



Report on the CNMV's supervision of non-financial information and main enforcement priorities for the following financial year

2021

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of non-financial information and
main enforcement priorities
for the following financial year**

2021

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Introduction

This report describes the supervision carried out by the CNMV in 2022 of the non-financial information statement (NFIS) for 2021 of the issuers of securities admitted to trading on regulated markets in the European Union (hereinafter, “issuers” or “entities”). In addition, it gives details of certain aspects identified in the review process that issuers must consider in order to improve the quality of the non-financial information they provide to the market.

For the second year, it has been presented as a separate report. In previous years, this information was included as a specific section of the *Report on the CNMV's review of annual financial reports and main enforcement priorities for the following financial year*.

The NFIS forms part of the management report, and therefore of the annual report that must be prepared and published by issuers of securities on regulated markets subject to the supervisory authority of the CNMV, in accordance with Articles 122, 233 and 234 of the recast text of the Securities Market Act, approved by Royal Legislative Decree 4/2015, of 23 October (the “LMV” for its acronym in Spanish), in order to reinforce confidence in the reliability of non-financial information published by issuers.

The preparation of the NFIS was made mandatory for the first time for the financial years beginning on or after 1 January 2017 for companies included in the scope of application of Royal Decree-Law (RDL) 18/2017, of 24 November, and later of Law 11/2018, of 28 December (hereinafter Law 11/2018 or the law).

To help with the reading of this report, a glossary of acronyms, terms and abbreviations has been included as Annex 2.

Some of the main sections of the report are summarised below. However, we recommend reading the entire document.

Executive summary

Regulations on sustainability-related disclosures

The latter part of 2022 was decisive for corporate reporting on sustainability in the European Union, due to the significance of published regulations.

Specifically, Directive (EU) 2022/2464, the Corporate Sustainability Reporting Directive (CSRD), was published in the *OJEU* in December, significantly amending the regulations currently in force on the disclosure of sustainability or non-financial information contained in Directive 2014/95/EU, the Non-Financial Reporting Directive (NFRD). In November 2022, the European Financial Reporting Advisory Group (EFRAG) submitted a first set of drafts of the European Sustainability Reporting Standards (ESRS) to the European Commission, which is expected to adopt them as delegated acts in June 2023, for first-time application to financial year 2024, for reports published in 2025.

With regard to the taxonomy of sustainable activities applicable to financial year 2021, the NFIS of issuers of securities with more than 500 employees had to provide the proportion of economic activities that were eligible and non-eligible for the objectives of mitigation of and adaptation to climate change; whereas in the NFIS for 2022, non-financial issuers will have to disclose the proportion of economic activities aligned with the taxonomy.

Verified NFIS

Of the 136 issuers that submitted individual financial statements and the 128 that submitted consolidated statements for the 2021 financial year, 52 included an NFIS in their individual management report (mainly by reference to the consolidated report) and 102 included an NFIS in their consolidated management report (30% and 80% of the totals, respectively).

It should be noted that only one issuer¹ presented qualifications in its NFIS verification report (none in 2020). All the reports were subject to limited reviews, which, in most cases, were carried out in accordance with the requirements established in the revised ISAE 3000 review standard and in the guidelines of the Spanish Institute of Chartered Accountants (ICJCE) or that of the Register of Auditing Economists (REA), although in some specific cases they included additional scope.

1 Amrest Holdings, SE.

More than half the verifiers that follow this guide only verified the information required by law, set out in a summary table. The CNMV stresses the importance of both verified and unverified information being accurately identified and traceable.

In 82% of the cases, the verifier was one of the “big four” in Spain: Deloitte, EY, KPMG and PwC.

Supervision of non-financial information

The CNMV's enforcement work on the NFIS follows a similar approach to its supervision of financial information. It carries out: i) a formal review of compliance with presentation requirements, the content of the verifier's report and other specific aspects, and ii) a substantive review of a specific number of companies, focused mainly on the enforcement priorities issued by the European Securities and Markets Authority (ESMA) and the CNMV, and on the material aspects of each entity.

In relation to the formal review of all issuers that submitted NFIS, various recommendations were sent to 17 issuers (all of them subject to substantive review), and a total of nine entities were requested to provide additional information (five of them subject to substantive review and four to formal review) with regard to issues such as: i) qualified verification report, ii) the frameworks used, iii) the tables of contents, and iv) Article 8 of the Taxonomy Regulation.²

Recommendations were sent to all 20 issuers subject to substantive review, and 13 were requested to provide additional information, mainly regarding the following aspects: i) disclosures of their carbon footprint and reduction goals; ii) the indicators set out in Article 8 of the Taxonomy Regulation; iii) the methodology and concepts used to calculate the wage gap, explanations of the data used and their performance; iv) the scope considered and its exclusions; v) the business model and participation of third parties in the issuer's value chain; vi) the consistency of the information in the notes to the financial statements on provisions and contingencies with that included in the NFIS on human rights and corruption issues; vii) variable remuneration linked to sustainability indicators; and viii) the impacts of COVID-19.

In most cases, the explanations provided by the issuers in response to the CNMV's requests satisfactorily completed the disclosures required by law or recommended by ESMA and the CNMV in their enforcement priorities, although there is still room for improvement, as described below.

The CNMV wishes to draw attention to several aspects that could be improved in the NFIS for future years.

² Regulation (EU) 2020/852 of the European Parliament and of the Council, of 18 June 2020, on the establishment of a framework to facilitate sustainable investment.

The disclosures about the implications of COVID-19 in certain areas of non-financial reporting were a priority for ESMA for the financial years 2020 and 2021. In 2021, ESMA placed greater emphasis on the following issues: i) the impact on issuers' ability to meet predetermined sustainability-related goals in the short and medium term; ii) How they foresee the development of their business in response to the changing conditions arising from the pandemic, particularly in relation to structural changes and the organisation of employees; and iii) transparency about the effects of the pandemic on non-financial indicators.

The vast majority of entities reviewed provided a reasonable description of the consequences of COVID-19 on their businesses and activities, and in general there were no significant structural changes, since in most cases they are considered transitory situations. However, disclosures about the impact on entities' sustainability objectives could be improved, as described in Chapter III in the section entitled "Follow-up of enforcement priorities for the 2021 NFIS".

Climate-related matters

This issue was an enforcement priority in the 2021 NFIS for both ESMA and the CNMV, and will also be a priority for ESMA in 2022.

It is recommended to include disclosures that allow the financial consequences of climate-related matters to be understood, and the importance of consistency between the information included in the NFIS and that contained in the IFRS financial statements should be stressed.

Reporting scope

This is one of the CNMV's enforcement priorities in the 2021 NFIS, which ESMA has taken up again in 2022. The scope in general terms must be clear and consistent with the information included in the NFIS, with any exceptions being clearly indicated and appropriately explained, together with a measure of the significance of the information excluded.

Although the mandatory scope of non-financial reporting refers to subsidiaries, issuers must specify whether or not they include interests in associates and joint ventures and, at least, explain the assessment of the non-financial risks they assume through them. This disclosure is also required for the supply and sales chains, as indicated in the section entitled "Business model. Participation in the value chain".

Key Performance Indicators (KPIs)

This is a transversal subject, which is addressed in all major non-financial reporting issues throughout this report, covering the KPIs most specific to each area.

Overall, the aspects of the KPIs most recommended for improvement were those relating to: explanations of their evolution (the importance of providing comparative quantitative and qualitative information on variations); the relationship

between the entity's non-financial objectives and the main KPIs (essential to be able to assess their evolution and the level of attainment of objectives); and the inclusion of the definition of and the calculation methodology used for the KPIs that are most significant for the entity, with explanations of the source of the data applied (especially in cases where estimates have been used due to a lack of reliable data).

Business model. Participation in the value chain

One of the CNMV's enforcement priorities for the 2021 NFIS was to improve the description of issuers' activity, the main phases of their value chain and any significant role played in each phase by the issuer and the various stakeholders. Entities must expand their explanations of the significant non-financial risks associated with the participation of third parties in their value chain and how they manage these risks through their policies, and provide information on results, through both qualitative explanations and specific KPIs or even by expanding the scope of one or more of their KPIs.

Materiality

It should be noted that a large number of issuers still do not explain in their NFIS whether their analysis takes into account the double materiality perspective which underlies the NFRD and Law 11/2018, and which was also developed in the Climate Supplement. In general, disclosures tend to be focused on an "inside out", or social and environmental or impact materiality, and should be completed from an "outside in" or financial materiality perspective. The assessment and definition of both materiality approaches is the cornerstone for establishing which information is relevant for investors and other stakeholders, and prevents the omission of material information or the inclusion of immaterial information.

Additionally, neither approach is isolated and the issuer's impact on its social and environmental setting and its stakeholders, will eventually to some extent have an impact on the entity's financial performance and value creation. More and better information on both approaches will make it easier to understand these interactions or cross-effects. In this regard, the ESRS, applicable from 2024, develop the principle of double materiality and make it explicit, but given that the principle already underlies the regulations currently in force, all issuers should incorporate it into their analysis.

Issuers must also disclose the time horizon considered in their analysis, which is recommended to include the short, medium and long term.

Social and employee matters

Once again, the importance of improving disclosures on these matters is stressed, with particular attention to the wage gap, where a number of different calculation and presentation methods are still observed. A greater segmentation of the wage gap would be desirable, broken down at least by category of employment and country, which would improve understanding of the objective pursued, namely, to demonstrate the entity's actions to promote diversity and eliminate gender bias.

Additionally, all salary components should be considered in the calculation. The CNMV highlights the importance of providing comparative data and an explanation of how the wage gap has evolved relative to any objectives that might have been set and, where relevant, a description of the plans and measures in place to narrow it.

Respect for human rights

Companies declare their commitment to respecting human rights, but they should be more specific about their risks and policies, and in their scope, indicating whether it also extends to supply and distribution chains where the risk of non-compliance with human rights is usually significantly higher, and also providing additional KPIs.

In this area, it would be advisable to offer clear information on how the issuer addresses frameworks such as the core conventions of the International Labour Organization (ILO), the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights, which are referred to in the Taxonomy Regulation, to ensure compliance with the minimum safeguards necessary for an activity to qualify as environmentally sustainable, in the 2022 NFIS onwards.

The fight against corruption and bribery

Entities should be more explicit and specific about the main risks associated with this issue, the internal control and diligence procedures established to address them and whether or not any risks have materialised during the year. The risks affecting the other links in the value chain, such as the supply and distribution chains, must be made clearer.

By way of a reminder, it is important that the information provided in the notes to the financial statements, particularly on provisions and contingencies relating to labour aspects, human rights, corruption and bribery, be consistent with the information included in the NFIS. The statement issued by the CNMV on 25 November 2019, resulting from cases of alleged irregular practices that affected some issuers, should once again be noted. In the event of a risk materialising in this area or in the area of human rights, entities must provide sufficient information to ensure its significance is understood, explain the actions carried out and the changes made to prevent the recurrence of such risks.

Whistleblowing channel

This is one of the main instruments used to detect violations in the areas of personnel, human rights, and corruption and bribery. The CNMV notes the importance of improving information on the characteristics and management procedures of these channels, as well as their results (breaking down the reports received by nature, into those relating to the entity itself and those relating to third parties, detailing the number of cases resolved and pending) and explaining any significant impacts. Entities should not confine themselves to reports received through the whistleblowing channel but should also provide information on violations

reported and resolved outside this channel, whether internally, through the courts, or through other procedures, and on communications received from international organisations or other external channels.

Company information

Law 11/2018 covers four major areas on this issue: company commitments to sustainable development, subcontracting and suppliers, consumers, and tax information.

One of the most commonly recommended aspects for improvement with respect to company commitments is the description of the main non-financial risks in the short, medium and long term, and the provision of progress measurement indicators.

For the tax information included in the NFIS, there is still some room for improvement in the explanations of the relationship between profits obtained and taxes paid.

Issuers generally have consumer complaint systems in place, the recommendations for which are basically those indicated in the foregoing section on the whistleblowing channel.

The analysis of the areas of subcontracting and suppliers was carried out within the framework of the CNMV's "participation in the value chain" priority.

Special analyses carried out in 2022

Article 8 of the Taxonomy Regulation

This is considered an enforcement priority by ESMA in both the 2021 and the 2022 NFIS, and the CNMV considers it important that the information required under Article 8 be adequately identified, a sufficiently detailed explanation be provided on the way the indicators (numerator and denominator) are determined, that references be provided to the corresponding line items in the case of turnover and capital expenditure, and for a description to be given of how the entity is preparing to meet all the requirements that will be applicable in the future.

Carbon footprint

The disclosures relating to GHG emissions were an enforcement priority for both ESMA and the CNMV in the 2021 NFIS.

In this regard, it is important that the data relating to the carbon footprint are accompanied by qualitative and quantitative explanations on performance and evolution, with these disclosures being more useful when they are appropriately segmented and placed in context with concrete objectives. It is also considered important to provide the absolute emissions (without offsets) corresponding to the three scopes, together with intensity indicators that take account of variables that represent the entity's level of activity, and it is recommended that advances be

made in quantifying the data for Scope 3, including the emissions of the main links located before and after the company's own operations.

2022 NFIS enforcement plan

It should be noted that in October 2022 ESMA published its common enforcement priorities for non-financial information statements, which refer to the following issues: i) climate-related matters, ii) disclosures relating to Article 8 of the Taxonomy Regulation, and iii) reporting scope and data quality.

Likewise, the CNMV wishes to draw attention to its decision to include as an additional enforcement priority for non-financial information a more detailed analysis of the disclosures relating to the Taxonomy Regulation.

Other issues will also be reviewed, such as the water footprint and the whistleblowing channel, and any other specific aspects that may be relevant for each issuer of securities subject to supervision by the CNMV.

I Regulations on sustainability-related reporting

Regulations applicable to the 2021 NFIS

Submission of the NFIS was made mandatory for the first time for the financial years beginning on or after 1 January 2017 for companies in the scope of application of Royal Decree-Law 18/2017,³ which included the obligations imposed by Directive 2014/95/EU of the European Parliament and of the Council, of 22 October 2014, on non-financial and diversity information⁴ (the “NFRD”).

Subsequently, Law 11/2018 of 28 December,⁵ applicable to the financial years beginning on or after 1 January 2018, repealed the aforementioned RDL, expanding the scope⁶ and increasing the content of non-financial information to be reported by companies and requiring that the information included in the NFIS be reviewed by an independent provider of verification services.

In application of the mandate contained in the NFRD, in July 2017 the European Commission (EC) published non-binding guidelines, 2017/C 215/01, on the methodology applicable to the presentation of non-financial information (hereinafter, the EU Guidelines),⁷ which were complemented, in June 2019, with a supplement on information relating to climate change (hereinafter, the Climate Supplement),⁸ which integrated the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD),⁹ set up by the Financial Stability Board (FSB).

June 2020 saw the publication of Regulation (EU) 2020/852, the “Taxonomy Regulation”,¹⁰ which established the criteria for determining how and to what extent

3 <https://www.boe.es/boe/dias/2017/11/25/pdfs/BOE-A-2017-13643.pdf>

4 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0095>

5 <https://www.boe.es/boe/dias/2018/12/29/pdfs/BOE-A-2018-17989.pdf>

6 In accordance with Law 11/2018, an NFIS must be prepared when the following requirements are met: i) the average number of workers employed by group companies during the year is greater than 500; and ii) either the entity is considered a public interest entity, or for two consecutive years it meets two of the following conditions at the closing date: 1) total consolidated assets of more than €20 million, 2) annual revenue of more than €40 million, 3) average number of workers employed during the year of more than 250. The transitional provision indicates that three years after the entry into force of this law, in other words in the financial years starting on or after 1 January 2021, it will be applicable to all companies with more than 250 workers that meet certain requirements.

7 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52017XC0705%2801%29>

8 https://ec.europa.eu/finance/docs/policy/190618-climate-related-information-reporting-guidelines_en.pdf

9 <https://www.fsb-tcfd.org>

10 <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:4481971>

the activities carried out by the entities subject to the NFRD qualify as environmentally sustainable, considering the taxonomy itself approved by the EU, which establishes six environmental objectives.¹¹

Additionally, in December 2021, Commission Delegated Regulation (EU) 2021/2139 (**Delegated Act on Climate**)¹² and Commission Delegated Regulation (EU) 2021/2178 (**Disclosures Delegated Act**)¹³ were published, completing the aforementioned Taxonomy Regulation.

This regulation meant that in the 2021 NFIS, for the first time, issuers of securities with more than 500 employees had to publish a series of indicators relating to the proportion of **economic activities eligible** and non-eligible for the objectives of climate change mitigation and adaptation. As this information is part of the mandatory content, in accordance with the applicable regulatory framework, it must be included in the NFIS verification process as a whole.¹⁴ This regulation is discussed in greater depth in Chapter IV of this report.

Regulations published in 2022

The latter part of 2022 was of particular importance for corporate reporting on sustainability in the European Union, due to the significance of published regulations.

New CSRD Directive

On 16 December **Directive (EU) 2022/2464 on Corporate Sustainability Reporting**¹⁵ (the “CSRD”) was published in the *Official Journal of the European Union (OJEU)*, reinforcing the regulations on disclosure of non-financial information contained in the NFRD.

The new directive expands both the number of entities required to report information on sustainability¹⁶ as well as its content, which must take as a reference the ESRS. In addition, it requires that the information on sustainability be presented, in electronic format, in a specific section of the management report and be verified by an independent assurance provider.¹⁷ This directive entered into force 20 days

11 The six objectives are: climate change mitigation, climate change adaptation, the sustainable use and protection of water and marine resources, the transition to a circular economy, pollution prevention and control, and the protection and restoration of biodiversity and ecosystems.

12 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R2139>

13 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32021R2178>

14 Directive 2013/34/EU gave Member States the option of requiring that the information contained in the NFIS be verified by an independent provider of assurance services. The Spanish legislator opted to require that the information included in the NFIS be verified by an independent provider of assurance services.

15 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022L2464>

16 According to the EU, nearly 50,000 EU companies will be affected by this regulation, compared to the 11,700 companies currently subject to the NFRD.

17 This was already required in Spain by Law 11/2018

after its publication in the *OJEU*,¹⁸ and from that time Member States have 18 months in which to incorporate it into their internal legal systems.

Sustainability reporting standards

Following the public consultation in 2022, on 15 November the EFRAG sent a first set of drafts of the ESRS to the EC, which is expected to approve these standards definitively as delegated acts in June 2023, for first-time application to financial year 2024, for reports published in 2025.

As shown in the chart below, this first set of 12 drafts consists of two transversal standards applicable to all sustainability issues and ten specific thematic standards: five on the environment, four on social issues and one on governance.

Published			Pending publication		
Cross-cutting standards			Industry-specific		
ESRS 1 General requirements			Adapted to SMEs		
ESRS 2 General disclosures			Adapted to companies in the EU affected by CSRD		
Industry-independent thematic standards					
Environment	Social	Governance			
ESRS E1 Climate change	ESRS S1 Own workforce	ESRS G1 Business conduct			
ESRS E2 Pollution	ESRS S2 Workers in the value chain				
ESRS E3 Water and marine resources	ESRS S3 Affected communities				
ESRS E4 Biodiversity and ecosystems	ESRS S4 Consumers and end-users				
ESRS E5 Use of resources and circular economy					

The publication of sectoral standards¹⁹ and specific standards for SMEs²⁰ and entities from third countries that exceed certain thresholds is expected in June 2024, although these have not yet been submitted to the public consultation process.

The ESRS require the provision of relevant information on the impacts, risks and opportunities on sustainability, identified through a **double materiality** analysis, although certain information can be omitted when it is not considered relevant.²¹ In preparation, other European and international initiatives on sustainability reports were taken into account,²² in order to reduce set-up costs for companies using different frameworks.

The following table shows the dates of application of the new CSRD and of the first set of ESRS:

When?	Who?
In 2025 for reports on 2024	Companies subject to the current Directive (NFRD)
In 2026 for reports on 2025	Large companies currently not subject to the NFRD (>250 employees and/or turnover of €40 million and/or total assets of €20 million)
In 2027 for reports on 2026	Listed SMEs ¹ (except micro-enterprises), small and non-complex credit institutions and captive insurance and reinsurance companies
In 2029 for reports on 2028	Non-EU companies that generate annual revenues of €150 million in the EU and have a subsidiary or branch in the EU that exceeds certain thresholds

Fuente: CNMV.

1 Possibility of opting to defer the obligation in relation to the 2027 financial year, but must comply in the financial years beginning on or after 1 January 2028.

On 31 March 2022, the International Sustainability Standards Board (ISSB), which forms part of the IFRS Foundation, submitted its first two draft standards to public consultation until the end of July. One of these addressed general requirements for companies (IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information)²³ and the other climate-related disclosures (IFRS S2 Climate-related Disclosures),²⁴ which include a definition of materiality that is aligned with the conceptual framework of the IFRS and are based on the recommendations

19 For example, agriculture, coal, oil, gas, road transport, textiles or food and beverages.

20 For SMEs, separate and proportionate standards will be developed which will be voluntary if the company is not listed.

21 ESRS 1 requires subject companies to disclose certain information regardless of materiality, including information on governance, strategy, impact management, risks and opportunities, and climate change-related metrics and targets.

22 Such as ISSB, TCFD and GRI.

23 <https://www.ifrs.org/content/dam/ifrs/project/general-sustainability-related-disclosures/exposure-draft-ifrs-s1-general-requirements-for-disclosure-of-sustainability-related-financial-information.pdf>

24 <https://www.ifrs.org/content/dam/ifrs/project/climate-related-disclosures/issb-exposure-draft-2022-2-climate-related-disclosures.pdf>

of the TCFD and the sectoral standards of the Sustainability Accounting Standards Board (SASB).

Finally, the US Securities and Exchange Commission (SEC) is finalising a regulation, based on the recommendations of the TCFD and the GHG Protocol,²⁵ which will require domestic and foreign companies listed on US stock exchanges to disclose qualitative information on climate-related risks, as well as various quantitative metrics.

EU taxonomy

In relation to the **EU taxonomy for sustainable activities**, it should be noted that with effect from 1 January 2023, Commission Delegated Regulation (EU) 2022/1214 (the **Complementary Delegated Act**)²⁶ will apply, relating to nuclear energy and gas that includes both, with certain conditions, as transition activities that contribute to mitigating climate change.

On 6 October 2022, the EC published a FAQ document²⁷ in the *OJEU* on the interpretation of certain legal provisions contained in the Delegated Act on Disclosure. This document complements the FAQ document published by the EC on 20 December 2021. Additionally, on 19 December 2022, the EC published two draft²⁸ FAQs on the interpretation and implementation of the technical selection criteria established in the Delegated Act on Climate and on the reporting obligations established by the Delegated Act on Disclosure.

In addition, the Platform on Sustainable Finance,²⁹ an advisory body³⁰ of the EC, published several documents in 2022, including the second version of the report on social taxonomy,³¹ which describes the bases for a possible future European regulation in this field and represents the technical work on which the EC would rely for the development of this new taxonomy. It also published a report on the minimum safeguards established in Article 18 of the Taxonomy Regulation, which

25 Greenhouse Gas Protocol (ghgprotocol.org).

26 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R1214&from=EN>

27 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022XC1006%2801%29>

28 <https://ec.europa.eu/finance/docs/law/221219-draft-commission-notice-eu-taxonomy-climate.pdf>
<https://ec.europa.eu/finance/docs/law/221219-draft-commission-notice-disclosures-delegated-act-article-8.pdf>

29 https://finance.ec.europa.eu/sustainable-finance/overview-sustainable-finance/platform-sustainable-finance_en

30 A group of experts created on the basis of the Taxonomy Regulation, whose function, as stipulated in Article 20, is to advise the EC on the technical selection criteria, the revision of the Taxonomy Regulation, the development of sustainable finance policies and the treatment of other sustainability objectives, in particular, social objectives.

31 The EC granted the Platform a mandate to validate the need to extend the taxonomy to social issues, creating a subgroup dedicated to this area that in 2022 issued a report defending the creation of a Social Taxonomy.

provides advice on how compliance could be assessed, and issued various recommendations for improvement and proposals for extension relating to the taxonomy.³²

At the date of preparation of this report, only the Delegated Act on Climate has been published, referring to the objectives of climate change mitigation and adaptation. Delegated acts corresponding to the other four environmental objectives, on which the Platform on Sustainable Finance has issued a proposal, are expected to be published in June 2023 and will be subsequently adopted. The publication of a complementary delegated act on agricultural activities is also pending, ahead of an agreement on the Common Agricultural Policy (CAP).

The chart below reflects the objectives associated with the aforementioned social and environmental taxonomies:

Objectives	
Environmental taxonomy	Social taxonomy ¹
Climate change mitigation	Decent work (including workers in the value chain)
Climate change adaptation	
The sustainable use and protection of water and marine resources	Adequate standards of living and well-being for end-users
Transition to a circular economy	
Pollution prevention and control	Inclusive and sustainable communities and societies
The protection and restoration of biodiversity and ecosystems	

1 https://finance.ec.europa.eu/system/files/2022-08/220228-sustainable-finance-platform-finance-report-social-taxonomy_en.pdf

It should be noted that the NFIS of non-financial issuers published in 2023, based on information for the 2022 financial year, will be the first to detail the proportion of total economic activities **aligned** with the taxonomy in their turnover, capital expenditure (CapEx) and operating expenses (OpEx), to the extent that they meet the technical criteria of a substantial positive contribution to the mitigation and adaptation objectives, do no significant harm (DNSH)³³ to the other four environmental objectives and comply with the minimum social and governance guarantees.³⁴

32 The Platform has received a mandate to carry out the preparatory work related to the extension of the taxonomy to activities with no significant environmental impact, those that cause significant harm and those that have an intermediate performance.

