revised GLEFI applicable as of 2022, as well as the ESMA supervisory briefings on selection methods and examination procedures.

105. According to CMVM, its selection model combines the risk-based approach with the rotation in line with the guidance provided in Guideline 5[22] and in the Supervisory Briefing[23]. Therefore, CMVM's selection model is applied in two subsets of the issuers' population: i) one population for the combination of risk and rotation elements and ii) another population for the random component (that excludes the issuers selected in (i) for the given year).

106. The combination of the risk and rotation approach is performed as follows:

a) when the rotation criteria was introduced, the rotation cycle was established for all issuers subject to EFI. The rotation cycle is currently set at 10 years. Taking into account the number of supervised issuers, the rotation sample represents around 5 issuers per year.

b) the risk model is fulfilled for all the issuers on an annual basis, whereby all issuers are scored based on specific risk factors. Subsequently, issuers are ranked on the basis of the scores obtained (from the highest score to the lowest one) and issuers with the highest risk scores are prioritised in the examination planning.

c) issuers that have already been selected for an examination within the current review cycle[24] based on the risk and rotation criteria are excluded from the selection sample.

d) However, in case an issuer has a recurrent high-risk score, CMVM reviews the underlying reasons why the score remains high before such exclusion. If a change in the issuer's risk profile is identified, the modification is analysed and an assessment is performed to ascertain the need to conduct an unlimited or focused examination of the issuers' financial information. If the underlying risks were already known at the time of the examination, the issuer is not considered for another examination.

107. As for the random component, CMVM in addition selects one issuer randomly, which may or may not have been examined previously in the cycle. CMVM considers that this random selection ensures that issuers are never able to predict when they will be examined.

108. A review of the examinations planned vs. those carried out is done at the end of each year and submitted to the CMVM Management Board, to check the effectiveness of the EFI process. In addition, when during the cycle it is anticipated that the number of examinations

[22] Paragraphs 53 to 58
[23] Paragraph 46 of the Supervisory Briefing on selection methods: "*The three elements (risk-based, rotation and random) do not necessarily need to be considered in isolation but can be combined if the Enforcer deems it helpful to ensure the most appropriate coverage of the market (…)*".
[24] According to CMVM, the review cycle is de facto 10 years (the CMVM's Board has not yet approved the ten-years rotation cycle).

planned won't be reached, a revised sample is established and approved by the Board with explanations on the underlying changes. Such process was used in 2018.

109. In addition, CMVM may decide to carry out additional examinations on a case-by-case basis when there is evidence that a risk is not captured by the Selection model. In such a case, the scope of the examination is decided based on the nature and extent of the risks identified. Besides, the depth of measurement and recognition issues identified in the context of unlimited examinations may lead to the execution of complementary focused examinations to address those issues to close the unlimited scope examination in a timely manner. CMVM also highlighted that, as a complement to examinations, risks are also addressed by additional enforcement procedures as well as ongoing analysis of: i) financial information and material information disclosed by issuers; ii) research reports and notes issued by analysts; iii) information disseminated by the media; iv) data provided by other regulators; v) complaints dully substantiated; vi) changes in the issuer's auditors, and also the emergence of material conjunctural risks such as the COVID-19 pandemic.

110. Hence, CMVM provided the detailed number and type of examinations performed in the last 3 years and planned for 2021, as further detailed below in table 8.

111. Additionally, adjustments were made regarding the procedures for the supervision of financial information in real time to enhance the efficiency of the supervision and achieve a more effective approach in detecting risks that could trigger an EFI ad-hoc selection. This includes also the participation of EFI experts as observers in the companies' results presentation to analysts.

112. Overall, CMVM notes that the enforcement procedures evolved from an approach essentially focused on ensuring compliance of the financial statement disclosures with the IAS/IFRS, to a model which addresses also the compliance of financial statements with recognition and measurement legal requirements, in line with most of the internationally-referenced supervisors' practices.

4.5.2 – Assessment analysis & conclusion

Guideline 2 Sufficiency of human resources

113. The table below provides an overview on how CMVM performs in the resource indicators.

Table 8 – Issuers under TD supervision, examinations planned and performed by CMVM

	2018	2019	2020	2021
Total n. Issuers under Supervision (A)	53	51	48	47
N. IFRS Issuers (B)	53	51	48	47
FTE allocated to EFI			**3.5**	**2.5**
IFRS Examinations planned				
Unlimited scope Examinations	6[25]	5	4	3
Focused Examinations	0	2	2	2
IFRS Total of examinations planned	**6**	**7**	**6**	**5**
IFRS Examinations closed				
Unlimited scope Examinations	6	5	4	0
Focused Examinations	3[26]	2	2	5
IFRS Total examinations closed (C)	**9**	**7**	**6**	**5**
IFRS Coverage of the market % (C/B)	**17%**	**14%**	**13%**	**11%**
Completion rate (examinations planned vs closed)	**150%**	**100%**	**100%**	**100%**[27]
Issuers (A) / FTE			**14**	**19**
IFRS Issuers (B) / FTE			**14**	**19**

114. The number of examinations concluded in 2021 and in 2020 per FTE was around 2. CMVM flagged, however, that the FTEs allocated to EFI include the coordinator role who is responsible, among other tasks, for the quality reviews of all examinations performed. The coordinator, however, does not perform examinations on his own.

115. The assessment concludes that, compared to the 2017 peer-review, CMVM increased the number of FTEs effectively dedicated to EFI activities: CMVM reported 1.05 FTE in 2017, compared to 2.5 FTEs in 2021. This increase led to an improvement of the ratio Issuers/FTE, which reduced from 55 issuers per FTE in 2017 to 19 issuers per FTE in 2021. ESMA also considers that the organisational changes made in CMVM to upgrade the profile of the EFI team within the department, under the aegis of a coordinator, show commitment from the organisation to an area which appeared marginalised and of secondary importance in 2017.