33 Do No Significant Harm.

34 The OECD Guidelines on Multinational Enterprises, the UN Guiding Principles on Business and Human Rights and the Core Conventions of the ILO.

The following table summarises the dates of the taxonomy-related reports:

When?	Who?
In 2022 for reports on 2021	Financial and non-financial entities report the eligibility of their activities
In 2023 for reports on 2022	Financial entities report the eligibility of their activities Non-financial entities report the eligibility and alignment of their activities
In 2024 for reports on 2023	Financial and non-financial entities report the eligibility and alignment of their activities

As previously mentioned, the information on the taxonomy falls within the scope of assurance of the NFIS, since it is part of its mandatory content in accordance with the applicable regulatory framework.

Other related initiatives

Lastly, current considerations relating to sustainability reports include the presentation at COP 27 in Sharm el Sheikh, Egypt, held in November 2022, of the report “Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions, Report From The United Nations’ High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities”,³⁵ prepared by a group of 17 experts that sets the guidelines for fighting against greenwashing by entities that present themselves as committed to the fight against global warming, including concrete recommendations for those who wish to present credible or serious commitments to net zero emissions.

In October 2022, the EC implemented its “EU Climate Action Progress Report”³⁶ on accelerating the transition to climate neutrality for Europe’s security and prosperity, while ESMA published its 2023-2028 strategy,³⁷ which ranks financial sustainability as one of its five key areas.

In November 2022, the European Parliament announced³⁸ that it had reached an agreement with the Council on increasing EU carbon sinks by 15% to reduce EU GHG emissions by 2030. That same month, the three European Supervisory Authorities (ESAs), i.e. the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the ESMA, published a Call for Evidence in order to collect information to January 2023 on possible practices of greenwashing throughout the EU financial sector, including banking, insurance and the financial markets.

35 https://www.un.org/sites/un2.un.org/files/high-level_expert_group_n7b.pdf

36 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022DC0514>

37 https://www.esma.europa.eu/sites/default/files/library/esma_strategy_2023-2028.pdf

38 Fit for 55: Deal on carbon sinks goal will increase EU 2030 climate target | News | European Parliament (europa.eu).

In December 2022, the Congress of Deputies, Spain's lower house of parliament, approved the draft text of the future Law regulating the protection of persons who report on regulatory violations and the fight against corruption, which will transpose into Spanish law Directive (EU) 2019/1937,³⁹ the "whistleblowing directive", which requires Member States to establish effective, confidential and secure reporting channels, as well as adopting protection measures for whistleblowers who use these internal channels against possible reprisals from their company or their superiors.

Finally, the future Corporate Sustainability Due Diligence Directive (CSDD)⁴⁰ will establish rules on the due diligence obligations incumbent on large companies in relation to the actual and potential adverse effects, for human rights and the environment, deriving from their own operations and those of their subsidiaries and trading partners.

Summary of the regulations applicable to sustainability reports

The following table summarises the regulations described in this chapter which have the greatest relevance for securities issuers' sustainability reports:

Taxonomy regulation	
Regulation (EU) 2020/852, of 18 June 2020	
Commission Delegated Regulation (EU) 2021/2139, of 4 June 2021 (Climate Delegated Act)	Commission Delegated Regulation (EU) 2021/2178, of 6 July 2021 (Delegated Act on Disclosure of Information)
<p>2021: calculation of eligibility with the objectives of climate change adaptation and mitigation</p> <p>2022: calculation of alignment with the objectives of climate change adaptation and mitigation</p>	
Non-financial disclosure directive (NFRD)	Corporate sustainability reporting directive (CSRD)
Directive 2014/95/EU, of 22 October 2014	Directive (EU) 2022/2464, of 14 December 2022
In force since 2017 by means of its transposition in RDL 18/2017 and subsequently in Law 11/2018	The type of companies will determine the date from which they will be obliged to report; the first companies to which it will be applied will have to report in 2025 on the 2024 financial year.
	European Sustainability Reporting Standards (ESRS)
	<p>The final approval will take place in 2023, to begin to be applied in 2025 with respect to the 2024 financial year.</p> <p>The publication of sectoral standards, for SMEs and entities from third countries is expected in 2024.</p>

39 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1937>

40 <https://www.consilium.europa.eu/en/press/press-releases/2022/12/01/council-adopts-position-on-due-diligence-rules-for-large-companies/>

II Verification of NFIS

Number of issuers required to publish an NFIS

The Commercial Code and the recast text of the Spanish Corporate Enterprises Act, in the wording of Law 11/2018, established the obligation, for financial year 2018 and later, to include an NFIS in the individual or consolidated management report of issuers considered to be public interest entities if they have an average workforce of more than 500 during the year.

In accordance with the transitional provision of Law 11/2018, three years after the entry into force of the law (i.e. from 2021) the threshold for the number of workers of public interest entities was reduced to 250, except for small and medium-sized enterprises,⁴¹ pursuant to Directive 2013/34/EU.⁴²

Issuers' annual financial statements and management reports, including, when applicable, the NFIS and the verifier's report, will be published on the CNMV's website and filed in the official register as provided in Article 238 of the LMV.

Of the 136 issuers that submitted individual financial statements⁴³ and the 128 that submitted consolidated statements for the 2021 financial year, 52 were required to include an NFIS in their individual management report and 102⁴⁴ in their consolidated management report (30% and 80% of the total, respectively).

41 Small and medium-sized enterprises are enterprises that, on their balance sheet closing date, do not exceed at least two of the following three criteria: a) balance sheet total: €4,000,000 and €20,000,000 respectively; ii) annual turnover: €8,000,000 and €40,000,000, respectively; iii) average number of employees during the year: 50 and 250, respectively.

42 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0034>

43 Excluding securitisation funds and bank asset funds.

44 Excluding two entities that availed themselves of the exemption option provided in Law 11/2018 as these companies and their subsidiaries are included in the consolidated management report of another company which does not meet the NFIS obligation.

NFIS received by the CNMV

TABLE 1

	2018	2019	2020	2021
Individual NFIS	43	45	43	52
	28%	31%	30%	38%
Consolidated NFIS	96	97	96	102
	69%	73%	71%	80%
Individual annual reports	152	144	145	136
Consolidated annual reports	140	133	136	128

Source: CNMV.

The number of issuers that have submitted an NFIS for the 2021 financial year has increased compared to the previous financial year, mainly due to: i) the decrease to 250 in the threshold for the number of workers,⁴⁵ and ii) IPOs of non-financial entities.⁴⁶

This increase was partially offset by: i) the delisting of several companies that had submitted an NFIS in previous years, either because they had been the subject of a takeover bid⁴⁷ (voluntary or buyback by way of public tender), had been absorbed or merged with other entities⁴⁸ or had gone into liquidation;⁴⁹ and ii) one entity that no longer had the obligation to submit a report.⁵⁰

In relation to individual NFIS received, only two issuers submitted a specific individual NFIS (the same number as in 2020). The rest of the issuers made appropriate reference to their consolidated NFIS (44 issuers) or included the consolidated NFIS in their individual management report (six issuers).⁵¹ None of the issuers that only submit an individual annual report were required to publish an individual NFIS.

45 Urbas Grupo Financiero, S.A., Compañía Levantina De Edificación y Obras Públicas, S.A., Neinor Homes, S.A., Borges Agricultural & Industrial Nuts, S.A., Nicolas Correa, S.A., Instituto de Crédito Oficial, Iberpapel Gestión, S.A. and Aedas Homes, S.A.

46 Atrys Health, S.A., Línea Directa Aseguradora, S.A. and Corporación Acciona Energías Renovables, S.A., which, in their IPOs in 2021, submitted an annual financial report for 2020, 2021 being the first year in which they submitted an NFIS.

47 Euskaltel, S.A.

48 Bankia, S.A. and Liberbank, S.A.

49 Abengoa, S.A.

50 Codere, S.A. was no longer obliged to consolidate and on an individual basis did not have to submit an NFIS.

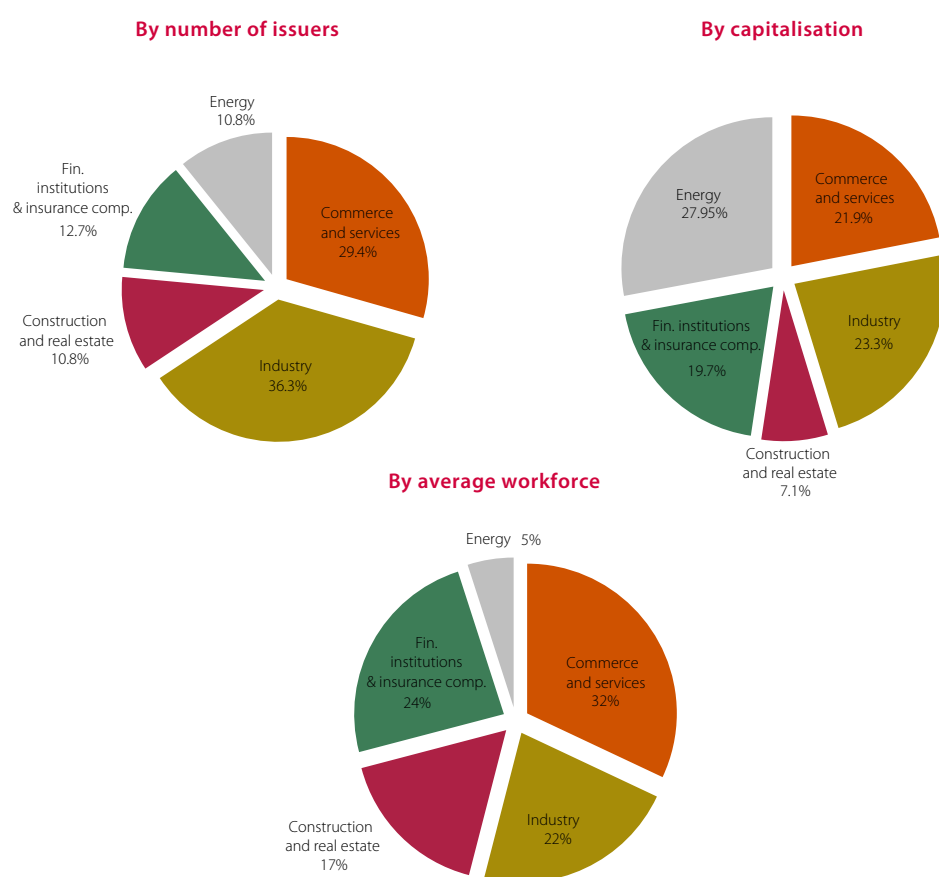
51 Law 11/2018 states that a company that belongs to a group will be exempted from the obligation to include an NFIS in its management report if said company and its subsidiaries, if any, are included in the consolidated management report of another company. If a company uses this option, it must include in its management report a reference to the identity of the parent company and the Companies Register or other public office where its accounts are deposited together with the consolidated management report. Two issuers, despite having more than 250 employees individually, do not state that they have taken advantage of this option, nor do they refer in their individual management report to the consolidated NFIS of their group that did submit an NFIS, so they have not been included in the 52 individual NFIS received.

Lastly, three Ibex-listed entities⁵² were not obliged to prepare an NFIS for 2021, as they had fewer than 250 employees on average in the year (four entities in 2020), although one of these⁵³ submitted a report voluntarily.

The following figures show a breakdown of the 102 issuers that submitted a consolidated NFIS for 2021 by sector, based on the number of issuers, their market capitalisation⁵⁴ at 31 December 2021 and their average workforce.

Distribution by sector of issuers that submitted an NFIS for 2021

FIGURE 1



Source: CNMV.

52 Inmobiliaria Colonial, SOCIMI, S.A., Merlin Properties, SOCIMI, S.A. and Solaria Energia y Medioambiente, S.A.

53 Pharma Mar, S.A.

54 Four issuers from the Trading and services and Financial institutions and insurance sectors that submitted an NFIS for 2021 are listed only in fixed income, therefore they are not considered as they do not have a market capitalisation.

Verification reports

Law 11/2018 requires that the information included in the NFIS be verified by an independent provider of assurance services.⁵⁵ As in the previous year, all issuers subject to this law (102 issuers) submitted their corresponding consolidated NFIS verification report.

Additionally, of the two issuers that submitted a specific individual NFIS, one submitted an individual verification report.

Qualifications

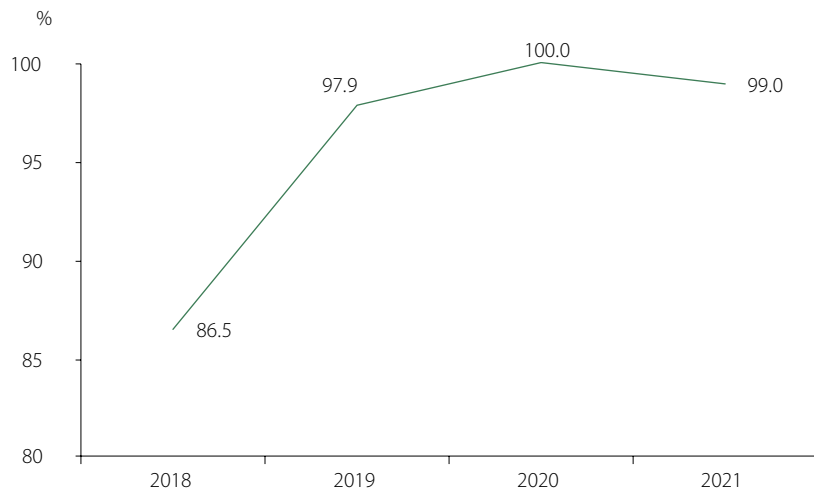
As a result of this verification, one issuer⁵⁶ presented a qualification in 2021 (none in 2020) relating to the omission of information required by law, specifically the frequency and severity rates for work accidents in the 2021 and 2020, which was explained by a lack of global data needed for the denominator.

Following a request sent to this issuer, it explained the reasons why it did not have the information and stated that it would be included in the NFIS for 2022.

Figure 2 shows changes over the past four years in the percentage of issuers filing unqualified verification reports.

Verification reports with an unqualified opinion

FIGURE 2



Source: CNMV.

In 2021, as in the two previous years, the percentage of issuers presenting verification reports with qualifications was less than 2%. It should be remembered that in 2018 a higher percentage (13.5%; 13 issuers) presented qualifications due to the

⁵⁵ Article 49.6 of the Commercial Code.

⁵⁶ Amrest Holdings, SE.

short period of time between the publication and entry into force of Law 11/2018⁵⁷ and the first-time obligation to verify the NFIS.

The decrease in 2019 was mainly due to the improvement in issuers' internal systems and processes, which allowed them to obtain the information omitted in previous years and provide greater detail compared to the previous year.

Emphasis of matter paragraphs

The 2021 financial year was the first in which the eligibility indicators established by Article 8 of the Taxonomy Regulation were disclosed. 94% of the verification reports of the issuers⁵⁸ that provided this information included an emphasis of matter paragraph to state that they lacked comparative information since the new information requirements were applicable for the first time to the 2021 financial year, as well as that they have used the criteria to establish the eligible activities that directors consider most appropriate.

Verification firms

As in previous years, there was a significant amount of concentration in the main verification firms. In approximately 82% of cases, the verifier was one of the four main auditing firms by business volume in Spain: Deloitte, EY, KPMG and PwC. This figure represents a slight decrease from 85% in the previous year, although in absolute figures the number of issuers increased from 82 to 84. As in the previous year, Aenor stands out among the remaining 18%, issuing the verification report of four issuers, which represents 4% of the consolidated verification reports received (four issuers, 4% in 2020).

It should be noted that in approximately 72% of cases (61% in 2020), the verification firm was the same as the company or group that audited the entity's 2021 annual financial statements.⁵⁹

Figure 3 shows the distribution of the verification reports prepared by the four main firms in the last three years.

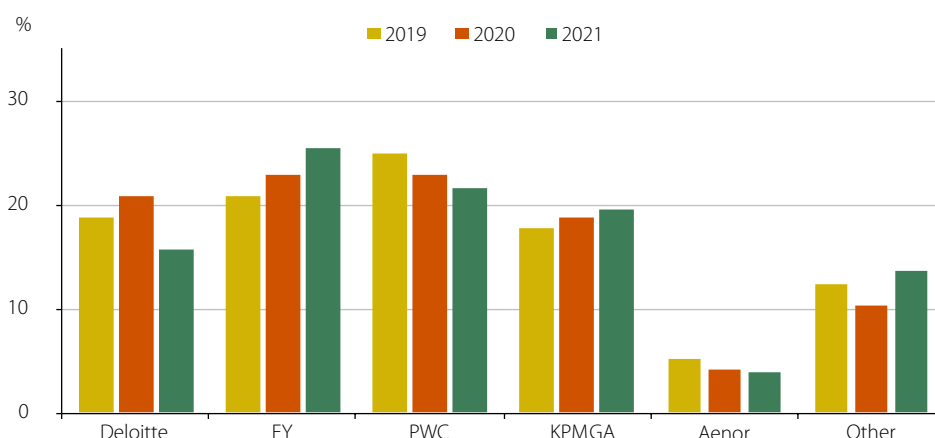
57 Law 11/2018, of 28 December, applicable to the financial years beginning on or after 1 January 2018.

58 Issuers with more than 500 employees whose NFIS are published from 1 January 2022 on information for the 2021 financial year. There were 90 issuers required to report, of which 87 provided the indicators (see Chapter IV).

59 In the case of 15 issuers (12 issuers in 2020), the auditor and the verifier were the same natural person.

Breakdown of verification reports by firm

FIGURE 3



Source: CNMV.

It is notable that all Ibxex 35⁶⁰ companies that submitted an NFIS for 2020 and 2021 were verified by one of the top four audit firms.

Nature of the verification

Virtually all 2021 consolidated NFIS verification reports correspond to a limited review report:⁶¹

- Most (94%) were audit firms, which performed their work in accordance with the requirements set out in the revised ISAE 3000 (ISAE 3000R) assurance standard⁶² issued by the IAASB of the IFAC and with the guidelines of the Spanish Institute of Chartered Accountants (ICJCE),⁶³ expressing a limited assurance as to whether the NFIS had been prepared, in all significant aspects, in accordance with prevailing mercantile legislation and following the criteria of the standards selected by the persons in charge of their formulation (mostly the GRI, as described in in Chapter III of this report).

60 Includes the 31 Ibxex 35 companies that submitted an NFIS to the CNMV. Arcelor Mittal is not required to submit financial information to the CNMV, since Spain is not its home Member State and Inmobiliaria Colonial, SOCIMI, S.A., Merlin Properties, SOCIMI, S.A. and Solaria Energía y Medioambiente, S.A are not required to submit an NFIS, as they each have fewer than 250 employees.

61 Except in two cases in which the verifier was not an audit firm and did not specify the scope.

62 This standard, ISAE 3000R, addresses the review of various non-financial aspects and has been approved by the International Auditing and Assurance Standards Board, IAASB, which forms part of IFAC, the International Federation of Accountants. In Spain, it has been adopted by the Spanish Institute of Chartered Accountants (ICJCE).

63 Among the different possible verification frameworks, the Spanish Institute of Chartered Accountants (ICJCE) and the Register of Economist Auditors (REA) both published Guidelines for action in 2019, which specify and clarify the scope of these reviews, based on ISAE 3000. The ICJCE subsequently published several addenda to its guidelines. The verifier of only one of the issuers mentions the action guidelines on NFIS verification orders published by the REA, of the Spanish General Council of Economists (CGEE); the rest refer to the ICJCE guidelines.

- The remaining verifiers were not audit firms. Of these, Aenor stands out, which carried out limited assurance on whether the NFIS complied with the content of Law 11/2018, indicating that the verification was carried out mainly in accordance with ISO/IEC 17029:2019.⁶⁴

Additionally, close to 9% of the issuers (all Ibex members), as stated in the verifier's own report, commissioned some level of additional scope, which in most cases was a type 2 moderate assurance commission, in accordance with the AA1000 AS Sustainability Assurance Standard,⁶⁵ and in some cases an additional review of certain GRI indicators with the scope of reasonable assurance in accordance with ISAE 3000R.

It should be noted that for the reports published in accordance with AA1000 AS, the verifiers included recommendations for improvement in the application of the four principles of the AA1000 AP (2018) standard, which should be included in the NFIS for future years.

Lastly, four issuers provided some additional report or reports accompanying their NFIS (directly or by reference to the place where it appears published), on occasion of a third party other than the NFIS verifier. In most cases, the report is a limited or reasonable assurance report or an independent statement of verification of the inventory of GHG emissions, among others, under UNE-EN ISO 14064-3: 2012⁶⁶ or ISAE 3410⁶⁷ corresponding to the period 2020 or 2021.⁶⁸ It is recommended that if issuers commission these reports, they should include them in their NFIS as an annex or reference, or at least summarise their main conclusions. This aspect was recommended to one issuer.

Additionally, one issuer was requested to obtain a document from the verifier clarifying the GRI option that had been the subject of the limited review.

64 ISO/IEC 17029:2019: "Conformity assessment – General principles and requirements for validation and verification bodies". ISO (International Organisation for Standardisation) and IEC (International Electrotechnical Commission) form the specialised system for global standardisation. National member bodies of ISO and IEC participate in the development of International Standards through technical committees established by the respective organisation.

65 In general AA1000AS v3 2020 issued by AccountAbility, on the application of the principles of inclusiveness, relevance, responsiveness and impact, in accordance with the provisions of the AccountAbility AA 1000 Principles Standard (AA1000 AP) (2018) in the basis of preparation of the general NFIS or in sections such as materiality or stakeholder participation.

66 The ISO 14064-3 standard determines the principles and requirements for the verification of GHG inventories determined following ISO 14064-1 and for the validation or verification of GHG projects.

67 ISAE 3410 Assurance Engagements on Greenhouse Gas Statements, issued by the IAAASB of IFAC.

68 Examples of other reports are: limited assurance under ISAE 3000R and ISAE 3410 of non-financial indicators included in the Report on green bonds included in the NFIS, the limited review report under ISAE 3000R on the classification of activities included in the EU 2021 taxonomy report or a reasonable assurance report from the same verifier, under ISAE 3000R, on six indicators set within the framework of strengthening the internal control of its non-financial information.

Verification scope

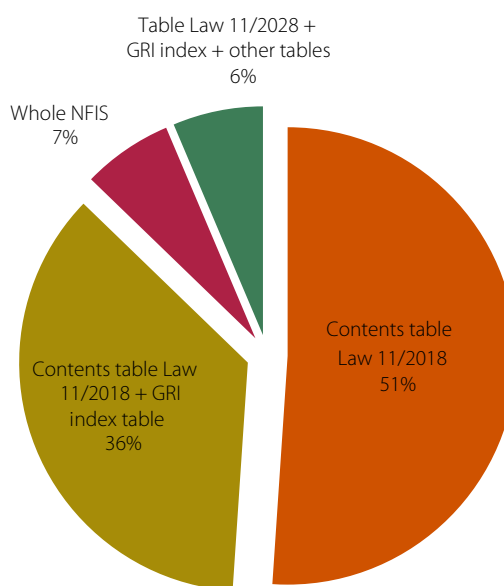
In general, issuers include in their NFIS or management reports, non-financial information in addition to that required under current regulations. Section 22 of Guideline 47 on verification orders for the Non-Financial Information Statement of the ICJCE indicates that the verification report of the NFIS must clearly identify the scope of the verification carried out.

Most of the verifiers that follow this guideline only verified the information identified in a summary table, namely that required by Law 11/2018, together with the criteria of the standards or frameworks selected and the page or section of the report in which it is located (51%, 67% in 2020). However, the percentage in which the verification also included the information identified in a GRI content index table and, in a few cases, in an additional table (basically an index of SASB content) is growing. The verification work did not generally extend to additional disclosures that issuers voluntarily chose to include.

Figure 4 shows the verification scope of the NFIS employed by the verifiers that followed the ICJCE guidelines in 2021.

Verification scope

FIGURE 4



Source: CNMV.

In line with the ICJCE guidelines, the CNMV stresses the importance of verified and unverified information being perfectly identified and traceable. The use of a table helps to meet in this objective, however, as indicated in the section on the formal review in Chapter III of this report, in many cases these tables could be improved so as to allow readers to clearly determine which information has been verified and which has not. It is also considered good practice for the verification to refer to the entire content of the NFIS.

Other issues

Article 49.6 of the Commercial Code, which regulates this matter, does not establish the qualification, experience and independence requirements applicable to independent verifiers, nor the basic aspects of the review to be carried out, such as the scope, level of assurance sought or the content of the report and the opinion to be issued, which has contributed to unevenness in the nature and scope of the verification and highlights the need to further regulate the verification work carried out on the NFIS. This would make it possible to avoid the risk of different interpretations and expectations and improve quality and uniformity. This aspect is reflected in the CSRD.⁶⁹

Additionally, for verification to be carried out, the non-financial information must be prepared based on an objective framework, which highlights the importance of the non-financial information standards of the EU, the ESRS discussed in Chapter II on regulations, which will contribute to comparability and uniformity in sustainability reports.

The growing importance of sustainability information makes it more important to strengthen and appropriately design the internal control system for non-financial information, which should cover the entire non-financial information reporting process, from risk management, to control, information and communication processes, and supervision activities. This will contribute to improving the quality of the data included in the NFIS, and as indicated in Chapter V of this report, in the priorities set by ESMA for the 2022 NFIS, issuers could consider disaggregating information on the processes of compiling the NFIS data and on the due diligence applied to such data, by the issuers' Boards or other relevant internal bodies.⁷⁰

69 The EC must adopt verification standards for limited verification through delegated acts by 1 October 2026 (no later than 1 October 2028 for reasonable verification). In order to facilitate the harmonisation of the verification in the presentation of sustainability information in all Member States, the Committee of European Auditing Oversight Bodies (CEAOB) is encouraged to adopt non-binding guidelines to establish the procedures that must be followed when issuing a verification opinion on sustainability information until the Commission adopts a verification standard that applies to this.

70 The review of the Good Governance Code of June 2020 recommends reinforcing the powers of the audit committee, attributing to it the supervision of the control systems and management of non-financial risks, ensuring that the internal control policies and systems are applied effectively in practice, in line with the guidelines established in 2017 through Technical Guide 3/2017 of the CNMV.

III Supervision of non-financial information

Review of the 2021 NFIS

The LMV entrusts the CNMV with supervising the NFIS submitted by issuers to the extent that it forms part of their management reports. To exercise this function, the CNMV is empowered to require issuers to publish additional information, supplementing the disclosures provided or to include certain corrections, where applicable, accompanied by commitments to restate or reissue the non-financial information.

In this process, the CNMV can address issuers, requesting information in writing to obtain clarification or data on specific matters. On occasion, additional information is collected orally, either by telephone or through meetings.

In the first years of the mandatory nature of the NFIS, the supervisory effort of the CNMV focused on issuing recommendations, issuing written requests only in cases of inclusion of qualifications in the verifier's report or in specific cases. Progressively, a greater volume of additional information has been requested, especially on aspects that are considered an enforcement priority in the NFIS review.

It is important to remember that these requests for information are tools to investigate possible breaches, but that not all requests are ultimately related to a failure to observe applicable rules, and consequently, some responses given by entities do not lead to any corrective action by the CNMV.

The CNMV's enforcement work on the NFIS follows a similar approach to its work on financial information, with two levels of review performed: formal and substantive. In line with the principles set out in the ESMA guidelines on enforcement of financial information,⁷¹ the substantive reviews may, in turn, be full or partial, with the partial reviews only covering certain specific aspects of non-financial information.⁷²

All of the NFIS received are subject to a formal review regarding compliance with certain legal requirements. This type of review includes other specific issues that are described in the following section.

71 ESMA – Guidelines on enforcement of financial information (28 October 2014). These guidelines have been recently updated, and the amendments came into force from 1 January 2022. (https://www.esma.europa.eu/sites/default/files/library/esma32-50-218_guidelines_on_enforcement_of_financial_information_en.pdf).

72 Basically the enforcement priorities set by ESMA and the CNMV.

A full or partial substantive review is also performed on a specified number of NFIS. To identify the entities that are subject to this type of review, a mixed selection model is applied based on risk, which takes into account factors related to financial and non-financial information, and on random rotation, maintaining consistency with the ESMA guidelines on enforcement of financial reporting.

The concept of risk used in the model combines two factors:

- The likelihood that the financial statements and the non-financial information contain a material error.
- The potential impact of any material errors on market confidence and investor protection.

The risk-based selection is supplemented by randomised rotation criteria to ensure that the financial and non-financial information received from all issuers is reviewed at least once in every rotation cycle.

Formal review

All NFIS filed were subject to a formal review that involved, at least:

- i) Checking that both the NFIS and the verification report were included in the consolidated and/or individual management report submitted by the entities that are required to do so and confirming consistency with the section “Other information: management report” in the audit report of the annual financial statements.
- ii) Analysing the content of any qualifications included in the verification reports, as well as the nature and scope of the verification.
- iii) Follow-up on whether aspects formally requested in previous years’ reviews have been corrected or properly disclosed.

In addition, the review of the 2021 NFIS included checks on whether the eligibility indicators established by Article 8 of the Taxonomy Regulation were included, as this was the first year of application, and a more in-depth analysis of the disclosures relating to the carbon footprint was also carried out. Chapter IV of this report includes a section with a detailed description of both analyses.

Additionally, other aspects of all the NFIS received were reviewed, such as the identification of the global frameworks used, the inclusion of tables or content index for Law 11/2018 and, for some of the frameworks, a statement that the EU Guidelines and their Climate Supplement, or the recommendations of the TCFD had been taken into account. The aspects detected related to these matters, in general, led to recommendations and/or requests being sent to issuers subject to substantive review.

In addition to requests for information in respect of the only qualified verification, recommendations were sent to 17 issuers (14 in 2020), all of them subject to substantive review, and a total of eight entities (three in 2020) were sent formal

requests for information on issues such as: i) the frameworks used, ii) the tables of contents, and iii) Article 8 of the Taxonomy Regulation.

Six entities were contacted by telephone, mostly to correct shortcomings in formal aspects or in relation to the improvement in future years of the references to the NFIS included in their individual management report and of aspects detected in the review of previous years that had still not been properly addressed in this year's report.

As for aspects relating to the location of the NFIS, it was noted that approximately 13% of the issuers that had submitted individual annual financial statements, despite not being required to prepare an individual NFIS, had attached a consolidated NFIS or made a reference to it in their individual management report.

The main conclusions on tables and the framework are highlighted below.

Inclusion of tables of contents in the NFIS

In 2021, all issuers required to submit an NFIS included a summary of contents in the form of a table or box (99% in 2020). In 97% of cases, this table corresponds to the contents of Law 11/2018 in which issuers generally identify the pages or sections of the document in which it is found, and the framework used for the report (usually GRI).

65% of the issuers reflected in their tables certain information (KPIs, policies, etc.) that had been omitted from the verifiers' reports, which in 91% of cases they explicitly or apparently justified by saying that they considered this information to be non-material or not applicable to the entity in question, such as biodiversity or actions to combat food waste. In some cases, total or partial omissions of the information required by law were detected that were not indicated in the tables.

In this first year of disclosures of information related to the taxonomy, 68% of issuers required to submit this information included in their tables a reference to the section or page of the NFIS where the corresponding disclosures appear.

As in previous financial years, it was observed that, in general, it is still necessary to improve the quality and consistency of the tables. In many cases references are to large chapters that make it difficult to locate the content, some are to incorrect pages or are incomplete (for example, not linking each specific content of the law with the specific GRI or other applied framework, not including a column of omissions, etc.). In this regard, it is recommended that:

- The tables should be complete:
 - i) To prevent certain contents of Law 11/2018 from being left out of the table or of the NFIS itself, it is recommended that when transcribing the texts of the information required by law to the table, they be incorporated literally or, at least, not summarised excessively.
 - ii) To facilitate the location of the content, entities should check to make sure references are to specific, correct pages.

- iii) The reference framework or indicator used to prepare each content of the law should be indicated.
- A specific section should be included relating to the taxonomy requirements in the table.
- If other reference frameworks are used in addition to the GRI (which is usually indicated) for one or more of the issues required by Law 11/2018, they should, if relevant, also be indicated in the table.
- All omissions of the information required by law must be indicated in the tables and properly explained using a materiality analysis.

The quality of these tables is important, especially in cases in which the verifier's review only refers to the information required by law and identified in the tables and not to the entire NFIS report, and also in cases where the NFIS information does not follow the structure of the legal requirements, is not organised according to the five issues indicated, or the non-financial information is included with the other content of the management report, forming part of an integrated report.

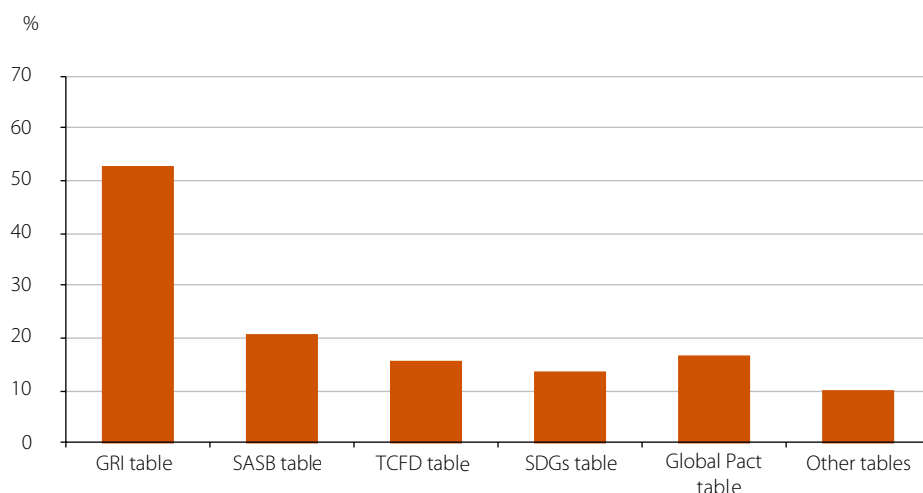
Finally, 57% of the issuers include other tables in addition to that required under Law 11/2018 (approximately 30% in 2020), which, in general, refer to the frameworks followed. Of these, 71% included more than two. This is considered good practice, since it improves the clarity and usefulness of the information, allowing content related to compliance with the frameworks to which they refer to be located. However, it is important to avoid information being only contained in these additional tables when it would be more useful and relevant if it were (also) reflected in the table required by law, as this usually determines the scope of the verification. The above recommendations on the quality of the tables also apply to these tables.

Figure 5 shows the percentage of all issuers that submitted an NFIS and that include a table related to GRI, SASB, TCFD, the UN SDGs, the principles of the UN Global Compact or other tables (notably, in the finance sector, a table of contents of the UNEP FI Principles for Responsible Banking).⁷³

⁷³ The Principles for Responsible Banking were created in 2019 by the United Nations Environment Programme Finance Initiative (UNEP FI).

Issuers that included additional tables to those of Law 11/2018 in 2021

FIGURE 5



Source: CNMV.

In relation to points detected for the tables, recommendations were sent to nine entities (nine in 2020) subject to substantive review.

Following EU Guidelines and the reference framework

It was observed that approximately 76% of the total number of companies submitting an NFIS (80% in 2020) did not refer to the EU Guidelines and only 7% (4% in 2020) stated that they had taken the Climate Supplement into consideration, or that they intended to do so in the future. As in the previous year, the CNMV recommends following these guidelines, although they are not binding, since they are a useful guide on how to properly comply with the regulations.

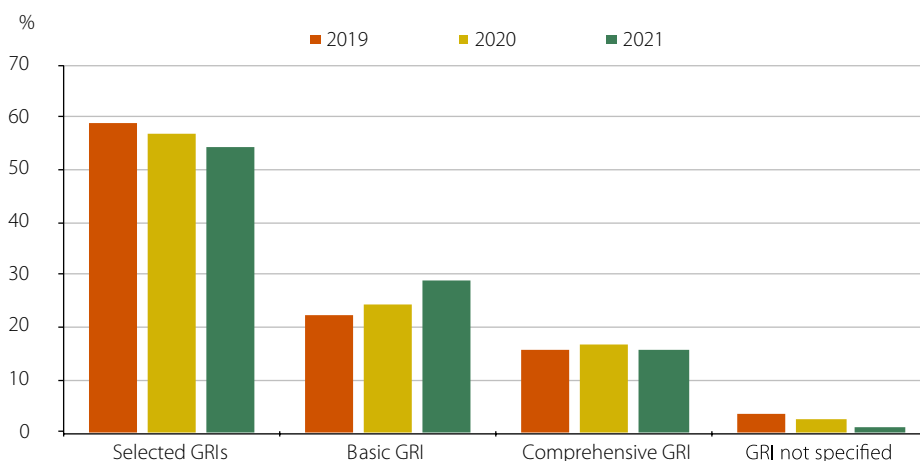
Law 11/2018 states that for the disclosure of non-financial information, the reporting entities must base their disclosures on recognised national, EU or international regulatory frameworks, and must specify the frameworks they have used. Further, ESMA stated in its enforcement priorities for the 2019 NFIS that, in accordance with Directive 2014/95/EU, issuers must specify the level of use of these frameworks (for example, indicating whether they have been fully or partially applied and explaining which disclosures have been prepared using each framework, and why).

It should be noted that, as in the previous financial year, a general framework was identified in all cases, in the statement itself or in the verifier's report.

As in the previous year, the most widely used reference framework was the Global Reporting Initiative (GRI) (99% of cases). 1% of those who used the GRI did not indicate the option followed, while in the 99% of cases that did indicate it, a growing trend towards more complete options was observed, particularly the core option permitted by the GRI.

GRI options used by issuers

FIGURE 6



Source: CNMV.

At the end of 2021, the GSSB⁷⁴ completed an update to the GRI Universal Standards so that companies can better respond to emerging regulatory disclosure needs, such as those stemming from the CSRD. These new standards will come into effect for the preparation of reports or other published materials on or after 1 January 2023. Among other changes, the updating of the methodology to assess the materiality of relevant issues and a greater focus on human rights reporting stand out. Additionally, this body is working on the preparation of new specific sectoral standards.

One third of the verification reports on NFIS prepared by issuers in accordance with the core or comprehensive GRI option mention that they took into account one or more of the sector supplements of the GRI G4 guidelines⁷⁵ that were applicable, depending on the sector, with the supplements on “Financial services”, “Oil & gas” and “Electric utilities” being mentioned most frequently.

27% of the issuers did not provide details of the framework or used an internal framework for some of the contents of the law reflected in the tables.

In addition to the GRI standards, as mentioned in the previous section on tables, it is common for issuers to mention other frameworks to which they adhere or which they take as a reference.

74 Global Sustainability Standards Board (GSSB), the GRI's independent standard-setting body.

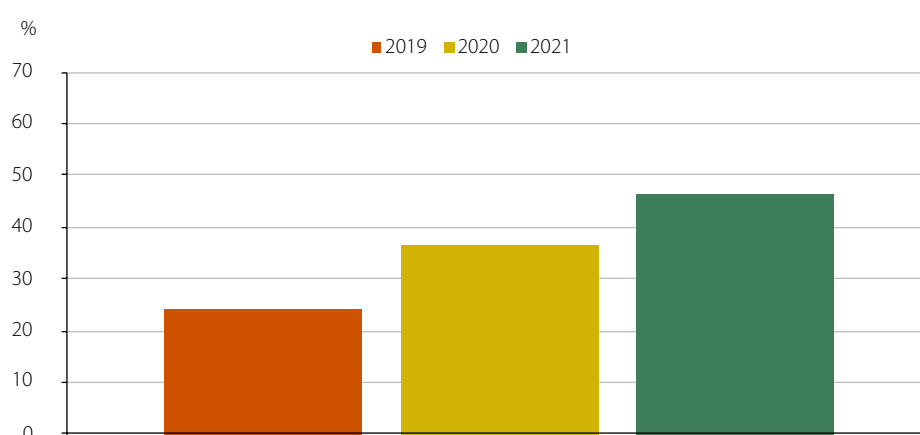
75 The G4 sector supplements were developed by the GRI G4 guidelines and published in 2014. These GRI G4 guidelines subsequently became the GRI Standards. GRI standards apply to reports or other materials published on or after 1 July 2018. The GSSB has started to develop Sector Standards (a total of 40 are planned), which will describe the most significant impacts of a sector from a sustainable development perspective. In 2021, the GRI 11 standard for the oil and gas sector was published, which will be effective from 1 January 2023, and in 2022, GRI 12 (coal sector) and 13 (agriculture, aquaculture, and fishing sector), which will be effective from 1 January 2024. One of the issuers refers to the new GRI 11 in its NFIS for 2021.

46% (36% in 2020) of reporting entities indicated that they were following or in the process of implementing TCFD recommendations, although not all of them addressed the four recommended areas (governance, strategies, risks and metrics). An additional 7% referred to these, generally in the assessment of climate risks, but apparently do not follow them or indicate that they plan to adopt them in the coming years.

Figure 7 shows how the percentage of issuers indicating that they had considered, or were in the process of implementing the TCFD recommendations has grown.

Issuers following TCFD recommendations

FIGURE 7



Source: CNMV.

Other frameworks were also reflected to a varying extent for all or part of the contents of the NFIS, most notably: i) UN Global Compact; ii) SDGs; iii) SASB; iv) in the social sphere, the provisions of the ILO and the OECD Guidelines for Multinational Enterprises; v) in the environmental sphere, the Carbon Disclosure Project (CDP); vi) the UN Guiding Principles on Business and Human Rights; and vii) the International Integrated Reporting Framework (IIRF). Figure 5 in the section above on tables shows the frameworks for which issuers included a table, which is considered a good practice and facilitates understanding of their level of adherence to these frameworks.

Five issuers were requested to submit additional information and recommendations were sent to 14 entities (four and ten in 2020, respectively), in relation to reference frameworks and the EU Guidelines.

- As in the previous year, it was observed that there was room for improvement in the statements made by issuers of the GRI option followed, in accordance with GRI 101 (Foundation), as this information was provided only occasionally in the verifier's report. It is important to include not only a table identifying the GRI, but also a section describing the bases for preparing the NFIS. This should be an indication of the general framework(s) used and the GRI option followed (core, comprehensive or selected), in accordance with GRI 101

(Foundation), avoiding or explaining any inconsistencies in the statements made in the various sections as the case may be.

- Entities were asked to explain the reasons why the framework was not disclosed or it was considered appropriate to use an internal framework for some of the contents of Law 11/2018, given that the preamble of this law indicates that these must be based on national, European Union or recognised international frameworks. In these cases, the criteria on which these internal frameworks are based and, when applicable, the details and methodology of the calculations made, should be very well explained, and for the next financial year an express commitment to following a recognised reference framework should be made, if possible, with an indication as to which GRI framework/standard they will follow for their reporting.
- In the event that selected GRI standards are used, which is the option most frequently chosen, and/or if a GRI standard is used in part in accordance with clause 3.3 of GRI 101, an indication must be provided of which specific content of the standard has been applied and why. In their responses, some issuers acknowledged that they partially applied them. Some examples of partially used GRI standards are GRI 405-2 and GRI 306-1, relating to personnel and the environment (waste), respectively.
- Additionally, there should be an indication as to which version or versions of the GRI are being used in the preparation of the report.
- It is recommended that the NFIS text should indicate the specific standards or reporting criteria used, as identified in the table, to make it easier to follow, for example the GRI number if this standard is followed, together with the information for disclosure of which this criterion has been used. This reduces the risk of GRIs that have not been used to prepare the content of the report being included in the table.
- In cases where throughout the NFIS other frameworks are mentioned and taken into account in its preparation for some of the issues, it is recommended to show how these frameworks are addressed, for example detailing the aspects in which they have been taken into account by incorporating them into the law table or into a specific table with the aforementioned quality criteria, providing additional disclosures on the scope of their use. Where other reference frameworks are used in addition to the GRI, this is expected to be indicated in the NFIS itself together with the information to which they have been applied.

Additionally, the explanations of how their activities contribute to attaining sustainability objectives should be expanded, taking into account any objectives indicated by the frameworks to which they say they adhere, for example, clearly detailing specific and quantifiable objectives relating to the SDGs to which they contribute, and providing data that allow their level of fulfilment and level of progress in the year to be assessed or referencing published annual progress reports.

- It is recommended that the EU Guidelines and the Climate Supplement be taken as a reference and that the report should indicate that they have been taken into account.

In 2021, a total of 20 entities were subject to substantive review. In ten of these cases the substantive review of the NFIS focused basically on the priorities set by ESMA and the CNMV, and on certain significant aspects specific to each entity. In the other ten cases, essentially selected based on a sectoral approach, (hereinafter, the selected sample), a more in-depth review of their NFIS was carried out.

By sector, 40% of these 20 entities corresponded to the trading and services sector, 10% to the banking and insurance sector, 20% to the energy sector, 20% to industry and 10% to construction and real estate.

By market capitalisation⁷⁶ at 31 December 2021, these 20 companies represented 5% of the financial and insurance sector, 49% of the energy sector, 31% of trading and services, 1% of industry and 44% of construction and real estate.

It should be noted that in the 2020 Report on the CNMV's supervision of non-financial information,⁷⁷ the main areas on which the CNMV would focus its review were listed for the 2021 NFIS, both those set by ESMA, and the additional areas established by the CNMV.

Among other aspects, ESMA highlighted the importance of reviewing in the 2021 NFIS disclosures relating to the impact of the COVID-19 pandemic on non-financial issues, certain aspects of climate-related matters and disclosures relating to Article 8 of the Taxonomy Regulation.

The CNMV included among its priorities a more detailed analysis of the disclosures relating to the carbon footprint, as well as an analysis of the reporting scope of the NFIS and the disclosures relating to the participation of the entity and its stakeholders in the value chain.

It should be noted that ESMA's climate-related priorities included an analysis of the consistency of the information included in the IFRS financial statements with the NFIS, and that the CNMV also decided to include a more detailed analysis of this consistency as an additional priority for financial information.

As a result of the substantive review, in 2022, 13 entities out of the 20 were requested to provide additional information, mainly on the following aspects: i) disclosures of their carbon footprint, especially Scope 3, explanations of its evolution and their reduction goals; ii) indicators of Article 8 of the Taxonomy Regulation; iii) the methodology used and concepts taken into account for calculating the wage gap, explanations of the data and their performance; iv) inconsistencies in the statements concerning the scope considered and exclusions from it; v) the role of subcontractors and other third parties in the issuer's value chain, relevant associated non-financial risks and clarifications and explanations of the evolution of KPIs of the suppliers and subcontractors; vi) consistency of the information in the notes to the financial statements on provisions and contingencies with that included in

76 One of the issuers under substantive review, belonging to the trading and services sector, is listed only in fixed income, so was not considered as it does not have a market capitalisation.

77 https://www.cnmv.es/DocPortal/Publicaciones/Informes/EINF_2020_ENen.pdf

the section on human rights issues and corruption in the NFIS; vii) variable remuneration linked to sustainability indicators; and viii) impacts of the COVID-19 pandemic on compliance with sustainability objectives and on the business model. These requests were included either together with the requests for financial information or as a specific request.

In addition, recommendations were given to 20 issuers (i.e. the entire sample) for the preparation of future NFIS.

One entity subject to substantive review was contacted by telephone to clarify some aspects of its NFIS relating to its carbon footprint, the indicators of Article 8 of the Taxonomy Regulation in the future and the impacts of COVID-19.

Most significant actions in 2022

Table 2 shows the non-financial aspects for which issuers were served with requests for information or issued written recommendations, separately breaking down the requests concerning enforcement priority areas in 2021 and including the formal aspects⁷⁸ mentioned above.

In most cases, the explanations provided by the issuer in response to the CNMV's requests completed the disclosures required by law or those recommended by ESMA and the CNMV in their enforcement priorities for the 2021 NFIS, although there is room for improvement in some areas, as seen in the comments below.

78 This table includes the items for which information was requested or recommendations were given for the formal issues indicated in the section above, included under "Characteristics and presentation of NFIS information" and "Framework".

Nature	Number of entities ⁷⁹	
	Information requested	Recommendations
1. Priority areas for review		
Impact of COVID-19 on non-financial matters	1	3
Climate-related matters	6	17
Disclosures relating to Article 8 of the Taxonomy Regulation	7	8
Reporting scope	2	13
Business model. Participation in the value chain ⁸⁰	4	14
2. Other issues		
Characteristics and presentation of NFIS information	0	14
Materiality	1	17
Framework	5	14
KPIs	0	20
Other environmental issues	2	11
Social and employee matters	2	16
Issues relating to the fight against corruption and bribery	0	9
Issues about respect for human rights	2	11
Company commitments to sustainable development	0	4
Consumers	0	8
Tax information	0	7

Source: CNMV.

The main results of the CNMV's enforcement actions are highlighted below:

- Two issuers included in their response to the request, published on the CNMV website, a **corrective note**⁸¹ concerning the disclosures relating to the Taxonomy Regulation.
- In five cases, corresponding to five issuers, the enforcement actions carried out with regard to the 2021 NFIS gave rise to a **commitment to future correction** of the non-financial information, with the main issues being:

79 In cases where an issuer was recommended to provide additional information about an aspect that, due to its nature, affects more than one area, it was considered in both or all aspects (e.g. a personnel KPI). It also includes requests made as a result of letters received. In total, formal requests were made to 18 entities, of which 13 were subject to substantive review. Entities to which formal requests or recommendations were made in respect of Alternative Performance Measures (APMs) are not included, since they are included in Chapter II of the *Report on the CNMV's review of annual financial reports for 2021 and main enforcement priorities for the following financial year*.

80 Includes requests and recommendations mainly relating to the business model, sub-contracting and suppliers.

81 In line with ESMA's guidelines on enforcement of financial information, a corrective note is the issuance by an enforcer or an issuer, as initiated or required by an enforcer, of a note making public a material misstatement with respect to one or more particular items included in already published financial information and, unless impracticable, the corrected information.

CNMV

Report on the CNMV's supervision of non-financial information and main enforcement priorities for the following financial year

2021

- i) Qualified opinions of the verifier due to non-inclusion in the NFIS of certain KPIs relating to health and safety at work required by Law 11/2018, (the entities concerned committed to disclose them in their 2022 NFIS).
- ii) Omission of disclosures required by the Taxonomy Regulations in the NFIS and in the verifier's report, as they were considered to be immaterial.
- iii) Methodology used to carry out materiality analysis taking into account the concept of double materiality.
- iv) Scope exclusions and expansion of the explanation of the reasons why they do not consider it necessary to include associates and joint ventures.
- v) Expansion of the disclosures on the KPIs of CO₂ emissions.

In all the cases described above, the issuers took on a commitment to change their methodology or expand the disclosures contained in their 2022 NFIS.