116. However, ESMA observes that the EFI team resources (6 IFRS experts in 2017, 4 in 2018, 5 in 2019-2020, 4 in 2021) and the time allocated to EFI activities (from 70% in 2020 to 50% in 2021) have decreased during the period under analysis. ESMA notes that these variations had a significant impact on the EFI activities. Notably:

[25] In 2018, initially, based on a rotation cycle of 6 years, 10 issuers were selected for examination (9 of them based on a combined risk and rotation approach and one issuer based on random selection). Subsequently, but before the examinations were initiated, the rotation cycle was extended to 8 years and the number of planned examinations was reduced to 6 (of which 5 were based on a combined risk and rotation approach).
[26] Issuers selected on the basis of the European Common Enforcement Priorities (ECEP).
[27] In 2021, CMVM concluded five examinations, representing 100% of completion rate. However, the type of examinations actually performed, and the issuers examined did not correspond to the initial selection.

a) since 2018 to 2021, CMVM changed the rotation cycle of issuers twice. In 2018, as a response to the findings of 2017 peer-review, CMVM modified its selection model by including a rotation component[28] and by setting a 6-year rotation cycle for all issuers falling under the GLEFI scope. In 2019, CMVM extended the rotation cycle to 8 years.[29] In 2021, CMVM (although not formally approved by the Board)[30] decided to extend its cycle again to 10 years. According to CMVM all these changes were to adapt to resources constraints and the need to perform more in-depth examinations.

b) since 2018, the number of unlimited scope examinations planned (6 examinations in 2018, to 3 in 2021) and concluded (from 6 in 2018 to 0 in 2021) have been in constant decline. In 2021, CMVM had to postpone or deprioritise most of its planned unlimited scope examinations in order to perform urgent focused examinations. As observed in table 9, not all issuers selected for examination in 2021 were effectively examined.[31]

117. ESMA considers the variations in the time allocated to EFI work, the increasing length of the rotation cycle and the regular decrease of EFI activities planned concerning as it demonstrates that CMVM has not clearly set its ambition level with regard to EFI supervision and does not ensure that the resources available are commensurate to effectively achieve implementing the determined work plan.

118. Finally, ESMA commends CMVM for the quality and relevance of the cases brought to EECS. During the period under analysis, CMVM submitted 8 emerging issues and two decisions. The issues raised, the analysis made, and the conclusions taken demonstrate that the CMVM EFI team evolved from checklist-based analysis, where disclosures were the main focus, to a more in-depth approach where the application of recognition and measurement principles is also assessed. ESMA understands that challenging the application of recognition and measurement principles by issuers requires more time to be allocated because it often requires a critical analysis to the assumptions used, the judgements made, and the accounting policies adopted by issuers. ESMA considers that the approach followed by CMVM is in line with the principles included in the revised GLEFI.

Recommendations

119. Although ESMA considers that the planning must be realistic by taking into account the team composition, it also believes that reducing the number of planned examinations over the years due to resources constraints is not a sustainable long-term strategy. ESMA considers that CMVM should strive to keep the number of FTEs and the time allocated to EFI stable over the years to ensure that its ambitions as regards EFI (as set by its internal procedures and supervisory work plan) are achieved and that the number of EFI examinations is not

[28] The 2017 selection model only included risk and random approaches.
[29] 9 examinations-based risk/rotation and 1 based on random.
[30] In this respect, it is important to emphasise that every year, CMVM's board approves the selection sample and any modifications deemed necessary to the model.
[31] CMVM however observed that out of the 3 unlimited examinations planned in 2021, 2 were significantly executed and planned to be closed in Q1 2022.

constantly decreasing. For example, to address the high rotation of personnel, ESMA suggests that CMVM strives to reinforce its EFI team, by recruiting new members internally or externally, when EFI team members leave or to increase the time allocated to core EFI activities (such as examinations) as opposed to regularly decreasing the number of expected activities or further extending the rotation cycles. In this respect, ESMA makes reference to the 2017 peer review where it was recommended that all NCAs should have, where possible, at least one member of staff fully dedicated to EFI work.

120. ESMA emphasises that while the figure ‘FTEs allocated to EFI’ seems sufficient, the changes made to GLEFI may apply additional pressure on CMVM’s EFI resources. Notably, the revised GLEFI requires enforcers to (i) frequently challenge the application of measurement and recognition principles and to (ii) carry out a certain number of unlimited interactive examinations. Finally, the revised GLEFI notes that the sole use of interactive focused examinations should not be considered as satisfactory for enforcement purposes.

121. Finally, ESMA recommends that CMVM consider the expected increase in the work related to the enforcement of NFI when assessing how best to strengthen and support its personnel because it is ESMA’s understanding that the EFI staff is also responsible for examining whether issuers are also complying with NFI requirements. Whilst ESMA recognises that synergies can be identified when the same team carries out both tasks (supervision of financial and non-financial information), it also considers that both tasks are equally relevant and thus both require sufficient time allocation.

Guideline 5 Selection Model

122. As regards the implementation of the selection model, ESMA understands that CMVM revised its selection model following the recommendations derived from the peer-review of 2017. The report had highlighted that CMVM should effectively follow the already established selection model as at the time most of the examinations performed were triggered by a public offer or the approval of a prospectus by CMVM and not by the normal application of the selection model.

123. ESMA considers that progress was made on the implementation of the selection model, as between 2018 and 2020 all issuers selected for an examination are effectively examined (as observed in the table below). However, ESMA points out that, in 2021, not all issuers selected were subject to an examination.

Table 9 – Implementation of the selection model (issuers selected, examined and acted upon by type of selection approach)

		Risk/Rotation	Random	Total
2018	N. of issuers selected	5	1	6
	of the issuers selected, n. Issuers examined	5	1	6
	Actions taken according to GL 7 of GLEFI per issuer	5	1	6
2019	Issuers selected	6	1	7
	of the issuers selected, n. Issuers examined	6	1	7
	Actions taken according to GL 7 of GLEFI per issuer	3	1	4
2020	Issuers selected	5	1	6
	of the issuers selected, n. Issuers examined	5	1	6
	Actions taken according to GL 7 of GLEFI per issuer	3	1	4
2021	Issuers selected	4	1	5
	of the issuers selected, n. Issuers examined	2	0	2
	N. actions taken according to GL 7 of GLEFI per issuer	-	-	-

124. ESMA takes note that the risk assessment is re-run throughout the year and, if other material risks are identified, focused examinations are carried out. ESMA considers that it is important that the EFI team is attentive to risks arising in the course of the year and reacts (promptly when needed) by conducting additional unplanned examinations. ESMA also considers that CMVM should strive to plan its annual activities in order to allow for additional examinations to be carried out, if the need arises, without deprioritising or postponing examinations following the risk model. ESMA considers that it is key that issuers selected (in particular when this is due to their risk score) are effectively examined.