Some aspects that can be improved as a result of the main actions carried out by the CNMV to monitor the defined priority areas and other aspects for which additional information was requested and recommendations were made in the 2021 NFIS for issuers subject to substantive review are explained below.

Throughout this section, the percentage data, magnitudes and other data provided derive from the analysis of the group of issuers that made up the substantive sample (20) in 2021 and those selected for more detailed review (10). However, although they are indicative of the situation, the samples are not comparable with those of the previous year because, for the most part, the entities are different.

Follow-up of enforcement priorities for the 2021 NFIS

Impact of COVID-19 on non-financial information in 2021

The disclosures about the implications of COVID-19 in certain areas of non-financial information were an enforcement priority for ESMA in the NFIS of both 2020 and 2021. In both periods it can be stated that, in general, issuers disclosed information that makes it possible to consistently relate the financial impacts of COVID-19 disclosed in the notes to the financial statements to the information included in the management reports, and to the non-financial risks and impacts reported in the NFIS.

In financial year 2020, ESMA focused on social and labour issues, as well as the business model. In the 2021 financial year, ESMA placed greater emphasis on the following issues, for which the aspects for which requests for information or recommendations were made to five entities (one entity received a request for information and 12 received recommendations in 2020) were as follows:

- Impact on issuers' ability to meet any predetermined sustainability-related goals in the short and medium term, indicating how the consequences of the

pandemic are affecting their plans and whether any new or adjusted goals have been determined.

Requests for information relating to this priority were made where the entity itself indicated that the context in which it operated continued to be marked by the management of the impact of the pandemic but did not specify whether this situation was harming its ability to comply with its strategic plans and with its sustainability goals. In the case of entities that provided certain information, but did not address the matter in detail, greater transparency about compliance with the established sustainability objectives was recommended for the future, both in the context of the pandemic and other possible adverse macroeconomic circumstances that had been partly triggered by the pandemic.

The vast majority of entities in the sample (84%) provided a reasonable description of the consequences of COVID-19 on their business and activities, either in a specific chapter or scattered throughout the report.

However, the disclosure of information on the impact of COVID-19 on the realisation of sustainability objectives is an aspect to improve in future years, since 63% of the sample did not provide information on this matter. Of this percentage, it should be noted as a mitigating factor that 21% of the cases were issuers on which the pandemic had not had a significant effect.

- Information on how they foresee the development of their business in response to the changing conditions resulting from the pandemic, in particular, regarding any expected structural changes in the way they conduct their business (for example, restructuring supply chains and distribution channels) and in organising the working conditions of their employees.

In the cases in which the entities indicated that in general they were still affected by the pandemic but did not indicate the measures adopted in this regard, express clarification was requested as to whether any type of action was being carried out to minimise the impact, or otherwise, specific information on the measures taken or planned to be taken.

In other cases, entities indicated certain changes in their business in response to the pandemic and other existing macroeconomic problems, and clarifications were recommended in the future as to whether the labour measures adopted were transitory or permanent, as well as whether the senior management remuneration policy had been affected by the pandemic. This recommendation was extended to other adverse circumstances that could have affected the entity during the year, such as the war in Ukraine or unstable situations in other countries in which it operated.

The issuers in the sample generally provided adequate explanations in their NFIS about how they expected their business to develop in response to the pandemic (78%).

The information provided by the entities describes the actions taken to safeguard the health and safety of their employees since the start of the COVID-19 pandemic, the most frequently mentioned measures being those corresponding to preventive health and safety actions, implementation of

teleworking or hybrid models to more employees, together with online training measures, remote work management and work-life balance policies that allow greater time flexibility. Explanations relating to structural changes in businesses, such as in supply and distribution chains to alleviate price increases in supplies, energy or transport, were less frequent, and in most cases the explanation as to why major changes were not being questioned was that the situations were considered transitory. In some issuers, COVID-19 was mentioned as an accelerator of the group's digitisation process, as well as the evaluation of cybersecurity given the growing dependence on technology.

- For non-financial KPIs, transparency on any significant effects of the pandemic on these magnitudes, as well as any new non-financial KPIs broken down to reflect any long-term impact of the pandemic.

In general, entities provided sufficient information to enable the effects of the pandemic on certain indicators to be understood, disclosing qualitative explanations of their evolution in recent years. Therefore, no recommendations were made in this area.

With regard to the incorporation of new ratios, it is worth noting the businesses engaged in the use of infrastructures, which included specific indicators on the impact of the pandemic through traffic volume ratios relative to 2019, the last full year that was not affected by the health crisis.

From the analysis carried out on the companies subject to substantive review, 50% of the sample provided sufficient quantitative and qualitative information to understand the effects of the pandemic on certain indicators. Mainly noteworthy are the magnitudes relating to emissions, and indicators of waste, energy consumption, eco-efficiency and sustainable use of resources. The commonest explanations related to the complete non-occupancy of buildings and offices, after the implementation of teleworking policies, but also in some cases due to workforce cuts, partially caused by COVID-19. In the remaining 50% of the cases, for which no information was provided, these were basically sectors whose business model had not been significantly affected.

In this regard, it should be noted that some issuers expressly indicated that the situation deriving from COVID-19 had not had significant effects on the group, as it had continued to operate normally, and it was not necessary to introduce KPIs or modifications to those already presented in previous years, a clarification that is considered good practice, since it is an aspect indicated as an enforcement priority in 2021 NFIS by ESMA.

Carbon footprint

This enforcement priority for ESMA and the CNMV in relation to the review of the 2021 NFIS was the subject of a specific analysis, and the conclusions reached can be consulted in Chapter IV of this report, “Special analyses carried out in 2022”.

Other disclosures relating to climate change

In relation to the 2021 NFIS, ESMA once again considered the disclosures on climate change as an enforcement priority, emphasising the importance of transparency in the description of policies and their results, and considering it a good practice to explain the reasons why this information was not provided. It also highlighted the importance of describing the impact of the entity’s activities on the climate, as well as the risks (physical and transition) and opportunities with a material impact for the entity deriving from the climate, revealing how these risks are managed and the measures adopted to address them.

ESMA insisted on the inclusion of disclosures that provide an understanding of the financial consequences of climate-related matters, highlighting the importance of consistency between the information included in the NFIS and that contained in the IFRS financial statements. In this regard, the CNMV decided to add, as an enforcement priority, a more detailed analysis of this consistency, the conclusions of which can be found in the 2021 *Report on the CNMV’s review of annual financial reports and main enforcement priorities for the following financial year*.⁸²

Consequently, as a result of the review of the 2021 NFIS, additional information was requested from six companies for issues related to climate change (three in 2020), while recommendations were sent to 17 of the 20 companies in relation to these issues (13 in 2020). Additionally, one company was contacted by telephone to request clarification on certain aspects of its NFIS.

100% of the entities considered in the substantive sample provided, to a greater or lesser extent, information relating to climate change and other environmental issues, as well as KPIs relating to these issues.

The main aspects not related to GHG emissions on which formal requests and recommendations were sent⁸³ were as follows:

- Describe the bodies involved in the approval of environmental policies and the date on which said approval took place.

82 <https://www.cnmv.es/portal/Publicaciones/PublicacionesGN.aspx?id=20>

83 As previously indicated, this information is analysed in Chapter IV, “Special analyses carried out in 2022”.

2021

Although 100% of the companies belonging to the substantive sample indicated that they have policies related to climate change and other environmental issues in place, 20% did not reveal whether they have been approved by the Board of Directors.

- Indicate whether any type of variable remuneration has been established for the company's directors, managers and workers linked to the achievement of climate objectives, providing, where appropriate, a description of its scope, detailing the indicators considered in the remuneration scheme and their accordance with the objectives set for the environmental sustainability metrics.

Half of the companies reviewed did not provide information regarding the existence of variable remuneration plans linked to the achievement of climate objectives. 15% of the entities that said they do have such a plan did not describe its scope.

- Complete the explanations related to the identification of risks (physical and transition) and opportunities related to climate, and their evolution, extending this information to the value chain and describing how they are integrated into the overall risk management of the entity. An expanded description of the main measures implemented to prevent the materialisation of risks, mitigate their effects and adapt to the negative consequences of climate change was also requested, indicating whether the materialisation of risks has led to changes in due diligence procedures to prevent them from happening again in the future.

95% of the substantive sample detailed the due diligence procedures applied to the management of climate change and other environmental issues, the main risks and opportunities for the issuer's activities deriving from climate change and the adaptation and mitigation measures implemented to avoid climate-related risks.

However, of the companies reviewed, only two described the materialisation of risks during the year, with one of them expressly indicating that these were not significant risks, while none explained the measures adopted to resolve the risks that materialised, or whether changes had been made to due diligence procedures to prevent them from occurring in the future.

- Include information that makes it possible to understand the financial consequences deriving from climate-related matters, ensuring the consistency of the climate-related information included in the NFIS with that provided in the financial statements.

The TCFD climate change financial risk recommendations provide examples of potential financial impacts (via revenues, expenditures, assets and liabilities value, and capital and financing) deriving from climate-related risks and opportunities, encouraging organisations to perform both historical and forward-looking analysis. Some of the examples of impacts mentioned in the document are the increase in costs deriving from the increase in insurance premiums, fines and rulings, the deterioration and early retirement of assets due to changes in policies, the existence of R&D expenses for new technologies,

the reduction in the demand for goods and services due to changes in consumer preferences, etc.

25% of the substantive sample does not provide information to understand the financial consequences of climate-related matters.

- Provide forward-looking information on how the entity estimates that it will progress on matters related to climate in the face of different scenarios at different time horizons.

The Climate Supplement, published by the EC in June 2019, and the recommendations on financial risks of climate change of the TCFD, recommend breaking down at least two scenarios: one that assumes a rise in global temperatures equal to or less than 2°C, and another that assumes a rise greater than 2°C.

45% of the companies in the sample propose different scenarios of temperature rises and an additional 30% provide very general forward-looking information.

Other environmental issues

As a result of the review of the NFIS for the financial year 2021, additional information was requested from two entities for environmental issues other than climate change (one in 2020), while recommendations were sent to 11 entities (11 in 2020), with the main aspects addressed being:

- With regard to the **water footprint**, expanded information was requested on the volume of water collected and consumed, together with the measures planned to minimise its consumption, detailing the measurable reduction objectives, as well as qualitative or quantitative information on the performance that occurred during the year, detailing how progress towards those goals is monitored.

75% of the substantive sample provided some indicator of water consumption, this being, in most cases, the volume of water consumed. A smaller percentage of approximately 20% detailed the volume of water collected, indicating the source (i.e. surface, underground, marine, produced and from third parties). While close to 40% quantified the volume of water discharged, of which only 15% specified the type of water (fresh/other), its destination (sea, rivers, lakes and reservoirs, purification network...), or the level of treatment applied (no treatment, primary, secondary or tertiary treatment).

40% included information on the water supply in accordance with local limitations, 25% stated that they have measures in place aimed at improving the impact of the water footprint together with measurable objectives relating to these measures, while 35% said they have measures in place but did not state any objectives.

- Expand the explanation of the measures implemented to improve **energy efficiency**, indicating how they contribute to the objectives of saving fuel and energy consumption, together with the goals achieved after their application.
- With regard to the commitments set for the different environmental issues, such as those declared by some companies for the reduction of waste or chemical discharge, a description was requested of the short, medium and long-term objectives, together with the due diligence procedures implemented for their achievement and an explanation of the performance in the year for the pre-established objectives.

Disclosures relating to Article 8 of the Taxonomy Regulation

Considering the novelty that the inclusion of the disclosures related to taxonomy has meant for entities and the importance attached by ESMA to this issue, setting it as an enforcement priority in the 2021 NFIS, a specific analysis was carried out that is available in Chapter IV of this report, “Special analyses carried out in 2022”.

Reporting scope

One of the CNMV's enforcement priorities for the 2021 NFIS was the scope considered in the NFIS and, as indicated in Chapter V, ESMA has returned to this issue as a priority enforcement area for the 2022 NFIS. Therefore, it should be remembered that in the NFIS, the material information of all the activities of the group must be disclosed, including those carried out by all subsidiaries and for all the countries in which they operate.⁸⁴

In relation to the 2021 NFIS, requests for information were sent to two issuers and recommendations were made to 13 (in 2020 requests for information were sent to three and recommendations to 12), mainly concerning the following aspects:

- Clearly explain the general scope of the NFIS, indicating whether it is consistent with all the information presented in the report, and clearly indicate any specific exceptions.

All the companies in the substantive sample included a reference to their scope in general terms, although in approximately 25% this reference was not sufficiently clear.

More and more companies clearly explain their general scope in a specific section detailing the bases for preparation of the NFIS, but there are still companies in which said information is not so clearly located.

In some cases the scope of the management policies and procedures is not clear. In others there is some inconsistency between the information on the

⁸⁴ In this regard, Article 49.5 of the Commercial Code, on the companies that are required to include an NFIS in their consolidated management report, states “[...]including all its subsidiaries and for all the countries in which it operates”.

scope that appears in different parts of the NFIS. Issuers should make an effort in this area.

Often, in the section of the NFIS where reference is made to the general scope, the exceptions are not made explicit or a phrase such as “unless otherwise indicated” is included. It is considered a good practice to reflect all the relevant data on the scope in aggregate, referencing, where appropriate, the sections of the report in which the exceptions are explained in more detail, although this is sometimes complex for the groups in which there are many subsidiaries in multiple geographical regions.

There are issuers that do not indicate whether there are scope exceptions. It is recommended that this it be clearly explained if they do not exist or are not material.

- Exclusions from the scope should be adequately identified and explained, indicating their magnitude, the reasons that justify the exclusion (materiality, impossibility of the internal systems to obtain the information...) and, where appropriate, the measures to be taken to resolve it and their schedule, as well as a measurement of the significance of the excluded information, preferably through quantitative information, so that users can assess the impact of the such information, considering the materiality analysis carried out by the group.

In approximately half of the substantive sample, exceptions to the general scope were disclosed, although their magnitude was not always clear.

The exclusions observed in the substantive sample are of different types and scope. The most common refer to subsidiaries (in their entirety or in relation to a non-financial matter), activities in some countries and specific KPIs. As for those of subsidiaries, in some cases they refer to companies acquired or sold during the year.

In general, they should include additional information to provide an adequate understanding of the reasons for the exceptions, whether they consider that it is necessary to take measures to resolve them and, if so, the expected schedule.

It is recommended that entities improve their disclosures on the measurement of the significance of the excluded information. Often it is indicated that it is not material, in which case the reasons for that this conclusion has been reached should be explained (for example, the exclusion of a subsidiary in an environmental KPI because it is a company with no productive activity), but in other cases there is no information.

In some of the responses received, it was fully and satisfactorily explained that certain labour KPIs of a subsidiary could not be reported because they were not available at the closing date, assessing their impact as insignificant taking into account the workforce of the subsidiary as a percentage of that of the Group as a whole and, additionally, indicating that measures have been taken to obtain these data and include them in future NFIS, indicating the corresponding KPI in the response.

- Although the requirement to disclose non-financial information applies to group companies, it must be made clear whether **associates and joint ventures** form part of the NFIS scope and to what extent (in policies, procedures, in some of the KPIs...). Where appropriate, they should at least reflect the assessment of the **risks** they assume on non-financial issues through said participations, disclosing them if they are significant or specifying that they are not.

In general, the non-financial data of the issuers in the substantive sample referred to the consolidated group, which is the mandatory scope under the Commercial Code. In the NFIS of more than half of the substantive sample, it is not clear whether associates and joint ventures are included to any extent or, although it appears to be indicated in general terms, the scope is not clear (in all or part of the policies and procedures, results and KPIs).

In general, companies must improve their disclosures of the assessment of non-financial risks assumed by these holdings, not limiting themselves to indicating that they are not significant and expanding their explanations of the reasons why.

As discussed in the carbon footprint section in Chapter IV, it is especially important to provide information that helps readers to understand how these investees are included in the calculation of Scope 3 GHG emissions.

An issuer that was asked for clarification on whether it had included these investees in its scope, clarified that it had not included them in its NFIS scope as it did not have control over them and added that it had not identified relevant non-financial aspects in the investees, which it would explain in future NFIS.

- Explain whether or not there have been **changes in the criteria** used to determine the scope of the NFIS with respect to the previous year.

Often, it was not expressly indicated in the general section on the scope, whether or not there were changes in the scope of the NFIS, although sometimes it could be deduced from the whole document. In other cases it was not clear what the change consisted of.

Sometimes the exceptions are different in the current year and in the comparative one, which makes comparability difficult, so it is recommended that the restatement of the comparative data be evaluated as far as possible, or that qualitative explanations be given that allow the evolution of the KPIs to be properly understood.

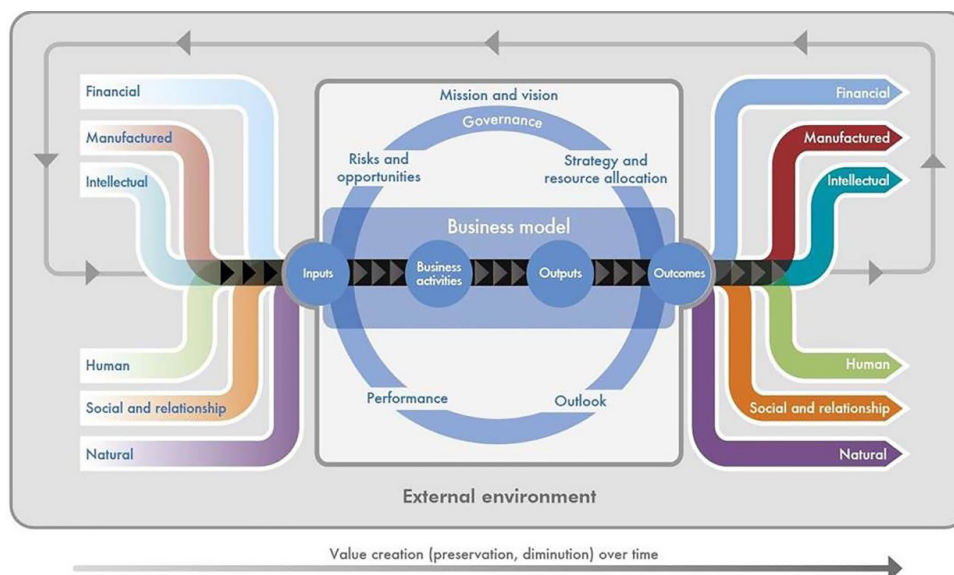
- On the possible extension of the scope of the NFIS to **other participants in the value chain**, such as supply and sales chains, see the section on “Business model. Participation in the value chain” in this chapter.

Business model. Participation in the value chain

One of the CNMV's enforcement priorities in the 2021 NFIS related to disclosures on business models and, in particular, those related to the description of the group's activity and the different phases of their value chain, explaining which ones the

group participates in and which ones third parties or stakeholders significantly participate in, as a starting point for understanding the shared value creation process and the group's risks with respect to non-financial matters. As indicated in Chapter V, ESMA takes up this priority to a certain extent in its review of the 2022 NFIS as part of its reporting reporting scope priority.

The value creation process



Source: IIRC.⁸⁵

All the entities in the substantive sample describe, to a greater or lesser extent, their business model in their 2021 NFIS, although there is room for improvement in its description and its relationship with non-financial issues. The disclosure of the business model is useful as a means of putting the rest of the NFIS information into context.

In relation to the 2021 NFIS, requests for information were issued to four issuers and recommendations were made to 14 (in 2020⁸⁶ requests were sent to seven and recommendations to nine) mainly in relation to:

Participation in the value chain:

- The description of the group's activity and the different phases of the value chain, the role of the issuer in each of them and, in particular, its **supply and sales chains subcontracted to third parties** (among others: suppliers, subcontractors, distributors, franchises), as well as the material non-financial risks associated with them and **how they manage these risks** through due diligence policies and procedures.

85 <https://www.integratedreporting.org/wp-content/uploads/2013/12/13-12-08-THE-INTERNATIONAL-IR-FRAMEWORK-2-1.pdf>

86 The description of the business model was an ESMA enforcement priority for the 2020 NFIS, including the definition of value creation.

- Provide information about the **results** of policies for managing non-financial risks in supply and sales chains, among other means, through **specific KPIs** (such as supplier audits), including comparisons, explaining their evolution and relating them to the objectives set, if any.
- State whether they have evaluated the advisability and possibility of **extending the scope of some group KPIs** to the supply and sales chains, if significant, providing at least qualitative information. Include clear information about this if they have done so.

The description of the group's activity, the various significant phases of the **value chain**, the participants in each of them and their corresponding role, was insufficient or incomplete in approximately 40% of the substantive sample.

Although it is not always found in a specific section of the NFIS, it is often deduced in part from reading the annual financial report and the NFIS, with the information sometimes being scattered over different locations. It is very useful if it is explained in a unified manner in the NFIS or if it is properly referenced.

In this regard, in the case of some issuers, a significant part of the value creation process is in the hands of third parties to whom it is subcontracted and the nature and relevance of the group's suppliers and subcontractors is not always clearly explained. For example, there are entities that subcontract all or part of the manufacturing of the products they sell or the services they provide (common in the textile sector or in construction and project companies) and others for which the sales chain is largely in the hands of third parties (common in supermarket chains or clothing retailers that sell through franchises).

In some cases it is explained that these are integrated models in which the issuer participates in all phases of the chain and apparently there should be no involvement of third parties, but in practice this is not always the case.

Around one third of the substantive sample does not include clear or sufficient information on the **non-financial risks** associated with the participation of third parties in the value chain and should expand the information on their **policies and procedures** for managing them.

It is recommended that they be more specific in the description of these risks considering the particular circumstances of the Group and explain in greater detail in which activities and countries where they operate they are most significant.

Regarding the management of these risks, some issuers indicate that they extend their sustainability commitments to third parties (suppliers, franchisees...) and that they include ESG criteria in their purchasing policy, but it is not always explained at what level, nor the procedures used to do so. The procedures referred to by the issuers, in the NFIS or in the responses to the requests for information include: the inclusion of clauses in orders and contracts related to adherence to their policies, their code of ethics or certain frameworks, the incorporation of non-financial criteria in the selection and

approval processes of suppliers, avoiding the contracting of those that have committed breaches (legal, fiscal, human rights...) in a certain period, request for ESG certifications, internal and external supervision and evaluation processes from the point of view of sustainability, the existence of supplier codes of conduct in which the relationship with them is regulated, permanent contact through work sessions and communication channels, etc.

It should be noted that Law 11/2018 requires the disclosure, in relation to “Subcontracting and suppliers”, of the inclusion in the purchasing policy of social, gender equality and environmental issues; of the consideration in relations with suppliers and subcontractors of their social and environmental responsibility and of the systems of supervision and audits and their results.

On the results of the policies applied, in general, issuers do not provide many **specific KPIs** related to the supply and sales chain. The most common is the number of audits, in line with legal requirements but the disclosures are often not detailed enough. In this regard, for example, there is not always segmentation by type of audit (external or internal), by third party participant in the value chain (suppliers, franchisees...), by non-financial aspect audited (food quality, human and labour rights, money laundering, environmental...), or the percentage they cover is not indicated. In general, although the number of audits is provided, the information on their results and the corrective measures applied is usually very general (indicating, for example, that no significant deficiencies have been detected, with no further explanation).

Some entities provide other KPIs such as the number of suppliers, the percentage they represent of the volume of purchases and different classifications of these (% approved with ESG criteria, % of local suppliers...).

As for **extending the scope of KPIs used in NFIS** to include the supply and sales chain, as described in section on reporting scope for associates and joint ventures, one of the clearest cases is that of indirect Scope 3 GHG emissions. As discussed in the carbon footprint section of Chapter IV, entities should at least list all the categories of activities in their chain, upstream and downstream, carried out by third parties that generate significant emissions, since in many cases these emissions are the most significant, for instance in the case of entities that subcontract the manufacture of the products they sell.

Other data from third parties may also be provided, such as the number of employees of subcontractors and franchises or the number of accidents suffered by these employees. In some sectors and entities the proportion of subcontracted personnel is very high (for example, in certain project or construction companies).

As discussed in the section on the whistleblowing channel in this chapter, in terms of human and labour rights, information on complaints or claims relating to the work of subcontractors is relevant. It is considered appropriate for them to be provided separately so that they are clearly identified by users. If quantitative information is not available, it is recommended to include qualitative information as a minimum.

As in the KPIs of other areas, in general entities should complete the explanations on their evolution.

In their responses, the issuers to which requests had been sent provided additional information on the matters for which requests had been made, although they must continue to expand their disclosures on the results obtained through KPIs.

In conclusion, it is proposed that entities seek to provide more information on the results of their supply and sales chain risk management through both qualitative explanations and additional KPIs (supplier contact statistics, complaint mechanisms and claims from suppliers or customers in relation to the activities carried out by the suppliers...).

Other aspects related to the business model:

- Non-financial risks of the issuer.
- Expanding the information on how the group generates value for the various stakeholders (shareholders and others).
- The lack of quantitative disclosure of sustainability objectives, their scope and the deadlines set to meet them, as well as information to assess the degree of attainment of the objectives of previous years.
- More information about the business environment and the facilities where they carry out their activity.
- Explaining the adjustments made to the business model as a result of significant changes that have arisen.
- It is recommended that the business model be presented by means of schematic illustrations that facilitate users' understanding.

An entity's business model can affect sustainability issues and vice versa. Issuers must explain the relationship in both directions from the perspective of double materiality (see the section on materiality).

Several companies in the selected sample need to improve their description of different aspects of the business model, such as strategy, which in many cases is dealt with only very briefly.