125. Following the peer-review, CMVM decided to amend its selection model by combining the risk and rotation component with the objective to ensure that all issuers would be subject to an examination in a given cycle. The rotation cycle was initially constrained to six years, however, after a revision in 2019, it was extended to eight years and, once again, extended in 2021 to ten years (subject to the approval of CMVM's Board).

126. ESMA considers positive that CMVM has introduced the requirement to examine all issuers in a given period of time, as this principle is aligned with the revised GLEFI. However, given (i) the low number of examinations performed annually and (ii) that some issuers are reviewed twice in two consecutive years (i.e. unlimited scope examination in year 1 and focused examination in year 2), ESMA considers it unlikely that the 8-year rotation period currently approved by CMVM's Board will be accomplished and notes that the execution of a ten-year rotation period de facto in place may require more examinations to be planned and performed. Furthermore, ESMA considers that it is not good practice to repeatedly change the length of the rotation cycle before its completion or when resource constraints are identified. With regards to the latter, ESMA refers to its assessment of implementation of Guideline 2.

Recommendations

127. In light of the revised Guidelines and the new Supervisory Briefing on selection methods, ESMA makes the following observations which may prompt a revision of the selection model by CMVM:

a) the revised guidelines require that the selection model takes into account risk, rotation and random sampling. This implies that NCAs are able to identify issuers selected based on each component. According to CMVM, the rotation sample is selected annually following the risk ranking of all issuers. Given that there is intrinsic link between risk and rotation in CMVM's model, CMVM is not able to identify which issuers originate from rotation and which issuers originate from risk.[32] Therefore, it is not totally clear if the model currently in place fully meets the amended requirements set out in the revised GLEFI and its related supervisory briefing on selection methods because CMVM's model does not allow for a complete understanding of whether all approaches of the selection model are effectively implemented.

b) the risk-based selection method used by CMVM takes into account several risk factors. All issuers are scored against these risks and (subject to certain exclusions)[33] the riskier issuers are subsequently selected for examination. Some of these risk factors are related to the auditors' reports/opinions (i.e., qualified opinion, emphasis of matter, key audit matters) or to grounded complaints. When analysing how the scores are structured and the weights given to these risks, ESMA noted that issuers with qualified opinions or grounded complaints may not necessarily be selected based on risk.[34] ESMA observes that paragraph 56 of GLEFI states that "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. (…) Enforcement examinations should be considered where, after preliminary scrutiny, a complaint received appears reliable and relevant for a possible enforcement examination." In light of the new Supervisory Briefing, ESMA believes that CMVM should consider revisiting the structure of the risk scores and/or clarifying in its supervisory manual the factors which may (or not) lead to a selection of issuers on the basis of paragraph 56 to ensure that a consistent approach is undertaken when filling in the risk model scoring spreadsheet.[35]

[32] According to paragraphs 15 and 46: if the various criteria are combined, enforcers should be able to define what is the main criteria driving the selection of an issuer.
[33] Please see below.
[34] I.e., the weight given to risk factors related to auditor's indications and to grounded complaints is diluted in comparison with other risks.
[35] CMVM notes, however that, although the risk model does not automatically trigger the examination of the issuers with qualified opinions, the scoring assigned to qualified opinions is manually inserted. CMVM has prior access to all the qualifications issued by auditors, which it analyses individually in order to assess their relevance and the need to perform an immediate analysis. Therefore, when fulfilling the risk model, CMVM assesses the nature of each qualification and evaluates whether an unlimited or focused examination should be performed on the issuer's financial statements. In view of the above, CMVM considers that, in practice, the procedure ensures the compliance with the purpose of paragraph 56 of the guidelines.

c) The risk and rotation selection sampling followed by CMVM excludes issuers which obtained a high-risk score if they have been examined in prior years and after checking that the factors that triggered such high score remained the same. CMVM explained that this approach is deemed necessary because, following its risk model, some issuers obtain a high score in consecutive years. Selecting and examining the same issuer in consecutive years could have limited value and would require significant resources. ESMA notes that this approach may lead to the situation where, certain issuers (despite being considered risky on the basis of the risk model in place) are examined only once within a ten-year rotation period. While ESMA understands that carrying out examinations of the same issuer in two consecutive years may not bring new findings and requires resources which are scarce, it also considers that a ten-year rotation for certain issuers (such as issuers constantly scoring high according to the risk model over the years) may be excessively long. ESMA strongly believes that the riskiness of the issuer should have an impact on the frequency of examinations. ESMA notes that, within a ten-year timeframe, the financial situation and the risk profile of an issuer may change significantly (which may not be captured by an analysis to the factors that led to a high score in the risk model). Therefore, ESMA recommends that CMVM:

   i. assess if the risk factors (or its weight) considered in the risk model result in biased tendency to select certain issuers as opposed to others.

   ii. consider in its risk approach – with the appropriate weight – not only risks factors reflecting structural and permanent features of the risk profile of an issuer but also risks factors reflecting for instance short-term tendencies or variations observed in the market or in the issuer performance or annual ECEP. [36]

   iii. revisit its risk model to ensure that the risk scoring has an effective impact on the selection of issuers for examination (issuers with a higher score are effectively selected and examined regardless of whether they have been examined before).

4.6 – ASF (Romania)

128. The 2017 peer review Report noted:

a) Insufficient resources to perform examinations of issuers' financial statements effectively. Notably, the time allocated to enforcement of financial information was inferior to 1 FTE, which was deemed insufficient considering the number of issuers under supervision.

b) The selection model for financial statements to be examined did not capture the intrinsic risk profile of an issuer.