One of the aspects in which disclosures need to be further improved is that relating to their main objectives, with quantitative or at least qualitative data, their scope (whether it is at the group or subsidiary level, etc.), how they plan to meet them taking into account the specific circumstances and, especially, in what time frame, which helps to contextualise results.

Some entities should expand the description of their business environment (competition, regulation, markets in which they operate, types of clients, etc.)

and the trends in the sector, being more specific about the countries where they buy or sell, for example.

Once again, the importance of disclosing the risks and opportunities that non-financial issues represent for the business model, as shown in each of the sections, should be highlighted. In particular, the risks and opportunities relating to climate change are leading to changes in the strategies of some companies. Although in some cases these can be inferred from the NFIS as a whole, the risks and opportunities of each non-financial area should be more explicitly stated.

Issuers are expected to highlight and explain whether there have been material changes to their business model as a result of changes in the environment, particularly in recent years due to COVID-19, the macroeconomic situation or the war in Ukraine (see section on the impact of COVID-19).

Governance of non-financial issues:

- Indicate which bodies are responsible for approving the policies applied to non-financial issues and, in particular, whether they have been approved by the Board of Directors and if so on what date.
- Expand the information on the policies mentioned in the NFIS, their main characteristics and objectives.

In general, issuers refer to their policies relating to non-financial issues (sustainability, responsible purchasing, etc.) but they do not always provide sufficient information about their content or indicate who approved them and on what date. In this regard, it should be noted that the EU Guidelines indicate that entities may explain aspects of the governance of non-financial issues and the supervision, including follow-up and monitoring, exercised over them by the Board of Directors, committees or other internal bodies. Additionally, it should be noted that future ESRS have specific governance rules.

- Provide information from the internal control systems on non-financial information in progress and other projects under development, such as the preparation of a new risk matrix.

In this regard, one of ESMA's main enforcement priorities for 2022 is the implementation and supervision of internal control systems to ensure data quality (see Chapter V).

Additionally, the 2021 *Report on the CNMV's review of annual financial reports and main enforcement priorities for the following financial year*, in Chapter III states, in the context of the analysis of the consistency of the financial information with the information shown in the NFIS, that although the focus is on environmental issues, discrepancies were detected in some of the entities reviewed between the description of the business model in the NFIS and the lines of activity or segments identified in the annual financial report, and it is noted that the need for consistency between the information in the notes to the financial statements and the NFIS is

not confined to environmental issues but applies to both documents as a whole. Two companies were requested to provide further information⁸⁷ for this reason.

Follow-up of other matters subject to requests for information or recommendations

Key performance indicators (KPIs)

Directive 2014/95/EU and Law 11/2018 require entities to include relevant KPIs. Among its non-financial information enforcement priorities, ESMA included recommendations on KPIs for the 2019 financial year, underlining the importance of providing specific information on the entity and of the KPIs being consistent with the indicators used internally to direct its activity and determine senior management's remuneration. Although for the 2020 and 2021 financial years there was no specific point on KPIs, they continue to be crucial for reporting with the desired degree of transparency on the areas established as enforcement priorities in each financial year, such as the impacts of COVID-19 and climate change in the case of 2021.

This is a cross-cutting subject that is addressed across all the major non-financial reporting issues throughout this report, although more specific KPIs are dealt with by issue in each section. This section focuses on the aspects to be improved from a global perspective of the indicators used by the entity.

As a result of the supervision of the NFIS for 2021, in 2022 recommendations were sent to 20 entities regarding the KPIs disclosed in their non-financial information (requests for information were sent to six entities and recommendations to 12 in the previous financial year). The aspects most commonly subject to recommendations were:

- Regarding the evolution of the KPIs, issuers are reminded that the progress achieved in their non-financial policies must be shown by reference to the figures of their performance indicators, preferably including comparative quantitative information, or otherwise explaining why figures from previous periods cannot be provided.

To facilitate understanding, this information must be completed with qualitative explanations of the variations, indicating the context in which they occur, whether or not the data are considered positive, and whether there are concrete forecasts for improvement or specific measures for their management and/or mitigation as the case may be.

As in the previous year, this continues to be one of the most recurring themes in the letters of recommendation sent out.

- Regarding issuers' non-financial objectives, it is recommended to relate them to the most relevant KPIs of non-financial issues, allowing their evolution and

the degree of attainment to be evaluated. In this regard, it is useful to indicate whether intermediate targets have been set for certain objectives and if so the time horizon on which they are expected to be achieved, as well as whether there have been any changes to the initially predetermined objectives and if so why.

- In the KPIs that are most relevant for understanding the entity's performance, it is recommended that a definition of the indicator and the calculation methodology be provided, as well as the sources or origin of the data used, including the scope of application. It is noted that these aspects should be consistent between periods, especially in cases where the KPIs are complex or particularly significant for the entity, failing which any changes that may have occurred between periods must be clearly explained so that the implications can be understood.

The requests for information sent out in 2022 on KPIs referred mainly to indicators relating to social and personnel issues, particularly the wage gap, and to environmental issues, with requests for additional information on GHG emissions and their different scopes being especially frequent.

For future years, it is worth highlighting two aspects as good practices as regards performance indicators. On the one hand, regarding the origin of the data used in the KPIs, transparency is important whenever estimates are used in the calculations; entities should indicate the percentage obtained through estimates, the reasons why reliable data could not be collected, and the estimation method used. Regarding issuers' non-financial objectives, it is recommended that the comparison of the KPIs with the predetermined magnitudes for each objective be complemented with external references or benchmarks, for a better understanding of the achievements in terms of sustainability.

Materiality

Issuers, in general, include explanations of their materiality analysis in their NFIS, but this disclosure should be improved further. Recommendations were sent to 17 issuers and one request for information was made (requests were sent to 11⁸⁸ and recommendations to eight in 2020), mainly due to the following two issues relating to materiality:

- Expressly indicate whether they have taken into account the concept of **double materiality** in their general analysis, and for each of the non-financial issues in particular, and explain how they have done so or why they have not done so. On this subject, recommendations were sent to 18 entities.

As in 2019 and 2020, in the 2021 NFIS of the sample chosen for substantive review it was observed that more than two thirds of issuers still do not make explicit reference to the double materiality concept.

⁸⁸ It is worth noting the sending of requests for information on the NFIS for 2020 was basically due to the fact that the materiality analysis and its appropriate disclosure was one of the CNMV's enforcement priorities in that year, emphasising the concept of double materiality.

This double perspective (which underlies Directive 2014/95/UE, the EU Guidelines⁸⁹ and Law 11/2018 and was developed in 2019 in the Climate Supplement)⁹⁰ takes into account not only the impact of non-financial issues on the situation and results of the entity (“outside in” perspective or “financial materiality”), but also the impact of the entity on the environment (“inside out” perspective or “environmental and social materiality” or “impact materiality”) and, therefore, on the different interest groups or stakeholders.

Therefore, in accordance with current regulations, non-financial information must be disclosed if it is significant from either of the two risk perspectives, which are closely related and in some cases overlap. In addition, it must be explained how the analysis is carried out and, in the event that one of the two facets has not been considered, an explanation must be included that justifies it.

In some cases, although it is not made explicit, it seems that this double approach has been taken into account to some extent (from comments (*passim*) found throughout the NFIS, especially on the environment when dealing with climate risks and opportunities, or from the axes of the matrices in which some issuers show the results of their materiality analysis).

In other cases, although they indicate that they have taken the dual approach into account, it is sometimes not clear how they have considered it, especially with regard to the effects of non-financial issues on the financial situation.

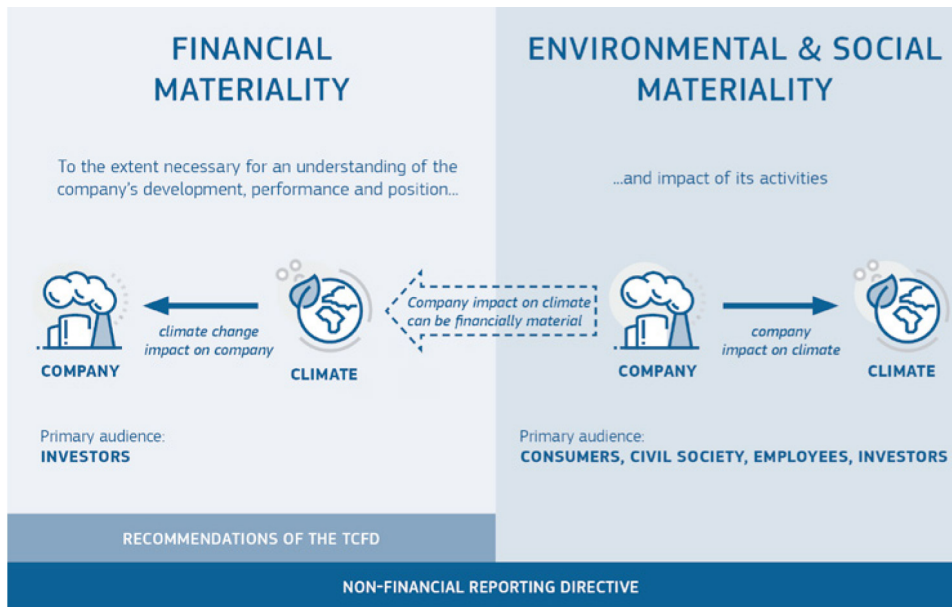
Two of the companies in the sample state that they have updated their analysis in 2021 by introducing the concept of double materiality.

In general, issuers' disclosures continue to be more focused on an “inside out” perspective. It should therefore be noted that the GRI, which is the framework most commonly used in Spain, is more focused on this environmental and social perspective.

In the response to the request, in line with the responses to the 2020 NFIS requests for information, the issuer replied that it will take into account the concept of double materiality in future NFIS, in order to adequately report it when the ESRS enter into force. Although the principle of double materiality is included and developed in the ESRS, applicable from 2024 (see Chapter II on regulations), it already underlies the regulations currently in force and all issuers should incorporate it into their analysis.

89 Directive 2014/95/EU states that subject companies are obliged to disclose information on non-financial matters, to the extent that said information is necessary to understand the development, performance and position of the company [...] and adds that the companies are also required to disclose information on non-financial matters, to the extent that such information is necessary to understand the impact of their activities. In this regard, the EU Guidelines, in section 4.6 (a) regarding environmental issues, state that “A company is expected to disclose relevant information on the actual and potential impacts of its operations on the environment, and on how current and foreseeable environmental matters may affect the company's development, performance or position”.

90 A table representing double materiality, extracted from the Climate Supplement, is attached later in this report.



* Financial materiality is used here in the broad sense of affecting the value of the company, not just in the sense of affecting financial measures recognised in the financial statements.

Source: Climate Supplement.

- Explain the **time horizon** used to assess which non-financial information is material, which must also address the long-term effects. On this subject, recommendations were made to 13 entities.

In more than half of the selected sample, issuers still do not mention the time horizon considered in the evaluation of the risks and opportunities related to non-financial issues and, therefore, to assess which non-financial information is material. In the rest of the sample, the information is, in general, incomplete. In this regard, although some entities refer to the medium and long term, they often do not specify the time horizon.

It should be noted that one of the entities to which recommendations were sent had already been given a recommendation on this issue in a previous year.

It is recommended that when assessing whether certain non-financial information is significant companies should take into account a longer time horizon than that traditionally used for financial information and should provide an analysis of short, medium and long term in their NFIS. In this regard, companies should not conclude that a non-financial matter is not significant just because the related risks are considered long term.

In particular, as regards the aforementioned “outside in” approach as per the Climate Supplement, financial significance refers to how the value of the company is, or could be, affected by non-financial aspects in a broad sense, not just how it affects figures in the current financial statements. Entities provide little information about this aspect and should explain what effects they consider there will be on their financial situation and future results at the horizon they are using, which must be long term. It should also include matters that, while unlikely to occur, if they were to materialise, would

significantly affect the financial statements or the value of the company, including intangible factors such as reputation (e.g. a case of corruption).

Apart from these two aspects of materiality in which there is considerable room for improvement in issuers' NFIS, other aspects relating to materiality that were also the subject of recommendations were as follows:

- Indicate the **date of the last update** of the materiality analysis and, if it was not carried out in the year, an explanation as to why this was not considered necessary.

Materiality analyses must be periodically updated and, if they are not, reasons must be provided as to why such an update is not considered necessary. In any case, the date on which the last review was carried out must be explicitly indicated.

In the NFIS of about two thirds of the selected sample, it was stated or implied that they updated their analysis in the 2021 financial year and, of the rest, half explained the reasons for not having updated it and the other half did not report the date on which the analysis was last performed.

Some issuers explain in their NFIS that they update the analysis annually and others say they do so less frequently, for example every two years, maintaining a dialogue with stakeholders to identify their new demands and consulting sector studies, in addition to observing the evolution of internal priorities.

The update of the analysis must take into account environmental and sector trends. As in 2020 due to the pandemic and also in 2021 for other reasons, such as the current macroeconomic environment and the war in Ukraine, it is likely that the expectations of some stakeholders have changed.

In the event that it has not been updated in the current year, even if it is adequately justified, the results of the materiality analysis must be included again, referencing, if necessary, the NFIS of the year in which the analysis is explained in more detail.

- Expand the explanations of the **criteria and methodology** used and of the **results** of the analysis, indicating, among other matters:
 - i) The **internal and external factors** taken into account, their **sources** and how sector issues affect the analysis.
 - ii) Who its main **stakeholders** are and the main channels of communication with each of them, relating the material aspects with their key concerns.
 - iii) A clear identification of the **results** of the materiality analysis, indicating which non-financial aspects are significant and which are not, explaining the reasons and conclusions.
 - iv) For aspects identified as significant, establish their relative **order of priority**, considering the severity and probability of the consequences of each

one and in the case of non-significant aspects, especially in matters required by law, make it clear how they have reached that conclusion.

- v) Whether they have considered the significant aspects of **both their direct and indirect activities** through their business relationships with the environment (see the section entitled “Business model. Participation in the value chain”).

The explanations of how the materiality analysis is carried out and its results must be clear and adapted to the particularities of the activity and reality of the issuer. Explanations of a general nature must be avoided.

All the entities in the sample selected, except one, include information on the **criteria and methodology** used in their materiality analyses, although in many cases they should expand their explanations, which are often generic.

Some entities state that their analyses are based on different methodologies, such as those used by the GRI, SASB or AA1000.

As mentioned in the section on the business model in general, and as reflected in the comments on the different non-financial matters in particular, it is very important for the entity properly to disclose the main risks related to non-financial matters and to provide appropriate information on the aspects in relation to which serious risks are most likely to materialise or have already materialised.

Sources used include sector studies, news and publications on matters that are relevant to their sector, such as the GRI Sustainability Topics for Sectors, sector regulations, sustainability reports published by their competitors and requirements of the sustainability indices.

Some issuers do not say whether they have taken into account how sector issues affect their analysis. In this respect it is considered that there are likely to be significant issues in common with other companies in the sector and that it is important to indicate these.

For **stakeholders**, around one third of the substantive sample need to expand and complete their disclosures. Some issuers clearly identify their stakeholders but do not explain their needs or expectations or the impacts that affect them, how they generate value for them, whether they have been taken into account in the group’s operational and strategic plans, or how they have been taken into account in its materiality analysis.

The EU Guidelines (3.1) state that having a thorough understanding of the key elements of its value chain helps a company to determine what the key issues are and to assess what makes information material.

It is common for issuers to indicate the main channels of communication with their stakeholders. They often obtain the opinion of internal stakeholders (mainly management employees) and external stakeholders (such as investors) through surveys and interviews about their needs and expectations and their degree of satisfaction.

As regards the **result of the materiality analysis**, most of the companies in the sample identified the material issues, although around a quarter of them should expand the information provided and the explanations of their conclusions.

In some cases entities list significant non-financial matters and rank their importance using a chart or matrix. However, in other cases, only a list of issues is included that is not always prioritised. It is considered a good practice to include a figure or matrix to represent the identification and prioritisation of material issues, but this should complement, not replace, the detailed qualitative explanations of the analysis performed. The reasons why material issues have been identified as material are expected to be clearly explained.

Inconsistencies between the results of the materiality analysis and the rest of the information provided in the NFIS should be avoided. In some cases, insufficient information is provided on topics identified as material, for example, the selection of suppliers or subcontractors.

In conclusion, there is still significant room for improvement in the materiality analysis of non-financial issues and their proper disclosure, particularly in aspects of double materiality and the time horizon. The assessment and definition of both materiality approaches is the cornerstone for establishing which information is relevant for investors and other stakeholders, and prevents the omission of material information or the inclusion of irrelevant information. Neither approach is isolated and the issuer's impact on its social and environmental setting and its stakeholders will eventually, to some extent, have an impact on the entity's financial position and performance and value creation. More and better information on both approaches will make it easier to understand these interactions or cross-effects.

Characteristics and presentation of NFIS information

Recommendations were sent to 14 issuers, which mainly include the following issues:

- The topics for improving the tables already mentioned in the formal review section of this chapter.
- It is recommended that the relevant information on non-financial matters included in the annual financial report or in other additional documents to the NFIS be properly referenced to the NFIS. To avoid duplication of content, it would be desirable to evaluate the use of references in the case of information that is repeated in the documents of the same annual financial report (notes to the financial statements, management report and NFIS).
- Some issuers, in addition to publishing the NFIS as required by law, publish a sustainability report separately on their website, usually later, often including additional information to that included in the NFIS or even accompanied by other additional verification reports. Issuers were reminded of the need to ensure that the mandatory NFIS contains all the information necessary for a proper understanding of the business and the situation, performance and development of the issuer and its group, as well as the impact of its activity on

non-financial matters, and that material omissions cannot be justified by saying that the corresponding information has been included in another, voluntary, report. In any case, consistency between the two reports must be ensured to avoid causing confusion among investors and other users of the information.

- In cases in which the certifications issued to the group are reported (e.g. in relation to environmental management systems, health and safety management, the prevention of occupational risks, information security, criminal compliance systems or anti-bribery management systems), it is recommended that issuers report their scope of application and the period for which they are valid.

Whistleblowing channel

One of the main instruments used by issuers to find out about breaches in the areas of personnel, human rights and corruption are the ethics, complaints or whistleblowing channels.

While certain improvements have been observed in the description of these channels, partly influenced by ongoing regulatory developments,⁹¹ a request for information was sent to one issuer and recommendations to nine, basically in relation to issues of human rights and corruption and bribery, as discussed in the respective sections. They mainly referred to the following aspects:

- i) Improve information about **characteristics** of the whistleblowing channels, for example by identifying the stakeholders that can use them (employees, clients, suppliers, local communities, etc.), and facilitating or expanding the information on the **management procedures** from the entry of communications, their classification as a reported breach until their resolution, clarifying how communications are managed based on their origin and content.

All the issuers in the selected sample have a whistleblowing channel or similar process in place, however, although progress is being observed, there is still room for improvement.

It is important to provide information on the characteristics of the channel, or each of the channels that are available. In this regard, approximately one third of the selected sample did not report the stakeholders that can use it or did so inadequately. Additionally, it is advisable to provide other details such as its scope (all countries, dependants, etc.), availability of access (web, intranet, email, orally, etc.), whether they have different channels depending on the users, confidentiality, the type of reports that can be made and whether they are outsourced.

91 On 22 December 2022, the Plenary of the Congress of Deputies (Spain's lower house of parliament) approved the Draft Law regulating the protection of persons who report breaches of regulations including those on the fight against corruption, thus transposing the Whistleblowing Directive. This Bill will be submitted to parliamentary processing before its final approval and subsequent publication in the *BOE* (Official State Gazette), so it could undergo amendments before its final approval.

Regarding the management of these channels, it is advisable to indicate, among other aspects, whether there is a person in charge of the channel and the bodies involved in the management and resolution of reports, indicating how they are processed depending on the type of practice that is reported, the criteria and procedures that are applied to analyse and assess the communications received and, where appropriate, dismiss them or not classify them as a reported breach, or how conflicts of interest are managed.

It should indicate what the issuers consider as reported breaches for these purposes. For example, in some cases they indicate that they only consider breaches of the provisions of the codes of ethics or conduct, but without making it clear whether there are non-financial aspects that are not covered in the aforementioned codes, while others only report judicial rulings as breaches, or fail to mention reports relating to labour exploitation or harassment.

- ii) Facilitate or improve explanations about the results of this channel. With regard to the KPI for the number of reports received, in addition to including comparisons of previous years and explanations of progress, issuers should:
- Classify reports according to their nature and subject, and by other relevant segmentation criteria (for example, geographical).
 - Distinguish the complaints to the entity itself (received from the employees themselves and from any third party) from those that are addressed to suppliers, subcontractors or other significant participants in the value chain.
 - In addition to providing the number of reports received, also indicate those resolved and open at closing, reporting on their evolution or resolution and the changes carried out to prevent them from occurring again in the future (for example, in due diligence procedures).

Most of the issuers indicated the number of reports they received, although half of the selected sample indicated that they had not received any in 2021. Additionally, the reports mentioned did not always cover all areas (human rights, corruption and bribery, personnel, etc.) or were not broken down by nature. A disclosure should be provided in which, among other categories, those related to corruption are distinguished from those of violation of human rights and other breaches (of personnel or other areas), detailing the main concepts considered in each one (working conditions, harassment, fraud and corruption, discrimination and equality, right to join a union, etc.). In line with the “participation in the value chain” priority, it is recommended to distinguish those that correspond to significant participants in the value chain. It is also useful to provide a disclosure by country, bearing in mind that the risks tend to be different in different geographical areas.

When material, it would be desirable to indicate the total number of reports received from the different stakeholders, distinguishing which of them are classified as reports of breaches and, of these, those that were admitted for processing, breaking down those resolved (and how, for example, through the adoption of disciplinary measures, without any action being necessary, etc.) and those that remain open. The information should also be expanded, where

appropriate, on the significant impacts deriving from the breaches detected (economic, criminal, reputational, etc.).

- iii) Issuers should not confine themselves to disclosing only the reports received through the whistleblowing channel. In many cases there are non-financial risks that have materialised (infringements or presumed infringements) that are communicated and resolved outside the whistleblowing channel, either internally in the entities, through the courts or other procedures, which should also be reported in the NFIS, especially if they had a significant impact in the year (also explaining the actions taken and the measures adopted or planned to prevent them from happening again in the future).

Additionally, complaints or other communications received from international organisations or other external channels such as the National Contact Point (NCP) of the OECD Guidelines for Multinational Enterprises or the Business & Human Rights Resource Centre (BHRRC) should be disclosed.⁹²

More than half of the selected sample did not indicate whether risks (cases of corruption and bribery, violations of human rights, etc.) had materialised in addition to those reported through the whistleblowing channel with a significant impact in the financial year. Those that do provide information, in many cases refer to legal procedures, which are not always included in the NFIS, sometimes only in the notes to the financial statements, and again issuers are reminded of the importance of consistency between financial and non-financial information. Examples of KPIs included in the EU Guidelines include the number of pending or concluded legal actions, including but not limited to those concerning anti-competitive behaviour.

As indicated, half of the selected sample stated that they had not received any complaints in 2021 even though in some cases they corresponded to highly personnel-intensive sectors or mentioned the existence of labour disputes.

In conclusion, it is recommended that information be provided in the NFIS on breaches resolved outside the whistleblowing channel and their impacts, which will contribute to making the data provided more robust.

Social and employee matters

In this area, requests for additional information were sent to two issuers and recommendations were made to 16 (six and 11 issuers, respectively, in the previous year) out of the substantive sample.

In its enforcement priorities for previous years (2020 and 2019), ESMA highlighted the importance of improving the disclosures on social and employment issues,

92 One of the recommendations included in the report on compliance with the minimum safeguards of the Taxonomy Regulation published by the EU Platform on Sustainable Finance is that the lack of collaboration with a National Contact Point (NCP) and an assessment of non-compliance with OECD guidelines by an OECD NCP or non-response to allegations by the Business and Human Rights Resource Centre should be considered a sign of non-compliance.

paying special attention to those related to: inclusion and diversity, and health and safety, especially in the context of the COVID-19 pandemic.

In the enforcement priority for the 2021 NFIS relating to impacts deriving from COVID-19, ESMA includes the provision of information how they foresee the development of their business in response to changing conditions deriving from the pandemic, and this in turn includes some aspects relating to the management and organisation of employees' working conditions, which can be consulted in the section "Impacts deriving from COVID-19" in this chapter.

It must be taken into account that this issue is closely related to others included in Law 11/2018: Information on respect for human rights, Information on the fight against corruption and bribery, Subcontracting and suppliers (as it relates to workers in the value chain) and Company commitments to sustainable development (local communities), for which reason some issuers include them in the same section in their NFIS. This is consistent with the future ESRS thematic standards that include these aspects under the "social" umbrella, except those relating to corruption and bribery. In this report, these issues appear in specific sections of this chapter, which basically refer to the entity's own workers.

Wage gap and other KPIs related to employees

In relation to equality, inclusion and diversity, the information requested, and recommendations made on the KPIs for the wage gap and on average remuneration stand out, with respect to which two issuers were sent requests for information and recommendations were sent to 12 companies (five and six in 2020, respectively).

The main requests for information and recommendations, which are extensible to the rest of the KPIs for employees, were:

- An adequate segmentation of the wage gap is recommended. Taking into account the characteristics of the issuer, it is desirable that this be provided for each professional category, differentiating by location with significant operations. Referring back to the indications in the "Formal review" section, GRI 405-2 asks for the wage gap to be broken down in these terms, so the issuers that stated that they followed it in the tables were asked to provide it, including the definition used for "location with significant operations" avoiding the inclusion in the reference table of indicators that are not applied or, where appropriate, indicating that they are not fully applied.

Sometimes it was recommended to expand the professional categories detailed, which must be adequate and derive from the organisation's own human resources system, explaining, where appropriate, any difference with those presented in the various published documents (annual accounts, annual report on corporate governance, etc.).

All issuers subject to substantive review provided information on the **wage gap** except one, which was requested to provide it. Excluding this issuer, 90% of the selected sample provided the wage gap with some type of segmentation; more than 90% did so by professional category or classification, and of these, less than half also made a breakdown by age, geography, dependants,

or some combination of these. One entity from the selected sample provided information only in relation to the company or group, without any segmentation, and, conversely, two provided information with some segmentation criteria but not for the group.

Although there has been an improvement in this sense, it should be noted once again that it is desirable that the wage gap be disclosed at least by professional category and country, which improves the understanding of the objective pursued, which is to show the actions of the entity to promote diversity and eliminate gender bias, since at the company or group level it sometimes leads to erroneous interpretations. It is desirable that the professional categories be adequately explained, taking into account that they are not always homogeneous among the different issuers.

Around 70% of the companies in the selected sample made reference to GRI 405-2, 2016. However, some did not provide all the details required for this GRI or explain that they had partially applied the standard.

- Provide details of the items taken into account in the average remuneration disclosures (fixed, variable and with or without supplements) and in the calculation of the wage gap. It is recommended that issuers provide not only the wage gap for fixed remuneration but also consider remuneration received for all items (which must be detailed) or at least provide an indication of the remuneration not taken into account as a proportion of the total, as some recognised frameworks recommend.
- Indicate or expand the explanation of the methodology used to calculate the wage gap, indicating whether it is weighted by different parameters (which should be described), and, if use was not made of a calculation period consistent with that of the annual accounts, justifying the reasons for this. Additional clarifications were also requested in this regard about other KPIs such as accident frequency and severity rates and absenteeism.
- In cases where the methodology or the remuneration taken into account in the calculation changes with respect to the previous year, consideration should be given to restating the comparison or, at least, providing explanations that allow the changes to be understood.

Two of the issuers in the selected sample did not indicate the formula used to calculate the gap and a third of those that provided it gave incomplete information. As in the previous year, large differences were observed in the calculation formula used, partly explained by the lack of specific regulations: some companies use the median remuneration and others use the average figures in their calculations, and sometimes it is weighted by different parameters that are not always explained and quantified.

Furthermore, two of the companies in the selected sample did not provide details of the remuneration items used to calculate the wage gap. Of those that did so, close to half considered fixed and variable remuneration and other supplements, although it is not always clear what these supplements consisted of. Approximately 20% included only fixed remuneration and in the rest of the cases they also considered variable remuneration.

In general, the issuers that did not refer to GRI 405-2, 2016, did not indicate a framework, or it was not clear, or they made reference to an internal framework, which is not considered appropriate, as indicated in the “Formal review” section.

Some issuers provided the wage gap calculated in various ways, for example, with and without bonus, by median and mean salary, by category average or by standard positions.

- Include explanations to facilitate the understanding of the different data provided for the same year. Sometimes the salary gap was not consistent in relation to the company and broken down by professional category or it was not clear what was included in a particular category. Additionally, explanations were requested of the evolution experienced with respect to the previous year in the relevant cases, including the context in which they occurred, whether or not the data were considered positive, whether there were specific forecasts for improvement, and a description of the specific plans or measures adopted or expected to be adopted for its management and/or mitigation.

On this point, in line with ESMA's enforcement priority on climate set for the 2022 NFIS, if objectives were set in previous years, it is important that they be broken down (preferably, when applicable, quantitatively with respect to a KPI, indicating the base year on which they are calculated) with an explanation of the degree of achievement in the year and the measures adopted to that end. In addition, issuers should detail how their compliance monitoring is carried out, the frequency with which said supervision takes place and the management bodies or departments to which said information is reported, explaining any changes that occur in the objectives set. These recommendations can be extended to all personnel KPIs relevant to the issuer, as already mentioned.

- Although most issuers included comparative data on almost all KPIs related to personnel issues, there are still cases where it was not provided, for example, regarding the wage gap.

Nearly one third of the companies in the selected sample did not provide comparative data on the wage gap (or did so but not for all segments) or an explanation of its trend. Although the rest did provide comparative figures, only 25% provided some explanation of the figure obtained and its evolution, and none related it to pre-defined objectives.

Slightly less than two thirds of the issuers in the selected sample did not include an explanation of the plans and measures to reduce it, in cases where the gap was significant. Some issuers in their response justified the gap data broken down in their NFIS by reference to the seniority of male employees being greater, especially in the managerial categories.

Additionally, some issuers provided other indicators that allow for a better understanding of salary inequalities as long as they are accompanied by the pertinent explanations, such as the relationship between the fixed or total annual remuneration of the highest paid person and the median fixed or total annual remuneration of all the workforce except the best paid person,

the ratio between the percentage increase in the fixed remuneration of the best paid person and that of the median fixed remuneration of the entire workforce except the best paid person or the ratio of the standard entry level salary to the local minimum wage.

Regarding the rest of the KPIs related to personnel, 90% of the issuers subject to substantive review provided comparative data for all or most of the KPIs, however, 60% did not provide, when necessary, a narrative explanation of their evolution with respect to the previous year or only did so in some cases.

- Returning to the indications under CNMV's enforcement priority on reporting scope, clarification was requested about inconsistencies in the explanations about the scope considered in the calculation of the wage gap and, in the case of employees or companies excluded, an indication of the reason for the exclusions (with only exclusions for reasons of materiality being justifiable), together with a measure of the significance of what is excluded in each year and proof or assurance that the exclusion does not impede the objective pursued by the disclosure of the wage gap.

In this regard, the importance of the aspects indicated in the section entitled "Reporting scope" in this chapter in regard to KPIs for employees stands out.

In some cases, it was observed that the total population was not considered to calculate the wage gap, ignoring the CEO, senior management or some countries, or considering only permanent workers. In these cases, as explained in previous sections, a proper explanation should be provided of the information that has been excluded, where relevant.

Other aspects of this issue

In relation to other issues that the law includes in social and employee matters, it was recommended that issuers be more specific in their disclosure of the risks related to this issue considering the activity and the countries in which they work, broadening their description and facilitating a perspective on these risks in the short, medium and long term, as recommended by the EU Guidelines. Additionally, it would be desirable for it to be made explicit if any risk in this area has materialised during the year.

Although most of the issuers subject to substantive review mentioned some aspect of the risks related to this matter, explicitly or implicitly, sometimes the descriptions were "boilerplate" or incomplete without detailing the specific circumstances of the issuer or the activities or countries in which they operate. In addition, 70% of the selected sample does not indicate whether risks with a significant impact have materialised in the year.

Most issuers subject to substantive review provided information on their due diligence policies and procedures to identify, assess, prevent, and mitigate these risks. Sometimes it is not clear whether the policies or procedures apply to the entire group or only some subsidiaries and it is still necessary to specify the measures adopted and explain the results obtained with respect to the objectives set, avoiding generic explanations. In nearly two thirds of the selected sample, it was not

indicated whether these employment policies had been approved by the Board of Directors.

It would be useful if the scope of the disclosures provided in this area were extended to employees of the supply chain and franchises, in those issuers in which it is relevant due to their activity (not only in the KPIs provided but also how the issues of inclusion and diversity, health and safety, etc. related to these employees have been addressed in their policies). In this regard, the importance of the aspects indicated in the section "Participation in the value chain" is highlighted.

Respect for human rights

This issue is becoming increasingly relevant, since human rights, including those related to employment, is one of the two major areas on which the future CSDD will focus,⁹³ extending it, in addition, to the entire supply chain.

In recent years, the CNMV has recommended that issuers be more specific and detailed in relation to the measures they employ to fight against corruption and bribery and in the area of human rights, two issues where information is not properly defined in the NFIS of some entities.

As a result of the review of the 2021 NFIS, a request for information was sent to one issuer,⁹⁴ and recommendations to 11 entities (recommendations to seven issuers in 2020). The aspects subject to requests for information and recommendations related to the whistleblowing channel for human rights, corruption and bribery, and employees are described in a previous specific section on the "Whistleblowing channel" of this chapter, as it is a common instrument used by issuers to find out about violations in these areas. The main aspects for which information was requested and recommendations were sent to issuers were:

- Regarding the risks of violation of human rights:
 - i) Expand the information on risk assessment in this area beyond declaring the entity's commitment with respect for human rights or that they are protected by compliance with the local legislation of the countries in which they are present.

Depending on the circumstances of each issuer, it was recommended that they be more specific, paying special attention to the sectors, activities and countries that present a particular risk of causing adverse impacts on human rights. This evaluation must consider not only the management of the issuer's employees but also that of third parties (suppliers, subcontractors, local communities, franchises, etc.) and in both directions, so

⁹³ Additionally, in parallel, the Spanish Ministry of Social Affairs and the 2030 Agenda is working on the Draft Law for the protection of human rights, sustainability and due diligence in transnational business activities.

⁹⁴ Additionally, one other issuer was sent a requirement as a result of a letter received from third parties (see section "Other actions of 2022: letters from third parties relating to the NFIS").

that the issuer's intervention will not imply a violation of human rights through its own activities, or through direct mediation of its operations, or through the sale of its products or services provided, nor in the third parties with which it works or is related.

- ii) Some entities stated that an assessment of the risks to human rights was carried out in several countries under certain criteria or, that it is analysed, if the country or region has a level of risk that requires the adoption of special measures on the associated potential impacts, but did not provide sufficient disclosures of the results of these analyses or of the impacts that could derive from these risks or an evaluation of the probability of their occurrence. In this regard, it was recommended that they explain which countries or activities were evaluated and the results of these analyses, from the perspective of double materiality, identifying at least those with the highest risk.

15% of the issuers subject to substantive review did not indicate what the risks were in this area and in 25% of the cases they were not clearly identified. Entities should be explicit about what their main specific risks are, although they can be partially deduced from reading the report or inferred from the type of activity in which they are engaged. In addition, the risks associated with other links in the value chain must be made clearer.

- Expand the description of the policies and due diligence procedures applied to identify, assess, prevent and mitigate risks, and the specific measures adopted (prevention, mitigation, verification and control, etc.) In particular, different aspects related to the whistleblowing channel were requested, which are described in the section “Whistleblowing channel” in this chapter.

Most of the entities subject to substantive review provided information on policies and procedures to a greater or lesser extent. Sometimes it was observed that they were in the process of implementing procedures, their scope was not clear or the descriptions were not very specific. It is recommended that it be indicated whether due diligence in the area of human rights and anti-corruption extends to suppliers, partners and distributors.

Half of the selected sample did not report whether or not the human rights policies had been approved by the Board of Directors, individually or as part of other broader policies, and around one third had the same omission for policies on corruption and bribery (see next section).

- Provide more information on the results of the policies adopted to measure the entity's performance and level of compliance with the established objectives, which should also be disclosed. To do this, in some cases it was recommended to include comparative figures in the KPIs provided (such as training hours, or known cases of human rights violations) and in others that did not do so or were not considered sufficient, provide additional KPIs (such as the results of the evaluations carried out), and qualitative explanations about them and their evolution.

Although most issuers include some KPIs related to this area and corruption and bribery, in general, as regards complaints received (see the section on the Whistleblowing channel in this chapter) it is recommended to provide more performance indicators. Two of the entities subject to substantive review did not include KPIs for these two issues. Of those that did provide them, approximately half did not provide comparative data and almost two thirds did not include explanations of their evolution.

Some examples of KPIs that are provided or recommended to be provided are: i) the hours of employee training on these subjects and the number of employees who have received such training, separated from other training; ii) the number of reports or complaints received and resolved; iii) the number of legal actions pending or concluded; iv) the number and result of internal audits or evaluations (explaining their scope) and of audits of suppliers and subcontractors on these issues; v) the result of the evaluations or external reviews of the due diligence procedures in these matters; and vi) the sanctions imposed. It is recommended that in cases where entities include qualitative explanations of evolution, for example, the decrease in labour conflict in a particular country, to the extent possible the KPI used to measure it be provided.

- Specify whether any significant risk has materialised in this area during the year and, in the cases that were indicated to have materialised, it was recommended to quantify them in order to be able to assess their significance, providing a description of the measures adopted in the NFIS to resolve them, noting whether changes have been made to due diligence procedures or whether other measures have been considered to prevent them from occurring again.

If, due to these events, any liability could arise for the issuer, their inclusion in the corresponding notes of the consolidated report on contingent assets and liabilities should be considered.

- In relation to the consistency between financial and non-financial information, in several cases it was observed that, in the notes to the financial statements relating to provisions and contingencies, labour demands or claims were broken down in certain countries on which no information was included in the NFIS. In this regard, it was requested that the explanation of the nature of these demands and their relationship, if any, with the aspects included in the NFIS be expanded, and it was recommended that they be adequately referenced between the two in the future.
- Provide details of the frameworks they follow or the initiatives they have joined, detail the extent of their adherence, the objectives that have been set and provide data to assess compliance.

In general, companies declared their commitment to respect human rights, and in many cases referred to different recognised frameworks.

Specifically, Law 11/2018 requires information on whether entities promote and comply with the provisions of the fundamental conventions of the ILO relating to respect for the freedom of association and the right to collective

bargaining, the elimination of discrimination in employment and occupation, the elimination of forced or compulsory labour, and the effective abolition of child labour; however some issuers did not provide this information despite indicating that they did so in the table of contents.

Frameworks cited by entities subject to substantive review included the OECD Guidelines on Multinational Enterprises (approximately 30%), the UN Guiding Principles on Business and Human Rights (10%) and the fundamental conventions of the ILO (around 50%), but it was not always clear to what extent they adhere, whether or not they comply, or whether they take account of them in all the countries in which they are present. In some cases, it was observed that they are imprecise about whether their compliance extends to suppliers and subcontractors or they are mentioned only with respect to the supply chain. As indicated in Chapter I on Regulations, these three frameworks are referred to in the Taxonomy Regulations for compliance with minimum social safeguards (regarding human rights, including those of workers, fraud and corruption, taxation and fair competition) necessary to qualify an activity as “aligned” (officially sustainable) starting with the 2022 NFIS.

The fight against corruption and bribery

In relation to these matters, most of the observations indicated in the previous section apply, particularly the observation that in some cases the information on the two issues is not properly differentiated in the NFIS.

As a result of the review of the 2021 NFIS, recommendations were sent to nine issuers (one issuer was sent a request and 11 were sent recommendations in 2020), on the topics already mentioned in the previous section and in the section “Whistle-blowing channel” of this chapter, in particular:

- Improve the explanation of the risk assessment, differentiating by countries (especially those most vulnerable) and detail the conclusions of the analyses carried out (crimes that could be applicable or with respect to which there is a certain risk of commission, in view of the activity that is carried out). In addition, the assessment of their materiality and the reasons why there are considered to be no significant risks in all or part of this area, if such is the case, must be clearly explained.
- Expand the information on due diligence procedures (such as those used to implement the Criminal Risk Prevention and Compliance plans) and the measures adopted against bribery and corruption, the duty of loyalty and conflict of interest, money laundering, and transparency in financial records, as well as the rules to promote fair competition in the markets in which it carries out its activity.
- Provide more information on the results of their policies, providing KPIs related to this issue, together with comparisons of previous years and explanations of progress of the reference policies on said metrics, including, to the extent possible, additional KPIs on the number of reports or complaints.

- Explain the relationship between materialised cases of corruption and bribery (including investigation processes related to alleged anti-competitive practices) broken down in the notes to the financial statements regarding provisions and contingencies and the information included in the NFIS. Once again, the importance of consistency between financial and non-financial information is highlighted.

All the issuers in the sample provided information on this issue to a greater or lesser extent, although part of the sample (approximately 30% of the issuers subject to substantive review) did not indicate what the risks are in this area or they are not specific. It is recommended to break them down in the short, medium and long term and that the detail of the risks be extended to the value chain.

In relation to measures to combat money laundering, some entities state that this is not a material risk for them, without giving a proper explanation of why such a conclusion has been reached.

Comments on policies, procedures and KPIs included under human rights are applicable to this question too. Additionally, it should be noted that:

Some entities state that they have certifications (UNE 19601-2017, UNE 37001, UNE 19602, etc.) in this area, but they do not always specify the date or the group companies they cover.

In regard to the possible impacts that the materialisation of a case of corruption or violation of human rights may have on the company, some entities refer to sanctions or reputational damage.

Entities should provide information not only when the risks materialise, but also when they do not, explaining that no significant risks have materialised to ensure clarity. Some entities report the complaints they have received or the investigations carried out, but it is important that they specify whether or not these contain any material issues.

If risks materialise, they must provide information to explain how they are material and explain the actions carried out, including internal audit or forensic activities, and the changes made to prevent them from recurring in the future. In this regard, the statement published by the CNMV on 25 November 2019, triggered by certain recent cases of alleged irregular practices that affected some listed companies,⁹⁵ should be noted here.

Law 11/2018 covers four major areas on this issue: company commitments to sustainable development, subcontracting and suppliers, consumers, and tax information.

The topics that were the most frequent subjects of recommendations in 2022, highlighting the need for improvement, refer to the following:

- Regarding the **company commitments to sustainable development**, recommendations were sent to four of the entities (two in 2020).

As in the past year, it was recommended to improve the description of the main non-financial risks in the short, medium and long term in relation to the issuer's commitment to society, providing progress measurement indicators to avoid excessively general information that is not adjusted to the singularities of the entity and its activity.

Recommendations were also sent to include more specific information in the future on the policies applied in practice for the generation of local, direct and indirect employment, or to try to reduce inequalities in vulnerable groups, among others, including metrics of results or examples that allow their impact to be assessed.

In some cases, the metrics provided were percentages, such as statistics on the types of social demands received (local hiring, working conditions, agreements and investment with interest groups, etc.), or those resolved during the year. It was recommended that the percentage information be complemented with metrics in absolute terms and comparative figures, to be able to assess the evolution with respect to previous years.

From the analysis carried out on the companies subject to substantive review on the commitments to sustainable development, it can be noted that 80% of the issuers provided the information required by law regarding employment and local development, collaboration, association and sponsorship activities with local communities. No entity expressly indicated significant risks that materialised during the year in this area, or substantial changes in their due diligence policies and procedures.

- In relation to **consumers**, recommendations were sent to eight issuers (four in 2020), mainly advising them to expand the information they provide on their complaints systems (social networks, customer service areas, calls, emails, etc.), the complaints they receive and their resolution. Issuers usually have specific complaints or claims channels for customers, with respect to which some of the aspects included in the specific section "Whistleblowing channel" of this chapter were recommended.

Additionally, it was recommended to expand the information on the measures in favour of the health and safety of consumers (which is the other disclosure required by Law 11/2018 in this area) and the related KPIs (such as the percentage of products approved in this matter, and the nature and period of validity of these approvals).

Virtually all of the selected sample had consumer or customer complaint systems in place, however, about 30% were not properly explained. The data on complaints received (totally or partially by nature) or resolved were not always provided, nor were mechanisms for their resolution always specified, changes explained or comparative data provided.

- As regards the **tax information** included in the 2021 NFIS, recommendations were sent to a total of seven entities (six entities in 2020). It is worth noting the progressive improvement in the comparability, reliability and relevance of the tax information provided in the sustainability reports, thus facilitating a better understanding of the tax liability of issuers, although there is still room for improvement. The most significant recommendations made this year on the aspects required by Law 11/2018 were the following:
 - i) In relation to **profits obtained country by country**, the supervised information was, in general, adequate, with the following aspects improving compared to the previous year: most of the entities provided disclosures by country, with limited groupings by geographic segments or other aggregation criteria; and profits were considered to be consolidated results before, not after, tax.

From the analysis of tax information carried out on companies in the selected sample, the following points stand out:

Most of the issuers provided information on the profits obtained country by country for all the locations in which they operate or at least all the relevant ones (80%), with few issuers not having provided this information (10%) or providing it aggregated by geographic area or segment (10%).

Likewise, most of the selected sample provided the consolidated profit before taxes (82%), compared to a minority that considered profit after taxes (9%). In this regard, it should be remembered that the ICAC (Spanish Accounting and Auditing Institute) guide on the application of Law 11/2018 indicates that the country-by-country profit should be taken as the profit before taxes, in an aggregated (not consolidated) manner, as provided in Article 14.2 of the Corporate Tax Regulations. It is recalled that, in any case, the methodology used in the calculation should be reported.

- ii) Regarding **tax paid on profit**, there were frequent recommendations on the importance of providing information about the relationship between the amount of the payment obligation in each country and the profits before taxes obtained, that is, the effective tax rate by location, as well as the main factors that serve as significant tax adjustments to determine the tax base in each country.

In some cases, the entity provided details of the taxes on profits paid by country for which the profits obtained were not broken down, and vice versa, so it is recommended to provide complete information to be able to relate both magnitudes.

In another case, a reference was included to a note to the consolidated financial statements, although this information did not expressly cover

what is required by Law 11/2018 on the payment of taxes by location, so it is noted that the disclosures of tax information are not the same as the breakdowns required by accounting laws and regulations.

The vast majority of the selected sample provided income taxes paid detailing them by country or for the relevant countries (70%). In other cases, this information was provided by segment or geographic area or only for some countries in which the group operated (20%), making it advisable to provide complete information.

Among the areas subject to improvement, once again the explanation of the relationship between the itemised profit, the accrued tax and the taxes on profits paid in each country stands out, this being only partially provided by some of the entities (30%). In general, the qualitative explanations are not clear, and it is advisable to clarify the year to which the payments already made correspond, as well as the existence of permanent differences or other deductible items that allow the connection and consistency between the aforementioned magnitudes to be understood.

In this regard, it is noted that in the event that the taxes have already been paid to the tax authorities on the closing date of the financial year, it is recommended that the entity indicate the taxes paid to understand the differences with respect to the accrued provision, while in the case of not yet having paid all or any of the taxes, it is recommended to expressly indicate that this is the best estimate of the amount to be paid, indicating in the NFIS of the following year any significant differences with the amount actually paid.

- iii) With respect to issuers' **fiscal responsibility**, some improvement was observed this year in transparency relating to the information on the existence of holdings in entities domiciled in tax havens and in the explanations about the fiscal commitment of the entity, in terms of implementation of fiscal policies and guiding principles of the group's tax strategy, together with an express commitment to the responsible payment of taxes and the tax regulations of each country where it operates. In this regard, in some cases it was recommended to provide more specific and precise information about the significant tax risks faced by the group, as well as the measures to mitigate them.

Approximately 50% of the selected sample included information on the **fiscal responsibility** of the issuer, for example, indicating whether or not there is a link with tax havens or other territories classified by the European Union as non-cooperative jurisdictions in tax matters, or by providing specific information on measures adopted in application of the guidelines and principles of transparency that guide the group's tax strategy, such as the classification of operations based on their tax risk.

- Finally, the information required by Law 11/2018 regarding **subcontracting and suppliers** and the work carried out in the 2022 financial year has been incorporated into the analysis included in the section "Business model. Participation in the value chain" included in this chapter.

Analysis of the impact of the guidelines on Alternative Performance Measures (APMs) on the NFIS

ESMA's guidelines on APMs⁹⁶ were published in 2015, and since 2016 compliance with these guidelines has been part of the CNMV's review plan.

It should be remembered that the purpose is to promote the usefulness and transparency of the APMs included in prospectuses, regulated information or other relevant information to improve their comparability, reliability and understanding. The guidelines apply to the APMs that are published in the NFIS, as this is part of the management report of the annual financial statements.

In 2021, a special analysis of the degree of compliance with the guidelines in annual financial reports for 2020 was carried out, which involved a cross-sectional analysis of the APMs included in the different documents published in the financial year for a sample of entities. As regards the NFIS, the main conclusions of this analysis came from the detection in several issuers of a series of magnitudes that met the definition of an APM established in the ESMA guidelines (para. 17 to 19) and the ESMA Q&A,⁹⁷ but which, however, were not identified as such, nor did they comply with the principles of disclosure of information. These included "generated value", "distributed value" and "retained value".

In the 2022 financial year, the supervision of the degree of compliance with the APM guidelines in the 2021 NFIS involved the submission of requests for information to three entities, as well as the sending of various recommendations to six issuers for their consideration in future sustainability information.

Requests sent to issuers included requests for the information disclosures established in the guidelines (definition, reconciliation, relevance of use, comparison, consistency, etc.) for all magnitudes included in the sustainability report that meet the definition of an APM, or, alternatively, the express indication by the entity of compliance with the principles of disclosure of information through direct reference to other previously published documents that already contain such information and are available and easily accessible to users.

In some cases, issuers were asked to indicate the measures that, if applicable, would be adopted to improve the quality of the information and the degree of compliance with the guidelines in their next sustainability reports. Examples of magnitudes detected in this area, for which requests for information or recommendations were sent according to their materiality, includes the wealth distributed to stakeholders, the direct economic value generated and distributed, support for social causes or the quantified order book, among others.

Finally, it should be noted that in Chapter II of the 2021 *Report on the CNMV's review of annual financial reports and main enforcement priorities for the following*

96 ESMA/2015/1415 – ESMA Guidelines on Alternative Performance Measures, 5 October 2015 (<https://www.esma.europa.eu/press-news/esma-news/esma-publishes-final-guidelines-alternative-performance-measures>).

97 ESMA32-51-370 Questions and answers – ESMA Guidelines on Alternative Performance Measures (APMs), 17 April 2020 (https://www.esma.europa.eu/sites/default/files/library/esma32-51-370_qas_on_esma_guidelines_on_apms.pdf).

financial year, a broader analysis of the supervision carried out on APMs is included in the annual accounts for 2021.