[36] Currently, CMVM considers ECEP in a three-step approach: (1) it selects issuers based on risk, rotation and random selection; (2) it verifies if ECEP topics are material for those issuers selected and; (3) in order to comply with ESMA's annual ECEP sample, it selects further issuers for focused examinations when the ECEP are not material for the issuers selected in step 1.

4.5.1 – ASF Response

129. ASF mentioned in response to the ESMA Chair letter that, at the time of the Peer review, the enforcement of financial information was carried out by the Issuers Supervision and Transparency Unit (also named ISTU, under the Issuers supervision, Transactions and Market Abuse Monitoring Directorate), composed of 3 specialists and the Head of Unit. In addition, administrative support activities were carried out by one additional staff member outside the Unit. In total, each ISTU specialist spent circa 35% of time on the enforcement of financial information, resulting in a total of 0.9 FTE dedicated to this activity.

130. Following the Peer review, efforts have been made to reshape the EFI process and increase the number of specialists allocated to it.

131. However, ASF highlights that, while the EFI team used to be composed of senior and specialised staff members, in the last years it has faced several staffing issues (retirement, leave, departures) and that it took measures to recruit 2 experienced specialists from the private sector. As a consequence, ASF also reallocated responsibilities within the team in order to enable the EFI specialists to dedicate more time to the EFI tasks. Currently the team is composed of 2 specialists with EFI responsibilities and one person with support responsibilities. In addition, a campaign is on-going to recruit an additional specialist. In total, the budget allocation represents 4 specialists plus one person with support responsibilities.

132. ASF flags that the EFI team has several activities (EFI activities, transparency, shareholder rights, ESMA groups, other administrative tasks), of which EFI represents 35 to 40%. This results into 0.7 FTE currently (1.2 when the third specialist will be recruited, 1.6 based on the full budget allocation). In parallel, adjustments are on-going to reduce the tasks allocated to other activities of the EFI team.

133. The number of issuers falling under the scope of the GLEFI (all IFRS issuers) amounts to 77 equity issuers under IFRS, 5 equity and bond issuers under IFRS and 9 bond issuers under IFRS.

134. ASF also notes that, for companies listed on the MTF (circa 330), the EFI team covers the transparency obligations and shareholder rights supervisory tasks.

135. In addition, ASF provided the detailed number and type of examinations performed in the last 3 years and planned for 2021, as further detailed below in table 10.

136. Regarding the actions taken, ASF indicates that it has made 7 requests to issuers to correct their future financial statements in 2019 (all of them through formal letters), 9 in 2020 (7 of them through formal letters, 2 of them led to public decisions) and 4 in 2021 (based on the examinations completed by October 2021, 3 of them through formal letters, 1 of them led to a public decision). It did not request any reissuances of financial statements nor public corrective notes over this period.

137. Regarding the 2019-2020 cases, the follow-up showed that the issuers had carried-out their obligations. As for the decisions taken in 2020, ASF indicates that, in the first case, an investment was not properly reflected in the 2020 financial statement and that it will be subject to a follow-up process upon publication of the 2021 financial statements. In the second case, it stresses that the issuer was fined for not presenting to the shareholders exact financial statements and real information on the economic conditions of the issuer in respect of its subsidiary.

138. Besides, ASF applied and benefited from a technical assistance program provided by the World Bank and the European Commission between June 2018 and June 2019 regarding the supervision of compliance of financial information with IFRS. They delivered a supervisory manual and a working procedure to support the determination of the materiality and selection of issuers which took into consideration changes to the GLEFI, as they were under discussion at the time. Those documents have been in place since the first part of 2020 and overhauled the previous internal procedures. ASF also provided its new selection method internal procedure.

4.5.2 – Assessment analysis & conclusion

Guideline 2 Sufficiency of human resources

139. The table below provides an overview on how ASF performs in the resource indicators.

Table 10 – Issuers under TD supervision, examinations planned and performed by ASF

	2018	2019	2020	2021
Total n. Issuers under TD Supervision (A)	92	90	87	94[37]
N. IFRS Issuers (B)	92	90	87	94
FTE allocated to EFI			1.6	**0.7**
IFRS Examinations planned				
Unlimited scope Examinations	7	12	14	8
Focused Examinations	7	18	9	8
IFRS Total examinations planned	**14**	**30**	**23**	**16**
IFRS Examinations closed				
Unlimited scope Examinations	6	10	10	5
Focused Examinations	7	7	5	2
IFRS Total examinations closed (C)	**13**	**17**	**15**	**7**
IFRS Coverage of the market % (C/B)	**14%**	**19%**	**17%**	**7%**
Completion rate (examinations planned vs closed)	**93%**	**57%**	**65%**	**44%**
Issuers (A) / FTE			**54**	**134**
IFRS Issuers (B) / FTE			**54**	**134**

[37] Including 3 fund units issuers.

140. In 2021, despite the low FTE allocated to EFI, ASF was able to conclude 7 examinations (in 2020 the number of examinations per FTE was around 9).

141. Given the ratio of Issuers /FTE and the number of the examinations carried out, ESMA considers that the number of skilled personnel allocated to the function of EFI is still insufficient. In this respect, ESMA notes that the time allocated to EFI activities decreased from 0.9 in 2017 to 0.7 in 2021. This decrease impacted the ratios Issuers/FTE which in 2021 represented 134 Issuers per FTE (an increase from 108 Issuers per FTE in 2017).

142. The lack of skilled personnel is also evidenced by the fact that ASF was not able to undertake all its annual planned examinations in 2021. Out of 16 planned examinations, ASF was only able to conclude 7 (5 unlimited and 2 focused examinations). According to ASF's internal procedures, ASF should carry out around 15 examinations each year and examine all issuers under supervision over a 6-year cycle.

143. ESMA notes that the 2017 peer review recommended that all NCAs should have, where possible, at least one member of staff fully dedicated to EFI work, in particular, those NCAs with an above average ratio of issuers to FTEs (which is the case for ASF). Not only ASF does not have personnel fully dedicated to the function of enforcement of financial information, but the combined time allocated by the 4 experts in TD supervision to tasks related to GLEFI reaches only 0.7, hence below 1.

144. ESMA acknowledges the efforts made by ASF to recruit skilled personnel in sufficient numbers in order to increase the time allocated to the function of EFI. ESMA also understands that not all NCAs are able to compete with the benefits packages offered by the private sector, and that in-depth EFI (such as challenging issuers' application of measurement and recognition principles in IFRS) requires competences and professional experience which are very specific.

145. Nonetheless, ESMA considers that where NCAs are not able to recruit this expertise in the market, they may need to consider developing the expertise internally (i.e., in-house). To support NCAs in this, ESMA organises regular trainings, in particular, when new IFRS standards are issued, and regular internal discussions, or, where necessary, prepares internal guidance when particular principles in IFRS pose challenges to the supervision of financial information.

146. Finally, where enforcement cases are complex, NCAs may make use of the experience of other NCAs by presenting and submitting cases to EECS and other ESMA groups (e.g., Financial Institutions Task Force). In this respect, ESMA notes that despite the significant number of issuers under its supervision and examinations concluded, in the last four years, ASF has not submitted any cases (emerging issues or decisions) to EECS. However, ESMA understands that the non-submission of cases to EECS may be due to lack of resources as the cases need to be translated into English and need to follow a pre-determined format.

Recommendations

147. ESMA acknowledges that ASF is currently in the midst of a recruitment drive to hire more personnel. In this respect, ESMA recommends that ASF:

a) assess the recruitment needs in light of the revised supervisory manual (e.g., number of examinations expected to be carried out annually, rotation period). When doing so, ASF may consider reinforcing either the EFI team composition and/or the time allocated to EFI activities. In this respect, where external recruitment is not feasible, ASF may also consider developing in house expertise in relation to EFI. ESMA recommends that ASF take full advantage of ESMA groups to share supervisory experiences and to participate in the trainings organised by ESMA.

b) consider the GLEFI requirements regarding the submission of Emerging issues and Decisions. ESMA considers it is key that ASF shares the EFI cases that meet the criteria set out in the guidelines with other members in EECS. Therefore, ESMA recommends that ASF investigate whether the reasons for the non-submission of cases to EECS are linked to resource constraints and if so, to also consider this aspect when assessing the adequacy of EFI resources.

c) take into account the changes made to GLEFI when determining recruitment needs (either internal or external) to ensure that the resources allocated to EFI are sufficient to respond to the new requirements of the revised GLEFI. Notably, the revised GLEFI requires enforcers to (i) carry out a certain percentage of unlimited interactive examinations, (ii) challenge on a regular basis measurement and recognition principles in addition to presentation and disclosures and (iii) perform quality reviews.

148. Finally, ESMA recommends that ASF consider the expected increase in the work related to the enforcement of NFI when assessing how best to strengthen and support its personnel because it is ESMA's understanding that the EFI staff will bear the responsibility of examining whether issuers also comply with NFI requirements. Whilst ESMA recognises that synergies can be identified when the same team carries out both tasks (supervision of financial and non-financial information), it also considers that both tasks are equally relevant and thus both require sufficient time allocation.

Guideline 5 Selection Model

149. ESMA commends ASF for having requested the technical assistance program provided by the World Bank and the European Commission between June 2018 and June 2019 regarding the supervision of compliance of financial information with IFRS. This initiative reaffirms ASF's commitment to improving its enforcement system and to implementing the recommendations arising from the 2017 peer-review report. ESMA further acknowledges ASF's early implementation of the ESMA Supervisory briefing on selection methods and its incorporation into ASF's manual of procedures. ESMA considers that the revised supervisory

manual adopted by ASF which was prepared with the assistance of the World Bank and the EC is aligned with the requirements arising from GLEFI and the Supervisory Briefing.

150. Notwithstanding the above, ESMA highlights that it is not enough to have sound supervisory procedures but rather, it is paramount that they are fully effective in practice. In this respect, ESMA understands that the lack of skilled personnel has created severe constraints in ASF's ability to implement the new supervisory procedures designed with the assistance of the World Bank and the European Commission. These constraints can be observed in the number of issuers subjected to an examination which significantly decreased between 2020 and 2021 (from 15 issuers to 7 issuers).[38]

151. In order to examine all issuers under its supervision,[39] ASF would require, on average, around 16 years while the 2020 ASF internal procedures refer to a 6-year rotation cycle. ESMA considers that a rotation period of 16 years is not reasonable. In this respect, it is important to emphasise that the objective of a cycle of 6 years to examine all issuers under supervision would require, on average, 15 examinations to be performed and concluded each year.

Table 11 – Implementation of the selection model (Issuers selected, examined and acted upon with regards to the risk-based sample) [40]

		Risk
2020	Issuers selected	14
	of the issuers selected, n. Issuers examined	11
	Actions taken (GL 7 - number of actions taken per examination)	6
2021	Issuers selected	16
	of the issuers selected, n. Issuers examined	7
	Actions taken (GL 7 - number of actions taken per examination)	2

152. With regards to the risk profile of issuers, ESMA takes note that ASF scores issuers based on risk factors and considers both the risk of a misstatement as well as the impact of a misstatement on the financial markets. ESMA also commends the fact that the risk model takes into account qualitative and quantitative data in order to depict the risk profile of issuers. However, ESMA observes that out of 16 issuers selected for examination based on risk in 2021, ASF was only able to examine the financial information of 7 (out of 14 issuers selected in 2020, only 11 were effectively examined in 2020).

[38] See Table 10

[39] Based on the assumption that issuers are reviewed only once. ESMA however points out that risky issuers may require more than one examination over a given period. This fact should extend the length of the examination cycle.

[40] Given that most weaknesses encountered in 2017 were related to risk-based selection, the table focuses on the implementation of the model in relation to the risk-based approach.

153. Finally, ESMA takes positive note of the increased number of actions taken by ASF in the context of EFI. ESMA deems important that ASF is visible in the market and financial market participants acknowledge ASF's contribution to improving the quality of the application of the financial reporting framework in Romania.