Other actions in 2022

Letters from third parties relating to NFIS

Letters received from third parties allow the CNMV, on some occasions, to carry out additional actions. In this regard, over the course of 2022 letters were received from third parties on aspects related to the NFIS of three issuers.

The most significant issues in the letters received were related to the following aspects of the NFIS: i) the alleged violation of human rights in a project carried out abroad; ii) the alleged incomplete preparation of the NFIS, for not accurately reporting the protocol for workplace harassment, as well as the complaints received through the whistleblowing channel in this area; and iii) adherence to the principles of ethics established by the entity regarding labour conditions in the subcontracting of services.

In order to clarify the issues raised in the letters, the CNMV sent requests for additional information to two entities.

IV Special analyses carried out in 2022

Disclosures relating to Article 8 of the Taxonomy Regulation

Non-financial issuers of non-financial securities with more than 500 workers had to provide in their 2021 NFIS the proportion of economic activities that were **eligible** and non-eligible for climate change mitigation and adaptation objectives in their total turnover, their capital expenditure (CapEx) and their operating expenditure (OpEx), together with certain qualitative information relevant to this disclosure.⁹⁸ Financial issuers with more than 500 employees must disclose the proportion of total assets of their exposures to: i) eligible and non-eligible economic activities according to the taxonomy; ii) central government, central banks and supranational issuers; iii) derivatives, and iv) companies that are not required to publish non-financial information under the NFRD, in addition to certain qualitative information⁹⁹ referring to financial years 2021 and 2022.

An activity is considered eligible if it is included among the activities listed in the Delegated Act on Climate, while non-eligible activities are those that do not appear in the aforementioned document, either because they have not yet been analysed, or because they are considered always to cause significant harm (i.e. have no place in a net zero emissions economy), or because they neither do significant harm to nor contribute significantly to the climate change mitigation and adaptation objectives. Activities not currently included in the taxonomy are not necessarily always considered environmentally harmful or unsustainable; their non-inclusion may be due to the current scope of development of the taxonomy. Future developments or revisions of the taxonomy will allow consideration to be given to the positive contribution of more activities to climate change or to one of the other EU environmental objectives, significantly increasing the percentage of activities that contribute positively to environmental sustainability.

In relation to the supervision carried out on the 2021 NFIS, ESMA established as a review priority the disclosures required by Article 8 of the Taxonomy Regulation, considering that this first-time application was subject to simplified information obligations during the transitional period of one year for non-financial entities and two for financial entities, that the assessment of the degree of alignment of economic activities with the criteria of the taxonomy and the disclosure of related information may require the collection of data that are not always readily available

98 Described in Section 1.2 “Specifications of disclosures accompanying the KPIs of non-financial undertakings” of Annex I “KPIs of non-financial undertakings” of Commission Delegated Regulation (EU) 2021/2178.

99 Described in Annex XI “Qualitative disclosures for asset managers, credit institutions, investment firms and insurance and reinsurance undertakings” of Commission Delegated Regulation (EU) 2021/2178.

and encouraging issuers to properly configure their internal information systems in order to meet the requirements.

The CNMV stressed the importance of the information required under the Taxonomy Regulation and its contents being properly identified in the NFIS and traceable, and recommends including a specific section related to the taxonomy requirements in the table that identifies where the different contents of the NFIS are to be found. In addition, it stated that companies must present their indicators in both quantitative and descriptive terms, to allow users to know how they have been obtained and the limitations of the information.

Therefore, during the **formal review** the inclusion in the 2021 NFIS of the eligibility indicators of the 90 issuers required to report the information on the taxonomy was verified.¹⁰⁰ The result of this review was that three entities did not initially provide these disclosures – the CNMV requested their presentation, which was provided by the issuers. Conversely, seven companies detailed the percentage of aligned activities as a voluntary disclosure in addition to those required for 2021.

The CNMV observed certain diversity in the magnitude of these indicators, depending on the entity's sector. In this regard, companies with electricity generation activities and construction companies show relatively high eligibility indicators, while, for example, companies belonging to the pharmaceutical sub-sector have very low ratios, indicating that their activities are not included in the taxonomy. It was also observed that some companies with low indicators associated with the turnover figure have high percentages in CapEx, while others take advantage of the exception provided in Section 1.1.3.2 of the Delegated Act on Disclosure of not reporting the OpEx ratio, as they are not material operating expenses in their business models.

The following table summarises the average percentage, by sector, corresponding to the taxonomy indicators:

Sector	Turnover (%)	Capex (%)	Opex (%)
Trading and services	18	47	46
Construction and real estate	83	85	28
Energy	45	66	45
Manufacturing	25	29	26

Sector	Total assets (%)
Financial entities and insurance undertakings	30

It should be noted that, given that in most sectors there are entities with a fairly uneven mix of activities, the dispersion with respect to each of the three ratios is high.

According to the **substantive review** carried out on the companies in the sample obliged to disclose information on the taxonomy,¹⁰¹ it was verified that the NFIS provided the information required under Article 8, together with the corresponding disclosures prescribed by the Delegated Act on Disclosure.

In this regard, it was verified that the non-financial entities detailed the way in which the numerator and denominator used in the indicators related to the turnover, CapEx and OpEx were determined, that references were provided to the items corresponding to the turnover and CapEx, that the nature of the eligible activities was described and that the reported results for the key indicators were explained. For the financial entities subject to substantive review, it was verified that they provided contextual information, an explanation of the nature and objectives of the activities adjusted to the taxonomy and a description of compliance with the Taxonomy Regulation in their strategy, product design processes and relationship with clients and counterparties.

As a result of the substantive review, additional information was requested from seven companies and recommendations were sent to eight entities on issues related to the taxonomy, with the main aspects for which requests and recommendations were made being the following:

- Explain the reasons why the information related to the taxonomy was omitted in the NFIS, providing the disclosures required by the regulations and providing a statement from the verifier¹⁰² explaining the reasons why they did not consider it necessary to mention the omission of the required information in their report and whether or not the new disclosure altered their opinion on the NFIS.
- Adequately identify the information required by the Taxonomy Regulation, including a reference in the summary table that shows the section or page where the different contents that make up the NFIS can be found.

67% of the companies required to report the disclosures of the taxonomy included a reference to the section where said information can be found in the summary table of contents of the NFIS.

- Clarify the way in which the indicators (numerator and denominator) required by the Taxonomy Regulation were determined, including references to the corresponding items in the case of turnover and CapEx.

With regard to the denominator used in the calculation of the CapEx indicator, clarification was requested on its relationship with the additions of tangible and intangible assets that occurred during the year. In addition, issuers were reminded that the denominator used in the calculation of the OpEx indicator must comply with the provisions of Section 1.1.3. “KPI related to

101 Of the 20 companies whose NFIS underwent a substantive review, 18 were obliged to provide information on the taxonomy because they have more than 500 workers.

102 Since the Spanish legislator opted to make the verification of the information included in the NFIS by an independent provider of verification services obligatory, the information required in the Taxonomy Regulation forms part of the verification process of the NFIS as a whole.

operating expenditure (OpEx) (OpEx KPI)¹⁰³ of the Disclosures Delegated Act. In relation to this last indicator, issuers were also requested to detail whether the entity had evaluated whether operating expenses are material to their business model, indicating the conclusions.

In the case of the indicators included voluntarily by some issuers based on turnover, CapEx and OpEx that include capital investments accounted for in joint ventures in accordance with IFRS 11 or IAS 28, express indication was requested as to whether, as set out in Section 1.2.3. “Contextual Information” of in Annex 1 of the Disclosures Delegated Act this was based on turnover, CapEx, or OpEx of equity accounted investees on a pro rata basis corresponding to their share in the equity of the investee. In addition, it was indicated that these indicators should be incorporated separately from the information specifically required by the regulations.

- Specify the data considered by the issuer as most appropriate for the eligibility indicators relating to annual turnover, CapEx and OpEx, in a situation in which more than one percentage was provided for each indicator, requesting further information about the judgements and estimates used.
- Describe how the issuer is preparing to comply with all the requirements of Article 8 of the Taxonomy Regulation (for example, changes in internal information systems).

It should be stressed that the 2022 NFIS of non-financial issuers of securities with more than 500 workers must detail, in addition to the percentage of eligible and non-eligible economic activities, the proportion of eligible economic activities that are **aligned** with the taxonomy in their turnover, CapEx and OpEx, which meet the technical criteria of a substantial positive contribution to the mitigation and adaptation objectives, do not cause significant harm to the other four environmental objectives and comply with the minimum social guarantees.¹⁰⁴ Financial issuers with more than 500 employees must expand their disclosures of information on alignment as of 2024, with reference to information corresponding to 2023.

Aligned activities

The activity contributes substantially to one or more environmental objectives.

The activity does not cause significant harm to any of the other environmental objectives.

The entity complies with the minimum social and governance safeguards.

103 This section shows that “the denominator shall cover direct non-capitalised costs that relate to research and development, building renovation measures, short-term lease, maintenance and repair, and any other direct expenditures relating to the day-to-day servicing of assets of property, plant and equipment by the undertaking or third party to whom activities are outsourced that are necessary to ensure the continued and effective functioning of such assets”.

104 The OECD Guidelines on Multinational Enterprises, the UN Guiding Principles on Business and Human Rights and the Core Conventions of the ILO.

The Climate Delegated Act is a document that will evolve based on changes and technological progress, its criteria being subject to periodic review, guaranteeing that new sectors and activities, including **transitional** and **enabling** activities, may be added over time. In this regard, it should be noted that it is expected that new economic activities for climate objectives will be included in June 2023, while the EC, following the suggestion made by the Platform, has mandated this body to expand the activities, with it being mandatory to carry out a review process every three years.

The following table summarises the different types of activities relating to the mitigation objective:

Mitigation objective		
<p>Low carbon activities: those that do not produce emissions, do so at very low levels or use carbon sequestration technologies.</p>	<p>Transitional activities: those for which there is no technologically and economically feasible low-carbon alternative, where it supports the transition to a climate-neutral economy.</p>	<p>Enabling activities: those that enable other activities to make a substantial contribution to the mitigation objective and do not themselves harm environmental objectives.</p>

Finally, it should be noted that ESMA has once again considered the disclosures related to the Taxonomy Regulation as an enforcement priority in the 2022 NFIS, reminding issuers that these disclosures are not subject to materiality, and must always be included.¹⁰⁵ In addition, ESMA highlights the importance of providing contextual information and of there being consistency between the disclosures related to taxonomy and other sections of the NFIS.

The CNMV will carry out a specific follow-up of the disclosures related to the report on issuers' alignment with climate change objectives, recommending that they exercise caution and careful judgement when evaluating this classification.

Carbon footprint

As mentioned in the section "Climate-related matters" in Chapter III regarding the monitoring of enforcement areas in the 2021 NFIS, the disclosures related to GHG emissions were a priority for ESMA and the CNMV.

In this regard, ESMA, when addressing issues related to climate change, recommended including specific indicators, providing qualitative and quantitative explanations regarding their performance and evolution with respect to pre-set targets, recalling that GHG emissions disclosures are more useful when they are provided through appropriate segmentation (e.g. by country/region of operations or business segment) and put into context by relating them to objectives. Specifically, it emphasised the importance of providing Scope 1 and 2 emissions, as well as Scope 3 when reliable data are available, together with an explanation of the most relevant

¹⁰⁵ Except for the provisions for OpEx in Section 1.1.3.2 of Annex 1 of Commission Delegated Regulation 2021/2178 when operating expenses are not material.

sources corresponding to such emissions, noting that these disclosures should not be limited to providing retrospective information, but also information on the expected progress towards the fulfilment of objectives.

In addition to the priorities set by ESMA, the CNMV stressed the relevance of the disclosures relating to absolute GHG emissions of Scopes 1, 2 and 3, adding, as far as possible, intensity indicators that consider variables that are representative of the level of activity of the entity (e.g. per unit of production – kwh or tonnes of clinker –, market capitalisation or sales in thousands of euro). In addition, if relevant, the CNMV recommended differentiating emissions by type of GHG, especially in reference to methane, main lines of business, geographical area and/or type of source or economic activity.

In the review of the NFIS of previous years, the CNMV observed that some issuers calculated Scope 3 emissions with a limited scope, basically including those deriving from the business trips made by their employees but excluding emissions that come from the value chain or their credit or investment portfolios. For this reason, it was recommended to expand the quantification of the data corresponding to the relevant links located before and after the company's own operations.

A reminder was issued about the importance of not netting gross GHG emissions with offsets from investment in environmental projects that reduce emissions to the atmosphere on which they can report separately, and pointed out that, if estimates are used in their calculation, the percentage of emissions obtained by estimation must be indicated, together with the reasons that justify why reliable data on said percentage and the method used to carry it out were not available. It was also highlighted that the disclosure of emissions must be accompanied by quantitative and qualitative information that shows the progress compared to previous years, highlighting the importance of disclosing the scope used to calculate the footprint and the reasons that justify the exclusion of any GHG source, together with the percentage of activities covered by reported emissions.

Finally, the CNMV highlighted the importance of providing the following information on emissions:

- Describe the methodology used for their calculation, explaining any changes and stating, where appropriate, the recalculations made.
- Include references to the sources considered to obtain the data used in the emissions calculation, including the emission factors used.
- Indicate whether the footprint data have been verified by an independent expert, stating the nature and scope of the verification carried out.
- List the objectives set for each scope in absolute or intensity levels, describing the base year and the date or period of fulfilment of the objective, in order to show, on an annual basis, the progress made towards the final objective, it being considered a good practice to provide a description of how such progress is monitored, disclosing the frequency of such monitoring and the person(s) or department(s) to whom such information is reported. It is relevant to indicate whether these objectives are in line with the SBTi (Science Based Targets initiative) and whether investment commitments have been set in the

short, medium and long term for CapEx in accordance with the EU taxonomy or aligned with objectives to achieve carbon neutrality in 2050 or with the Paris Agreement.

- Disclose whether any type of variable remuneration has been established for the directors, employees and/or managers of the company, linked to the achievement of climate objectives, providing, where appropriate, a description of its scope.

Aware of the complexity involved in compiling this information, the CNMV highlighted the importance of transparency, recommending issuers describe what information is not provided, the reasons for said omissions and providing, as far as possible, a measure that allows the impact of the information not included to be assessed. Lastly, the importance of describing the judgements applied was highlighted, considering the degree of uncertainty and variety of criteria surrounding the measurements used.

As a result of the review of the 2021 NFIS, the main aspects required or recommended in relation to GHG emissions were as follows.

- In relation to the different scopes, the following was requested:
 - i) Provide Scope 2 GHG emissions based on location, and, if applicable, based on the market, as prescribed by GRI 305-2 “Energy indirect (Scope 2) GHG emissions”.
 - ii) Quantify and complete the data on emissions corresponding to Scope 3, including those that come from the value chain, including links located before and after the entity’s operations. It was also requested to detail the reasons why certain categories were excluded from the calculation, as well as to provide quantitative information that allows the impact of their non-incorporation in the metrics to be assessed.

In the case of banking entities, it was requested to explain to what extent the emissions deriving from their credit and investment portfolios have been considered in the measurement of Scope 3.

100% of the companies in the substantive sample provided their absolute Scope 1 and 2 emissions, a percentage that was reduced to 70% for Scope 3.

Of the entities that reported their Scope 3 emissions, all detailed the upstream and downstream activities that had been considered in their calculation, highlighting the categories of business travel and purchased items and services. Some entities stated that they intend to delve into the emissions associated with their supply chain and other relevant indirect sources in the medium term.

80% of the entities that disclosed their Scope 1, 2 and 3 emissions provided these data, differentiating by main activity or facility that gives rise to said emissions.

75% of the companies reviewed provided details of the scope used to calculate emissions. Of that 75%, half stated that they have excluded some sources of GHG (facilities, activities, countries, dependent companies, specific gases, etc.), although they explain the reasons that justify said exclusion and disclose the percentage of activities covered by the emissions reported.

- Include emission intensity indicators that take into account a representative variable of the level of activity of the company.

60% of the substantive sample included a GHG emissions intensity indicator. 80% of the companies that provided these data offered a breakdown for Scopes 1 and 2, and only 25% for Scope 3.

- Quantify emissions, differentiating by type of gas, strategic unit or main lines of business, country or geographical area, type of emission source or economic activity, etc. and indicate the source of the emission factors used in the calculation of emissions.

60% provided segmented information, differentiating their emissions by country/region, business segment, type of gas, etc. and indicated the source or origin of the data used in the calculation (e.g. emission factors used).

- Separate the gross emissions from the offsets derived from the investment in environmental projects, providing qualitative and quantitative information on these projects.

15% of the sample stated that they have made some type of offset by providing the data corresponding to GHG emissions.

- Indicate the percentage of emissions obtained by estimation, the reasons why it has not been possible to collect reliable data on said percentage and the method used to carry out the estimation.

35% of the companies stated that they had resorted to estimates in calculating emissions due to a lack of reliable data. Of this 35%, 20% do not detail the percentage of emissions obtained by estimation, nor do they explain the reasons why reliable data could not be collected, nor do they describe the method used to calculate the percentage of emissions obtained by estimation.

- Provide comparative data and expand the narrative explanation to offer an understanding of the evolution that occurred with respect to previous years considering the context in which said variation has taken place, specifying whether or not the data are considered positive, whether there are concrete improvement forecasts, or plans or measures for their management and/or mitigation as the case may be.

100% of the companies reviewed provided the emissions data corresponding to previous years, although only 70% included narrative information that explains the evolution of the carbon footprint.

- Detail the specific objectives set for each scope (1, 2 and 3) and, where appropriate, for each relevant segmentation criterion, in absolute or intensity

levels, indicating the base year with respect to which they have been set, avoiding, as far as possible, generic emissions reduction targets and stating whether they are aligned with the content of the Paris Agreement.

40% of issuers provided details of specific GHG emission reduction objectives for Scopes 1, 2 and 3, while another 40% described generic goals.

75% indicated the date or period of fulfilment of objectives and emphasised that these are in line or in the process of being aligned with the Paris Agreement.

50% disclosed the base year taken as a reference, indicating that their objectives are in line or in the process of being aligned with the SBTi, stating that they have set sustainable investment commitments for CapEx and providing a qualitative or quantitative explanation of their performance with respect to the pre-established objectives (mainly in relation to Scope 1 and 2 and, to a lesser extent, Scope 3).

- Regarding the achievement of objectives, it was requested to provide details of:
 - i) Qualitative or quantitative information on the performance that occurred during the year in relation to Scope 1, 2 and 3, detailing how progress towards the different objectives is monitored, the frequency with which said supervision takes place and the management bodies or departments to whom such information is reported.
 - ii) Plans to be undertaken and due diligence procedures adopted aimed at meeting objectives.
 - iii) Expected impact on said achievement deriving from the implementation of certain actions.
 - iv) Measures adopted to monitor compliance with the objectives.

40% of issuers described how progress is monitored towards the different objectives and proposed various scenarios of rising temperatures.

- Provide details of the scope of the energy audits carried out, the type of verification and name of the verifier, together with its result, including this information on the entity that, if applicable, verifies the carbon footprint, identifying the standard and methodology used and indicating whether the data provided in the NFIS on emissions are definitive or are subject to changes deriving from the corresponding audit, in which case it is recommended to indicate in the NFIS for the following year if, after the verifications, there has been a significant change in the data comparisons with respect to those published in the previous year, quantifying and explaining the difference.

80% described the methodology used to calculate emissions, with one of the most used being the Greenhouse Gas Protocol, while 70% indicated having submitted the footprint data to verification by an independent expert.

In addition to the previously described work carried out for the substantive sample, in the review of the 2021 non-financial information, the CNMV verified the

inclusion of the data corresponding to the absolute Scope 1, 2 and 3 GHG emissions by the entirety of issuers required to prepare an NFIS,¹⁰⁶ concluding that four entities do not report Scope 1 and 2, while 38 companies do not provide Scope 3, with the latter being the one with the greatest weight as a proportion of total emissions (80% based on the information reported).

Based on the data provided by the entities, the sector with the highest percentage of emissions is the energy sector (60% of Scope 1, 3% of Scope 2 and 85% of Scope 3), followed at a considerable distance by the industrial sector (16% of Scope 1, 38% of Scope 2 and 8% of Scope 3). Conversely, the sectors that declare lower contributions are the construction and real estate sector (9% of Scope 1, 8% of Scope 2 and 3% of Scope 3) and the financial sector (0.1% of Scope 1, 0.9% of Scope 2 and 0.0% of Scope 3).

In all sectors, most of the GHG emissions come from Scope 3, with the exception of the financial sector, as in the financial year 2021 the entities belonging to this sector do not yet consider the emissions of the customers to whom they have provided finance in their Scope 3 disclosures,¹⁰⁷ although some issuers declare in their NFIS that they are advancing in the calculation of said estimate following the Partnership for Carbon Accounting Financials (PCAF) methodology.¹⁰⁸ According to a report published by the European Central Bank in March 2022,¹⁰⁹ only 15% of the banks in the euro zone disclose Scope 3 emissions, and these represent 93% of their total emissions.

In the construction and real estate sector, 55% of companies (that is, six entities) do not provide data related to Scope 3, probably because four of them published an NFIS for the first time in 2021, since they were not obliged to do so until then.¹¹⁰

In this regard, and as previously mentioned, in the substantive review it was observed that many companies still provide incomplete Scope 3 information and although some entities have made an effort to complete this scope, others continue to merely disclose the emissions deriving from the business trips made by their employees. It should be noted that some entities stated in their NFIS that they intend to go into greater detail about the emissions associated with their supply chain and other relevant indirect sources in the medium term.

The CNMV is aware that a part of this type of emissions can or do escape the direct control of the entity and that the larger and more complex the organisation, the more varied the sources of emissions will be as a consequence of decentralisation,

106 102 issuers obligated by having more than 250 workers.

107 As set out in the "Technical Guidance for Calculating Scope 3 Emissions" of the GHG Protocol which includes this type of emission in category No. 15 "Investments" (Scope3_Calculation_Guidance_0.pdf (ghgprotocol.org)).

108 <https://carbonaccountingfinancials.com>

109 www.bankingsupervision.europa.eu

110 In accordance with the transitional provision of Law 11/2018, three years after the entry into force of the law (i.e. from financial year 2021) the threshold for the number of workers of public interest entities will be reduced to 250, except for small and medium-sized enterprises, pursuant to Directive 2013/34/EU.

and the more complicated it will be to obtain the data, when operating under different jurisdictions. However, it continues to recommend that issuers continue to make an effort to advance in their calculation, explaining, where appropriate, the reasons why this disclosure is not provided or making estimates based on rigorous methodologies, and, in the absence thereof, providing qualitative information on the categories of activities corresponding to the previous and subsequent phases of the value chain that could be relevant for Scope 3, providing information that helps to understand how subsidiaries, associates and joint ventures are incorporated into the calculation of the emissions.

The CNMV highlights once again the importance of notifying emissions in absolute terms (before offsets), relating the data to the level of activity of the company using intensity ratios to provide a comparison and allow its performance to be evaluated regardless of the growth or reduction of the entity's activity. It also insists on the importance of providing information on emission reduction targets and remuneration policies aligned with their achievement, since these show the entity's level of commitment to decarbonisation.

Finally, the importance of being very rigorous in the calculation of emissions is highlighted, showing transparency when disclosing the methodology used and trying to adapt the internal information systems to guarantee a correct collection of the information, thereby ensuring the quality and completeness of the data.

V Main enforcement areas for non-financial information in the 2022 NFIS

In October 2022 ESMA published the common enforcement priorities in application of European regulations for annual financial reports for the year 2022,¹¹¹ differentiating between financial information and non-financial information.

ESMA, together with the national enforcers of the European Union, will pay particular attention to these areas when monitoring and assessing the implementation of the needed requirements and will also continue to focus on the aspects that are important for the different issuers analysed.

Common enforcement areas for the annual financial statements under IFRS and NFIS, as well as other considerations relating to APMs, refer to the following matters:

ESMA enforcement priorities for 2022

TABLE 3

	Priorities relating to IFRS financial statements	Priorities related to NFIS	Other considerations relating to APMs and ESEF
Climate-related matters	✓	✓	
Russia's invasion of Ukraine	✓	1	2
Macroeconomic environment	✓		
Taxonomy-related disclosures		✓	2
Reporting scope and data quality		✓	
Identification of APMs and reconciliations			✓
Block tagging in ESEF			✓

Source: ESMA.

- 1 The impacts of Russia's invasion of Ukraine are also addressed in the priorities related to NFIS within the priorities on climate-related matters and reporting scope and data quality.
- 2 These priorities include specific considerations on APMs.

It should be noted that one of ESMA's financial priorities is the analysis of the consistency between the information contained in the IFRS financial statements and that contained in the NFIS on climate-related matters and throughout the entire annual report, including the management report.

¹¹¹ https://www.esma.europa.eu/sites/default/files/library/esma32-63-1320_esma_statement_on_european_common_enforcement_priorities_for_2022_annual_reports.pdf

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Additionally, the CNMV has decided to include, as an additional priority for non-financial information, a more detailed analysis of taxonomy-related disclosures and, in particular, the criteria used to determine whether or not an activity is eligible, or whether or not it is aligned with the taxonomy.

Lastly, in accordance with the guidelines issued by ESMA on the enforcement of financial information, the national authorities will inform ESMA about the actions carried out in 2023 and the measures implemented if any breaches are detected, including any relating to non-financial information. ESMA will publish a summary of the actions carried out in its annual report on enforcement and regulatory activities of European enforcers.