Recommendations

154. Although ASF highlighted that qualified audit opinions normally trigger at least a focused examination on the issues raised by the auditor (in line with paragraph 56 of the GLEFI), the supervisory manual includes limited guidance on how to deal with issues arising from indications from auditors concerning misstatements (i.e., qualified opinions, emphasis of matter, key audit matters). In light of the entering into force of the Supervisory Briefing on selection methods and the revised Guidelines in 2022, the high number of issuers with qualified opinions encountered in 2017, and the high rotation of EFI personnel, ESMA recommends that ASF develops guidance on supervisory practices to address indications from auditors of misstatements (both in relation to selection and examinations) to ensure a consistent approach to be followed by the EFI team over time and across different files.

4.7 – FI (Sweden)

155. The 2017 peer review Report noted:

a) Insufficient resources to perform examinations of issuers' financial statements effectively during the review period. Notably, the number of IFRS issuers per FTE was a significant outlier when compared to the participants' average.

b) The selection model for financial statements to be examined did not take into account the potential impact of misstatements on the financial markets.

4.7.1 – FI Response

156. FI mentioned in response to the ESMA Chair letter that, on 1st January 2019, the legislation governing financial reporting supervision introduced a new system for the enforcement of financial information:

a) the statutory requirement for the stock exchange to conduct financial reporting supervision was removed;

b) FI was instead given the possibility of transferring the task of monitoring issuers' periodic financial information to a body consisting of representatives from the area of financial reporting and the FI Board decided to delegate the task to the Council for Swedish Financial Reporting Supervision (Council) on 9 January 2019 (an agreement that may be terminated by both parties, and which is terminated automatically if FI decides to withdraw the delegation from the Council).

157. The Council is an expert body under the Swedish Association for Generally Accepted Principles in the Securities Market. Based on the agreement, it is responsible for day-to-day supervision of annual and interim reports of issuers falling under the scope of the GLEFI.[41] As such, it reviews the financial statements and may instruct issuers to rectify their reporting, via non-binding requests that are handed over to FI in case they are not followed-upon by the issuer.

158. The Council consists of a chair (vacant between June 2021 and 10 January 2022), a deputy chair and five members, as well as an administrative manager (appointments are notified to FI in advance).

159. FI remains ultimately responsible for financial reporting supervision. The Council turns over cases to FI (i) when the issuer does not cooperate, (ii) when the Council determines that the issuer has committed an infringement that is not negligible in the meaning of the Securities Markets Act and (iii) when, in case of a negligible infringement, the issuer has not followed the Council's request to correct financial reporting. Thus, FI makes its own independent assessment on the need to intervene. FI may order the issuer to make a correction and may also issue a caution or decide that the issuer shall pay an administrative fine if a caution has been issued. FI can always decide to start an investigation on its own.

160. The Swedish legislator has stressed the importance of transparency of information about the Council's activities for FI to fulfil FI's duties under the Transparency directive. Therefore, the Council regularly reports to FI on its supervision. The Council is also obliged to hand over the documentation received when FI so requests. FI also indicated that there are no confidentiality provisions in Swedish law that could prevent the Council from disclosing those documents to FI.

161. Since October 2021, to facilitate resources allocation, the EFI function within FI has been organisationally integrated with the other highly qualified accounting experts in a competence centre for auditing and accounting.

162. In terms of resources, the 2019 restructuring included notably an increase of the number of resources allocated to the EFI tasks to a level deemed sufficient:

a) At the Council, when fully staffed, the total number of FTEs dedicated to EFI is 5.3. Nevertheless, over the period 2020-2021, there was a vacancy in the chairmanship between June 2021 and 10 January 2022 and a vacancy of one member in the period January-April 2020;

b) In 2021, until the end of October, FI had 2.5 FTEs allocated to EFI, of which 2.2 FTEs were solely dedicated to it and one vacancy. After that, FI has had 1.2 FTEs fully dedicated

[41] Issuers subject to Chapter 16, section 1, first paragraph of the Securities Market Act (2007:528).

to the task and two vacancies (one senior accounting profile has already been recruited starting 1 April 2022, while the other recruitment process is still on-going).

c) In addition, some FI employees are indirectly involved in the EFI function (experts on IFRS 9 – *Financial instruments*, valuation, sustainability, legal communication).

163. Nevertheless, the number of issuers has increased in the last years and both FI and the Council have requested additional financial resources for 2022.

164. The number of issuers falling under the scope of the GLEFI per 30 June 2021 amounts to 411 (of which 390 IFRS issuers).

165. In addition, FI provided the detailed number and type of examinations performed in the last 3 years and planned for 2021, as further detailed below in table 12.

166. In terms of actions taken to address the issue of considering the potential impact of misstatements on the financial markets in the selection model, FI indicated that, in 2017, Nasdaq Stockholm AB (Nasdaq - who conducted financial reporting supervision until end of 2018) updated its selection model to select the 30 largest issuers every three years.

167. The Council is independent from its predecessor Nasdaq. Therefore, in connection with the Council's formation, new policies, routines and methods are being applied. FI indicated that FI regulations on EFI prescribes principles to be followed by the Council for the monitoring, including the selection criteria, including the need to comply with ESMA Guidelines and recommendations. There is a requirement for the Council to base its review on a sufficiently large sample to contribute to maintaining the confidence in the securities market and to use appropriate time intervals for rotation. The Council also needs to review a specific issuer upon request from FI. FI provided the Council's selection process, which is based on risks, rotation and random selection:

a) The risk-based criteria take into consideration probability and impact. Either the risk level accumulated is high because of multiple documented events (assessed in the annual and half-year selections) or there are special circumstances that require immediate actions (assessed continuously).

b) The length of the rotation period varies according to the quantified risk impact assessed for each issuer (assessed in the annual and half-year selections).

c) In addition, a random selection of issuers is included each year for complete review (assessed in the annual selection), to ensure that issuers cannot predict when they will be examined.

168. FI also stressed that the selection model is under continuous improvement. As for the next improvements, the Council is planning to implement a more data driven monitoring model for financial data in order to automatically highlight issuers whose financial numbers and key

figures indicate financial misstatements or accounting inaccuracy. Currently, such analysis is made manually.

4.7.2 – Assessment analysis & conclusion

Guideline 2 Sufficiency of human resources

169. The table below provides an overview on how FI and the Council perform in the resource indicators. Given that the task of enforcement of financial information was delegated by FI to the Council, the figures in the table below were aggregated for both authorities.

Table 12 – Issuers under TD, examinations planned and performed by FI and the Council[42]

	2018	2019	2020	2021
Total n. Issuers under Supervision (A)	375	383	392	411
N. IFRS Issuers (B)	370	381	390	390
FTE allocated to EFI[43]			**7.5**	**5.8**
IFRS Examinations planned				
Unlimited scope Examinations	59	60	59	50
Focused Examinations	36	8	8	14
IFRS Total of examinations planned	**95**	**68**	**67**	**64**
IFRS Examinations closed				
Unlimited scope Examinations	59	57	53	36
Focused Examinations	36	8	7	8
IFRS Total examinations closed (C)	**95**	**65**	**60**	**44**
IFRS Coverage of the market % (C/B)	**26%**	**17%**	**15%**	**11%**
Completion rate (examinations planned vs closed)	**100%**	**96%**	**90%**	**69%**
Issuers (A) / FTE			**52**	**71**
IFRS Issuers (B) / FTE			**52**	**67**

170. The number of IFRS examinations concluded in 2021 per FTE was 7.6 (8 in 2020).

171. ESMA highlights the importance of having skilled and highly experienced personnel to carry out the function of EFI. Furthermore, ESMA considers that the changes made to the organisation of EFI in Sweden represents an improvement compared to the previous arrangement whereby the stock exchange was responsible for most of the tasks related to the monitoring of issuers' compliance with periodic information requirements and for most of the examinations of financial information. ESMA considers it is key that EFI is carried out by independent

[42] In 2018 most of the examinations were performed by Nasdaq (a limited number by FI and the other stock exchange). The Council was not responsible for enforcement until 2019.
[43] Comprise the time allocated to the EFI functions by the Council around 4.3 FTEs for Council (excluding the time allocated to supervision of non-financial information) and 1.5 for FI in 2021. In 2020, the estimated figures represented around 5 FTEs for the Council and 2.5 FTEs for FI.

organisations with sound codes of conduct and procedures that ensure that conflicts of interest are avoided. ESMA also takes positive note that, according to FI, there are (i) no legal impediments that limit FI's access to the information gathered by the Council (EFI files and any registered documentation collected by the Council), which is key when supervisory activities are delegated to a separate body and (ii) regular detailed reports and interactions between the Council and the FI on EFI activities.

172. The assessment concludes that from 2017 to 2021 there was an observable increase in the number of FTEs effectively dedicated to EFI activities (i.e., from 2.7 FTEs in 2017 to 5.8 FTEs in 2021). This increase in the time allocated to EFI activities can be observed in the high number of examinations performed since the setup of the Council (more than 60 interactive examinations per year in 2018-2020, 44 in 2021) and in the improvement of the ratios Issuers/ FTE and IFRS Issuers/ FTE. Since 2017, the ratio Issuers per FTE decreased from 121 issuers per FTE to 71 issuers per FTE in 2021 (116 IFRS issuers per FTE in 2017 vs. 67 in 2021).

173. ESMA highlights that while the FTE figure combines the time allocation of both FI and the Council, most of the work related to EFI activities is performed by the Council (as it is responsible for performing most examinations, running the selection model, submitting cases to ESMA groups, etc.).[44] As such, if the figures that relate to the Council are assessed in isolation, the ratio of IFRS issuers/ FTE increases to around 91 IFRS issuers per FTE in 2021 (78 IFRS issuers per FTE in 2020). A similar increase can be observed in the ratio total Issuers per FTE which was around 96 Issuers per FTE in 2021 and 78 issuers per FTE in 2020. In this respect, FI and the Council noted that, in January 2022, the Council reinforced its team by recruiting another team member. On that basis, it is expected that the ratios Issuers/FTE and IFRS Issuers/FTE will decrease accordingly.

174. Furthermore, according to the information received, 70% of all examinations planned are concluded between November and March of the following year. This means that, during this short timeframe, the EFI resources of the Council (around 5 FTEs) are under pressure as they may need to conclude approximately 40 annual examinations before the following annual financial statements are published.[45] ESMA considers that this fact may reduce the Council's capacity to promptly react to unexpected events, by undertaking further examinations (focused or unlimited) during this period, if the need arises without deprioritising or delaying the completion of ongoing examinations. In addition, ESMA considers that this may also impair the quality of the examinations performed. However, the Council considers that it is not under extra pressure during the five-month period (November to March) and highlighted that, in December 2021, it was it able to conclude more than a half of the on-going examinations, which means, according to the Council, that the major part of the work related to those examinations was performed in the period April-November 2021.

[44] FI only intervenes in limited cases. Please refer to paragraph 159.
[45] According to Article 4 of the Transparency Directive, a TD issuer shall make public its annual financial report at the latest four months after the end of each financial year.

175. Finally, ESMA commends the Council for the quality and relevance of the cases submitted to EECS and NRWG. During the period under analysis, the Council submitted 14 emerging issues and five decisions. The issues raised, the analysis made, and the conclusions taken demonstrate that the Council's EFI team is composed of highly skilled and experienced personnel capable of challenging the application of recognition and measurement principles in IFRS as well as the assumptions used, judgements made, and accounting policies adopted by the issuers. ESMA considers that the approach followed by the Council when enforcing financial information is in line with the principles included in the revised GLEFI.

Recommendations

176. Without prejudice of the above, ESMA would like to highlight the following risks and recommendations regarding the EFI resources currently at the disposal of the Council and FI.

177. ESMA understands that, as of 31 December 2021, there were on-going recruitment procedures (0.7 FTE for Council and 2 FTEs for FI). In January 2022, FI informed ESMA that the recruitment vacancy related to the Chair of the Council had been successfully filled. Given the high number of Issuers per FTE and IFRS Issuers/FTE, and the number of examinations concluded during a short timeframe (between November N and March N+1), ESMA recommends that FI and the Council further investigate if the current Council EFI composition is sufficient to ensure that well-constructed EFI examinations are performed and concluded in a timely manner.