Those aspects in the ESMA document relating to financial reporting that have been deemed most significant are highlighted below, together with the additional issues on which the CNMV will focus its attention. However, it is recommended that the ESMA statement be read in full.

Climate-related matters

ESMA reminds issuers of the existence of the guidelines contained in the EU Climate Supplement in relation to the aspects described in the following section.

Strategy

ESMA considers it important that issuers increase transparency in the preparation of their **transition plans**, since they show their intention to adapt their business model, operations and main assets towards a trajectory that is compatible with the latest climate science recommendations. Some issuers tend to present ambitious goals without explaining how these goals have been set, in what scenario they are developed, and how they intend to achieve those goals.

ESMA asks for specific disclosures to be provided, covering, among other things, information on the reference scenario used, the means to be used to achieve the plan (for example, by modifying its supply chain or base assets), how many resources will be allocated and the challenges it may face in reaching its goals.

ESMA urges issuers to be cautious and specific in their disclosure of carbon neutrality commitments, providing specific explanations of how they intend to contribute to said neutrality, indicating the base year used to determine their reductions and differentiating between reductions in the value chain and others that have come about outside it, such as those deriving from the use of carbon credits, which must be reported separately.

Metrics and objectives

ESMA highlights that the **KPIs** related to climate allow us to understand past performance and future ambition, with the disclosure of GHG emissions being of particular relevance.

It also notes that the disclosures relating to the GHG emission reduction **targets** are an effective way of showing climate ambition, although they can be overly optimistic if not placed in the right context. ESMA requires issuers to be balanced in their disclosure of the objectives and to disclose the probability associated with their achievement, together with the reasons explaining failure to achieve the expected progress if such is the case, inviting them not to omit relevant information on other ESG aspects and to highlight any significant conflicts between the different environmental objectives when necessary for a proper understanding of the impact of their activity.

In relation to the **GHG emissions metrics**, ESMA considers it relevant to describe the methodological principles and reporting scope used, especially in emissions of **Scope 3**, since the way their limits are defined can significantly affect the volume of emissions and, as they are related to the value chain, they present greater uncertainty. Consequently, ESMA urges issuers to provide clear information in relation to their Scope 3 emissions on the limits used, justifying any exclusions and explaining any uncertainties related to their data, as well as, if applicable, the reasons why, Scope 3 emissions being significant, no information is provided on them.

Issuers that conclude that Russia's invasion of **Ukraine** will affect their ability to meet their GHG emissions reduction **objectives** and their **transition plans**¹¹² will need to detail the reasons why they were unable to meet their targets and continue their transition plans in 2022.

In this regard, the CNMV wishes to stress that the disclosures on objectives should be extended to the relevant KPIs of the rest of the non-financial issues, for example, those relating to the wage gap, accident rates, whistleblowing, supplier audits, etc.

Material impacts, risks and opportunities and connectivity with financial information

ESMA invites issuers to continue to improve the descriptions of how the material impacts, risks and opportunities related to climate change have been identified, highlighting the importance of the link between non-financial and financial information.

Consistency between IFRS financial statements and non-financial information

For the second consecutive year, this issue is included in the financial information supervision priorities for the year 2022, which are included in the *Report on the CNMV's review of annual financial reports and main enforcement priorities for the following financial year*. It is considered that, to the extent that the financial

112 Due to issues such as interruptions in the supply of natural gas and the consequent switch to other, more emission-intensive sources of energy.

effects are material, there must be consistency in the judgements and estimates applied, as well as the uncertainties and risks described, between the financial information, the NFIS and the rest of the management report, taking into account the specific circumstances of each issuer and avoiding general disclosures.

2021

Additionally, issuers that conclude that climate-related matters are not material are expected to expressly state this circumstance and provide details of the judgements and estimates that they have applied to achieve it.

In this regard, the CNMV wishes to highlight that the consistency between the financial information and that included in the NFIS should not be limited to climate-related matters, but should extend to all issues of the NFIS, such as the description of the business model in the NFIS and the information by segments or the disclosure of the turnover in the financial information, or the provisions and contingencies broken down in the notes to the financial statements and the information provided in matters of personnel, human rights or corruption and bribery. To facilitate their understanding, it is recommended that they be adequately referenced.

Disclosures relating to Article 8 of the Taxonomy Regulation

Non-financial companies: Report on alignment with climate change objectives

ESMA highlights that 2023 is an important year for the report on Article 8 of the Taxonomy Regulation, since 2022 is the first year for which non-financial entities are required to disclose, not only the eligibility, but also the alignment of their economic activities with the objectives of mitigation and adaptation to climate change. Consequently, ESMA has issued the following reminders:

- It is mandatory to use the templates of Annex II of Delegated Regulation 2021/2178.
- When the same activity substantially contributes to multiple environmental objectives, it is not possible to allocate more than 100% of its turnover, CapEx and OpEx.
- The sum of eligible and non-eligible activities must always be 100% of the issuer's activities.
- Taxonomy-related disclosures are generally not subject to materiality and must always be provided (except as provided for OpEx when operating expenses are not material).¹¹³
- It is important to accompany the quantitative information that appears in the templates with contextual information such as that related to the description of the nature of the economic activities, whether they are eligible and aligned, and how compliance with the alignment criteria has been assessed.

- Also relevant is the information regarding the assumptions made about the alignment criteria, including the principles of “do no significant harm” and minimal safeguards, especially in relation to assets and activities outside the EU, about the methodological choices adopted and about the specific areas of judgement and methodological principles followed (e.g. how double counting has been avoided).

Likewise, it is important to be transparent if there are significant differences: i) in the eligibility indicator compared with the previous year (for example, because the issuer has started a new eligible activity or has refined its methodology to assess eligibility); or ii) between the eligibility indicator and the alignment indicator, probably due to the fact that the conditions associated with alignment are stricter than those related to eligibility.

Finally, ESMA recommends that issuers ensure consistency between the disclosures of the taxonomy and the information contained in other sections of the NFIS, so that, for example, there is consistency with the disclosures on the strategy and policies related to climate change.

Finance companies: preparation for the 2024 alignment report

ESMA reminds these entities that they must bear in mind their upcoming disclosure obligation, not only for eligibility, but also for the alignment of their economic activities in 2024. ESMA urges issuers to take the necessary steps to enable their systems to cope with the increase in information to be reported.

The CNMV will carry out specific monitoring of the disclosures relating to the information on the taxonomy of issuers of securities, in relation to both eligible and aligned activities. As 2022 is the first year in which it is required to disclose the alignment of economic activities with the objectives of mitigation and adaptation to climate change, the CNMV will pay address any doubts that issuers may raise regarding the application of the regulations, to provide a common understanding and establish consistent criteria in the Spanish market.

Reporting scope and data quality

Partially taking up last year’s CNMV priorities related to the scope of the NFIS and participation in the value chain, ESMA observes that, in order to provide a comprehensive picture of the non-financial matters listed in Articles 19.bis(1) and 29.bis(1) of the current NFRD, a company would have to report on at least the same scope as that used for its financial reporting.

ESMA also points out that Articles 19.bis(1)(d) and 29.bis(1)(d) of the NFRD require companies or groups to disclose information on the risks related to those issues linked to the company activities, including, when relevant and proportionate, those of their business relationships, products or services that are likely to cause adverse impacts in those areas. This approach will be further strengthened in future ESRS.

With this in mind, ESMA invites issuers to consider reporting on a larger perimeter than that used for their financial reporting, when this is necessary to provide

material information on non-financial matters. To this end, ESMA recommends that issuers describe their supply and sales chains (suppliers, subcontractors, distributors, franchisees and other relevant third parties in the value chain) and clarify to what extent they have covered these entities in their non-financial reports. Issuers could consider identifying KPIs of particular significance for them and expanding their reporting perimeter to cover parts of the value chain. For example, as indicated in the climate-related priority, the invasion of Ukraine may cause disruptions in the value chains of some issuers, which may have an impact on their climate-related matters, but possibly also in other areas of sustainability and is, therefore, material information that must be disclosed.

Regardless of whether the issuer decides to expand its scope or not, ESMA recommends that issuers explicitly state whether the reporting of non-financial information corresponds to that used in their financial information.

On the other hand, issuers may also sometimes make exclusions to their non-financial scope compared to financial reporting. When this is the case, issuers must specify the type of exclusion (subsidiary, geographic area, segment, etc.), its scale (it affects one or more KPIs, one or more policies, etc.) and the reasons for the exclusion. (immateriality, lack of access to necessary data with reasonable effort, etc.).

In short, it is not that ESMA needs to anticipate the requirements of the CSRD to include the entire value chain in the different disclosures, but rather, considering the growing expectations of investors and that it is advisable for issuers to gradually prepare to comply with the new requirements, it is recommended to provide greater disclosures to the extent that they do not involve a significant effort and, as long as the data are sufficiently reliable, as indicated below.

In relation to this ESMA priority, the CNMV recalls that, when evaluating whether an entity should expand the scope of its NFIS, they should also take into account the possibility of including their interests in associates and joint ventures and, at least, explain their evaluation of the non-financial risks they assume through them. Additionally, in the event that there are exclusions from the scope, a measure of the relevance of the excluded information should be provided.

Robustness of the data used for the non-financial reporting

ESMA points out that the value of non-financial reports will only be as good as the quality of the underlying data.

To provide users with transparency on data quality, issuers may consider reporting on their data collection processes and on the procedures that have been carried out in relation to such data, by the Board or other relevant internal decision-making bodies.

ESMA highlights the importance of having robust information systems for data collection and management. Likewise, this should be related to the general reference made at the beginning of the priorities document on the role of the management bodies and audit committees in ensuring internal control and due diligence procedures on the data used.

VI Other issues to consider with regard to non-financial reporting

In this chapter, the CNMV draws attention to certain issues arising from regulatory changes or its enforcement work.

Water footprint

Similar to the carbon footprint, the **water footprint**¹¹⁴ is an environmental indicator that measures the total volume of fresh water used in the production of goods and services, in order to raise awareness about the volume of water required by production processes and thus promote a rational and sustainable use.

Water stress, as defined by the United Nations Environment Programme, occurs when the demand for water exceeds the amount available during a given period or when its use is restricted due to its low quality.

As highlighted by the Intergovernmental Panel on Climate Change (IPCC)¹¹⁵ in a recent report,¹¹⁶ the link between climate change and water is increasingly evident, and we find ourselves facing chronic physical risks related to water, such as changes in patterns and types of precipitation, hydrological variability, acidification of the oceans, saltwater intrusion, rising sea levels and water stress; and acute physical hazards, including drought, heavy rainfall, flooding, and overflow of glacial lakes.¹¹⁷

In this context, the need to make responsible and sustainable use of water and to preserve water and marine resources is one of the challenges facing today's society.

In this regard, it should be noted that among the 17 Sustainable Development Goals (SDGs) that make up the United Nations 2030 Agenda, SDG 6 "Clean water and sanitation"¹¹⁸ and 14 "Life Below Water" stand out.

114 The concept "water footprint" was defined in 2002 by Arjen Hoekstra when he was working at the UNESCO-IHE Institute for Water Education. Subsequently, in 2008, he founded the Water Footprint Network, an international community that helps companies, organisations, NGOs and governments to use water correctly and publicise the water footprint.

115 www.ipcc.ch

116 <https://www.ipcc.ch/report/ar6/wg2/>

117 See Commission Delegated Regulation (EU) 2021/2139.

118 Indicator 6.4.2. of the SDGs refers to the Level of water stress, which is the extraction of fresh water in proportion to the available fresh water resources; that is, it is the ratio between the total fresh water extracted by the main economic sectors and the total renewable water resources, taking into account the environmental needs of water.

Almost 74% of Spanish territory is at risk of desertification for climatic reasons and 70% of the river basin districts have high or severe levels of water stress.¹¹⁹ Despite being one of the most arid countries in Europe, Spain is among the countries with the largest water footprint¹²⁰ (considering both the internal use of water to produce the goods and services consumed by its inhabitants, as well as the external water footprint or water used in other countries to produce imported goods and services), which means that it is one of the countries with a greatest tendency to water stress in Europe.

As indicated in the section on “Monitoring of the priority areas of the 2021 NFIS” in Chapter III, in the section corresponding to “Other environmental issues”, not all the companies analysed provide data on water extracted, discharged and consumed.

Taking into account the importance of water as one of the main elements of biodiversity, as a strategic component for the economy, and which also affects the social aspect,¹²¹ the CNMV considers it appropriate that those issuers that belong to sectors that are intensive in water consumption, provide information on their water footprint, and try to provide these data for their value chain, when the use of water to produce the goods or services sold by the entity takes place mainly in the links before or after its activity. This disclosure should be accompanied by information on the water supply in accordance with local limitations and a description of the measures aimed at improving the impact deriving from the water footprint, as well as the existence of measurable objectives for the establishment of these measures.

Whistleblowing channel

Taking into account the growing importance of the whistleblowing channel as one of the main instruments used by issuers to detect breaches relating to non-financial issues, particularly those related to the areas of employees, human rights and corruption, the CNMV will pay special attention to the disclosures relating to the description of its characteristics and management procedures as well as its results mainly through KPIs, in line with the aspects indicated in the section on the whistleblowing channel in Chapter III of this report.

119 Sanjuán, M.E., del Barrio, G., Ruiz, A., Rojo, L., Puigdefábregas, J. & Martínez, A. (2014). Mapa de la Condición de la Tierra en España (Map of Land Condition in Spain). Ministry of Agriculture, Food and Environment. Madrid. 80 p. NIPO: 280-14-128-4. ISBN: 978-84-491-1395-6.

120 According to calculations made by the Water Footprint Network.

121 The draft of the ESRS S3 “Affected Communities” standard shows that an entity can affect communities’ access to drinking water by not correctly managing polluting emissions or by operating and extracting water in areas with water stress.

VII Annexes

**List of verifiers issuing reports on the 2021 NFIS of issuers
of securities or companies with securities admitted to trading
on official secondary markets**

ANNEX 1

VERIFIER	COMPANY
AENOR INTERNACIONAL, S.A.U.	EROSKI SOCIEDAD COOPERATIVA
	FOMENTO DE CONSTRUCCIONES Y CONTRATAS, S.A.
	GRUPO EMPRESARIAL SAN JOSÉ, S.A.
	NATURHOUSE HEALTH, S.A.
AUREN AUDITORES SP, S.L.P.	CLÍNICA BAVIERA, S.A.
BAKER TILLY AUDITORES. S.L.P.	URBAS GRUPO FINANCIERO S.A.
BDO AUDITORES, S.L.P.	LABORATORIO REIG JOFRE, S.A.
BUREAU VERITAS CERTIFICATION	ERCROS, S.A.
CAVALA GABINETE DE ASESORÍA EMPRESARIAL, S.L.	INSTITUTO DE CRÉDITO OFICIAL
CROWE ACCELERA MANAGEMENT, S.L.	MINERALES Y PRODUCTOS DERIVADOS, S.A.
DELOITTE, S.L.	AENA, SME, S.A.
	ALANTRA PARTNERS, S.A.
	APPLUS SERVICES, S.A
	AUDAX RENOVABLES, S.A.
	CELLNEX TELECOM, S.A.
	CORPORACIÓN FINANCIERA ALBA, S.A.
	DEOLEO, S.A.
	DURO FELGUERA, S.A.
	INDRA SISTEMAS, S.A.
	INDUSTRIA DE DISEÑO TEXTIL, S.A.
	LINGOTES ESPECIALES, S.A.
	MEDIASET ESPAÑA COMUNICACIÓN, S.A.
	MELIÁ HOTELS INTERNATIONAL, S. A.
	NEINOR HOMES, S. A.
	SOLTEC POWER HOLDINGS, S. A.
	TALGO, S. A.
VISCOFAN, S. A.	
ERNST & YOUNG, S.L.	AEDAS HOMES, S.A.
	AMADEUS IT GROUP, S.A.
	AMPER, S.A.
	AZKOYEN, S.A.
	COMPAÑÍA DE DISTRIBUCIÓN INTEGRAL LOGISTA HOLDINGS, S.A.

**List of verifiers issuing reports on the 2021 NFIS of issuers
of securities or companies with securities admitted to trading
on official secondary markets (cont.)**

VERIFIER	COMPANY
ERNST & YOUNG, S.L.	CONSTRUCCIONES Y AUXILIAR DE FERROCARRILES, S.A.
	DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA
	EBRO FOODS, S.A.
	EDREAMS ODIGEO, S.A.
	ENAGÁS, S.A.
	FERROVIAL, S.A.
	FLUIDRA, S.A.
	GESTAMP AUTOMOCIÓN, S.A.
	IBERCAJA BANCO, S.A.
	NICOLÁS CORREA, S.A.
	OBRASCÓN HUARTE LAIN, S.A.
	PRIM, S.A.
	PROSEGUR CASH, S.A.
	PROSEGUR, COMPAÑÍA DE SEGURIDAD, S.A.
	RED ELÉCTRICA CORPORACIÓN, S.A.
	SIEMENS GAMESA RENEWABLE ENERGY, S.A.
	TUBACEX, S.A.
	TUBOS REUNIDOS, S.A.
	VIDRALA, S.A.
	ZARDOYA OTIS, S.A.
ETL GLOBAL AUDITORES DE CUENTAS, S.L.	LIWE ESPAÑOLA, S.A.
EUROPEAN QUALITY ASSURANCE SPAIN, S.L.	BORGES AGRICULTURAL & INDUSTRIAL NUTS, S.A.
GABINETE EAUDIWORK, S.L.	NUEVA EXPRESIÓN TEXTIL, S.A.
KPMG ASESORES, S.L.	ACCIONA, S.A.
	ACERINOX, S.A.
	ACS, ACTIVIDADES DE CONSTRUCCIÓN Y SERVICIOS, S.A.
	ALMIRALL, S.A.
	ATRY'S HEALTH, S.A.
	BANCO DE SABADELL, S.A.
	CORPORACIÓN ACCIONA ENERGÍAS RENOVABLES, S.A.
	ELECNOR, S.A.
	ENCE ENERGÍA Y CELULOSA, S.A.
	ENDESA, S.A.
	GENERAL DE ALQUILER DE MAQUINARIA, S.A.
	GRIFOLS, S.A.
	GRUPO EZENTIS, S.A.
	IBERDROLA, S.A.
	INTERNATIONAL CONSOLIDATED AIRLINES GROUP, S.A.
	LABORATORIOS FARMACÉUTICOS ROVI, S.A.
	MAPFRE, S.A.
	NATURGY ENERGY GROUP, S.A.
	RENTA 4 BANCO, S.A.

List of verifiers issuing reports on the 2021 NFIS of issuers of securities or companies with securities admitted to trading on official secondary markets (cont.)

ANNEX 1

Annexes

VERIFIER	COMPANY
KPMG AUDITORES, S.L.	BANCO BILBAO VIZACAYA ARGENTARIA, S.A.
LUIS CARUANA Y ASOCIADOS, S.L.	COMPAÑÍA LEVANTINA DE EDIFICACIÓN Y OBRAS PÚBLICAS, S.A.
MAZARS AUDITORES, S.L.P.	ADOLFO DOMÍNGUEZ, S.A. AIRIFICIAL INTELLIGENCE STRUCTURES, S.A. MIQUEL Y COSTAS & MIQUEL, S.A.
PWC AUDITORES, S.L.	AMREST HOLDINGS, SE ATRESMEDIA CORPORACIÓN DE MEDIOS DE COMUNICACIÓN, S.A. BANCO SANTANDER, S.A BANKINTER, S.A. CAIXABANK, S.A. CEMENTOS MOLINS, S.A CIE AUTOMOTIVE, S.A. DISTRIBUIDORA INTERNACIONAL DE ALIMENTACIÓN, S.A. EDP RENOVAVEIS, S.A. FAES FARMA, S.A. GLOBAL DOMINION ACCESS, S.A. GRUPO CATALANA OCCIDENTE, S.A IBERPAPEL GESTIÓN, S.A. LÍNEA DIRECTA ASEGURADORA, S.A., COMPAÑÍA DE SEGUROS Y REASEGUROS NH HOTEL GROUP, S.A. PHARMA MAR, S.A. REPSOL, S.A. SACYR, S.A. TÉCNICAS REUNIDAS, S.A. TELEFÓNICA, S.A. UNICAJA BANCO, S.A. VOCENTO, S.A.
SGS INTERNATIONAL CERTIFICATION SERVICES IBÉRICA, S.A.U.	PROMOTORA DE INFORMACIONES, S.A.

Source: CNMV.

Glossary of initials, terms and abbreviations

ACGR: Annual corporate governance report, which is part of the management report.

AFR: Annual financial report.

APM: Alternative performance measures, defined in the ESMA guidelines on alternative performance measures (ESMA/2015/1415) published on 5 October 2015 (see also MAR).

BHRC: Business and Human Rights Resource Centre.

CAP: Common Agricultural Policy.

CapEx: Investments in fixed assets / capital expenditure.

CDP: Carbon Disclosure Project.

CEAOB: Committee of European Auditing Oversight Bodies.

CGEE: General Council of Economists of Spain.

Climate Supplement: Supplement to the European Commission Guidelines on the presentation of non-financial reports, published in the *OJEU* on 20 June 2019.

COP: Conference of the Parties. Annual Summit held by the United Nations Framework Convention on Climate Change (UNFCCC).

CSDD: Corporate Sustainability Due Diligence Directive, (at the draft stage at the date of publication of this report).

CSRD: Corporate Sustainability Reporting Directive Directive (EU) 2022/2464, published on 16 December in the *OJEU*.

Delegated Act on Climate: see also Commission Delegated Regulation (EU) 2021/2139.

Delegated Act on Disclosure of Information: See also Commission Delegated Regulation (EU) 2021/2178.

Delegated Regulation (EU) 2021/2139: Commission Delegated Regulation (EU) 2021/2139 of 4 June 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives. Also referred to as the **Delegated Act on Climate**.

Delegated Regulation (EU) 2021/2178: Commission Delegated Regulation (EU) 2021/2178 of 6 July 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the methodology to comply with that disclosure obligation. Also referred to as the **Delegated Act on Disclosure of Information**.

Directive 2013/34/EU: Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC Text with EEA relevance.

Directive 2014/95/EU: Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014, on non-financial and diversity information, the Non-Financial Reporting Directive (NFRD).

DNSH: Do no significant harm.

EBA European Banking Authority.

EC: European Commission.

EFRAG: European Financial Reporting Advisory Group.

EIOPA: EIOPA European Insurance and Occupational Pensions Authority.

ESA: European Supervisory Authorities.

ESEF: European Single Electronic Format.

ESG: environmental, social and governance criteria.

ESMA: European Securities and Markets Authority.

ESRS: European Sustainability Reporting Standards.

EU guidelines: European Commission Guidelines on non-financial reporting (2017/C 215/01), published on 5 July 2017 in the *OJEU*.

EU: European Union.

FSB: Financial Stability Board.

GHG: Greenhouse gases.

GRI: Global Reporting Initiative.

GSSB: Global Sustainability Standards Board, the GRI's independent standard-setting body.

IAASB: International Auditing and Assurance Standards Board.

ICAC: Spanish Accounting and Auditing Institute.

ICJCE: Institute of Chartered Accountants of Spain.

IEC: International Electrotechnical Commission.

IFAC: International Federation of Accountants.

IFRS: International Financial Reporting Standards (NIIF in Spanish).

IIRC: International Integrated Reporting Council.

ILO: International Labour Organization.

IOSCO: International Organization of Securities Commissions.

IPCC Intergovernmental Panel on Climate Change.

ISAE: International Standard on Assurance Engagements.

ISO: International Organization for Standardization.

ISSB: International Sustainability Standards Board.

Issuers: Issuers of securities admitted to trading on regulated markets of the European Union.

KPI: Key Performance Indicator.

LAC: Spanish Accounts Auditing Law.

Law 11/2018: Law 11/2018 of 28 December amending the Commercial Code, the recast text of the Corporate Enterprises Act approved by Royal Legislative Decree 1/2010 of 2 July, and Law 22/2015 of 20 July on the auditing of accounts as regards non-financial information and diversity.

LMV: Recast text of the Security Markets Act approved by Royal Legislative Decree 4/2015 of 23 October.

LSC: Recast text of the Corporate Enterprises Act.

NCP: National contact point for the OECD guidelines for multinational enterprises.

NFIS: Non-financial information statement.

NFRD: Non-Financial Reporting Directive (Directive 2014/95/EU).

NIIF: Normas Internacionales de Información Financiera (IFRS).

OECD: Organization for Economic Cooperation and Development.

OJEU: *Official Journal of the European Union.*

OPA: Oferta pública de adquisición/public takeover bid.

OpEx: Operating expenses.

PCAF: Partnership for Carbon Accounting Financials.

PIE: Public interest entity.

REA: Register of Auditing Economists.

SASB: Sustainability Accounting Standards Board.

SBTi: Science Based Targets Initiative.

SDG: Sustainable Development Goals.

SEC: US Securities and Exchange Commission.

SFDR: Sustainable Finance Disclosures Regulation.

SMEs: Small- and medium-sized enterprises.

SSAF: Sustainability Standards Advisory Forum.

Stakeholders: interest groups or interested parties.

Taxonomy Regulation: Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088.

TCFD: Task Force on Climate-Related Financial Disclosures.

UNEP FI: United Nations Environment Programme Finance Initiative, which created the Principles for Responsible Banking in 2019.

UNO/UN: United Nations Organization / United Nations.

Whistleblowing Directive: Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019, on the protection of persons who report breaches of Union law.