178. In addition to the responsibility of carrying out the function of EFI, the Council EFI resources are also responsible for checking if the requirements related to NFI are met. Although, until very recently, these tasks were limited to checking the existence of such disclosures, ESMA highlights that there is increased interest and demand from investors and from the market in general on the disclosures related to NFI. Therefore, ESMA considers that the work related to NFI enforcement will most likely increase, for instance, requiring the Council and FI to react to external requests, analyse in-depth and enforce the content of these requirements in the future. Although ESMA considers it is paramount that NFI is examined and enforced against, it also considers that this work should not deter from effective EFI.

179. Consequently, ESMA recommends that FI and the Council assess and closely monitor if and to which extent, an increase in the tasks allocated to enforcement of NFI affects the work related to EFI and, where necessary, adjust the resources appropriately (increasing them in the long run).

Guideline 5 Selection Model

180. Based on the information received from the Council, ESMA understands that issuers are selected for examination based on risk, random and rotation selection. ESMA considers positively the approach taken by the Council as it is aligned with the principles included in the revised GLEFI.

181. ESMA also recognises that the risk model approach used takes into account the risk of a misstatement as well as the impact of a misstatement on the financial markets. When assessing the risk of a misstatement, the Council strives to identify events and circumstances that may give rise to an immediate need for an examination, such as grounded information on misrepresentation received from the auditor, a monitoring body, the media or some other external party. This procedure is also aligned with the GLEFI and the recent Supervisory Briefing on selection methods.

182. ESMA understands that the Council has an internal Committee that monitors the developments in the media about events that may have an impact on financial information and could subsequently prompt an examination. The full selection of the Council consists of the following elements: (i) an annual sample to be defined before 30 March each year; (ii) an additional six-monthly selection made before 30 September each year; and (iii) an ongoing risk selection based on events requiring immediate action from the Council. This means that events occurring after the annual sample is defined will not be unattended, which ESMA considers positive.

183. As regards the impact of a misstatement on the financial markets, the Council explained that this aspect is considered in the scoring of issuers for the purpose of the risk selection. When scoring issuers according to their risk profile, the Council takes into account factors such as the size of the issuer, the volatility of the financial instrument, the class of the financial instrument admitted to trading on the regulated market (e.g., shares, debt), the free-float and the number of years since the last examination. ESMA considers all these elements to be relevant for the determination of the impact of a misstatement on the financial markets.

184. Finally, ESMA has also checked whether the risk model is effectively followed. To this end, ESMA requested information regarding the number of issuers selected and effectively examined and acted upon (i.e., either using corrective notes, corrections in future financial statements or restatements of financial statements). The table below provides an overview on the implementation of the selection model by the Council.

Table 13 – Implementation of the selection model (issuers selected, examined and acted upon by type of selection approach)

		Risk	Rotation	Random	Total
2018[46]	N. of issuers selected	N/A	N/A	N/A	N/A
	of the issuers selected, n. Issuers examined	N/A	N/A	N/A	N/A
	Actions taken according to GL 7 of GLEFI per issuer	N/A	N/A	N/A	N/A
2019	Issuers selected	39	26	3	68
	of the issuers selected, n. Issuers examined	38	25	2	65
	Actions taken according to GL 7 of GLEFI per issuer	20	17	2	39
2020	Issuers selected	40	23	3	66[47]
	of the issuers selected, n. Issuers examined	35	21	3	59[48]
	Actions taken according to GL 7 of GLEFI per issuer	15	13	1	29
2021	Issuers selected	34	28	1	63[49]
	of the issuers selected, n. Issuers examined	21	22	1	44
	Actions taken according to GL 7 of GLEFI per issuer	5	8	1	14

185. According to the information received, it can be observed that the selection model in place is effectively being followed as most of the issuers selected have been examined. In 2021, although most examinations have been initiated, a significant proportion (around 30%) has not been concluded by the end of 2021.

Recommendations

186. ESMA understands that most of the risk factors identified by the Council that serve as input for the risk assessment are based on the information extracted from the media. ESMA is of the view that, although external sources should always be taken into account, specific factors relating to the intrinsic risk profile of an issuer should also be considered because not all companies are exposed to the same level of attention by the media. ESMA also understands that, at the moment, the Council is manually inserting data into its selection model in order to better depict the risk profile of an issuer. ESMA considers that, given the number of issuers under supervision (more than 400 issuers), such procedure is not ideal as it may lead to errors and to time inefficiencies.

187. To this end, ESMA takes positive note that the Council intends to implement a more data driven monitoring model for financial data, which will automatically highlight issuers whose financial information and key figures show indications of financial misstatements or accounting inaccuracy. According to the Council, the changes to the model are expected to be implemented once the implementation of ESEF is effective.

[46] The Council was established in 2019.
[47] One issuer in 2020 was selected and examined twice based on risk and is only included once in Table 13.
[48] One issuer in 2020 was selected and examined twice based on risk and is only included once in Table 13.
[49] One issuer in 2021 was selected (not yet examined) twice based on risk but is only included once in Table 13.

Annex – Extract of the GLEFI (as applicable at the date of the 2017 peer review report)

Guideline 2 – Resources

<u>General Guideline</u>

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.

<u>Supporting Guidelines</u>

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

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

Guideline 5 – Selection methods

<u>General Guideline</u>

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

Supporting Guidelines

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

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

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

In order to ensure European supervisory convergence, when applying the relevant criteria for selection, enforcers should take into account the common enforcement priorities identified by enforcers together with ESMA.

Selection models should comply with ESMA's supervisory briefing on selection. Such criteria are not public in particular in relation to the fact that issuers might identify the time when they become subject to examination. Enforcers should communicate factors used as part of their national selection method and potential subsequent amendments to ESMA for information. ESMA will ensure confidentiality of such information in accordance with the provisions of the ESMA Regulation. Such information will serve as a basis for any further potential developments that may be envisaged in relation to the criteria used for the selection methods.