

FESE Position Paper on the ESAP

9th March 2022, Brussels

Company information is, in general, easily available within local ecosystems, as institutional investors are familiar and know where to find the information. However, for cross-border retail investors, it can be harder to find information as investors may not know where to look for it.

FESE shares the Commission's objective to provide access to company information at the EU level and supports measures that give companies visibility on a European basis. By facilitating access to information about companies in other Member States or regions, more cross-border investments could potentially be encouraged. Therefore, the European Single Access Point (ESAP) can contribute to reaching this policy objective.

1. Scope

To increase integration but keep the project efficient and manageable in terms of the administrative burden of data processing, we welcome the Commission's approach that **ESAP should be limited to disclosures drawn from the existing Directives and Regulations**. However, we would like to stress that it is of key importance to ensure that ESAP is fit for its purpose. Any information included must add value to users and serve the purpose of matching investors with companies. Therefore, the scope of information should be limited to cases where this can be motivated.

Feedback indicates that the proposal is extremely extensive and covers a vast range of financial services legislation without a clear rationale. We are concerned that such an approach will bring additional and unnecessary complexities that may impact the success of this initiative. Some pieces of information in the scope of the current proposal might not add value in line with the intended objective. We question, for example, what value would information reported under CSDR bring to users. FESE believes that a further review of the scope of this proposal is necessary for assessing the legislation that should be included, ensuring it only includes relevant legislation that will assist in delivering the initial ESAP objectives.

2. Data reporting - "File once" Principle

In terms of approach, FESE sees merit in the Commission's proposals of tasking ESMA to establish, operate and maintain the ESAP. However, we believe that this role should not introduce additional requirements to reporting entities and ensure both the "file once" and "proportionality" principles.

It is important to ensure that any reporting requirement targets information that is useful, avoiding regulatory disincentives for firms to list on public markets. Companies should only have to report once and to one authority, following the "**file once**" principle. We believe that the ESAP should not introduce additional reporting lines for entities when their information is currently just made public. It would appear, however, from our initial assessment, that the proposal will create inconvenient reporting duplication and require new reporting lines to be established for entities. Also, introducing reported-related

requirements, as a “qualified electronic seal” and any other potential requirements, will certainly bring additional costs and administrative burdens for companies; thus creating unintended disincentives for firms to list on public markets, against the CMU objectives.

The Explanatory Memorandum states that the ESAP is a separate initiative from the Business Registers Interconnection System (BRIS). According to the Commission, the ESAP is complementary to BRIS and “*the overlap on data collected for the purposes of BRIS and ESAP will be limited to certain accounting documents (financial statements, audit reports, management reports including corporate sustainability reporting, and country-by-country reporting by extractive industries)*”. We are concerned, however, with the potential level of overlapping. While the Commission might consider it “limited”, feedback indicates that market participants are concerned about this overlay, as they might need to duplicate procedures (i.e. sending the same substantial amount of documents to both BRIS and the collection bodies under the ESAP). It would be most useful to clearly identify the overlapping points and adequately intervene in case they create an excessive burden to market participants.

3. Data reporting - “Proportionality” Principle

FESE welcomes that the Commission is not mandating a specific reporting format for entities to its respective collection body. Any open format, widely used, that allows data extraction by a machine, and that is not only human-readable should be allowed.

The proposal seems to consider searchable PDF documents to be acceptable where no other format (such as the ESEF) is defined. The proposal seems to be on the false assumption that a searchable PDF format qualifies as a data extractable format, which is technically incorrect. All these aspects, including the definition of machine-readable format, should be clarified.

It is also important to ensure that the “**proportionality**” principle is maintained. We believe that entities subject to the proposed requirement to report data-extractable formats (or machine-readable formats) to the designated collection body should not be asked to make any additional changes in respect to the format. Requiring entities to adapt to specific data-extractable formats (or machine-readable formats) would entail further compliance costs and administrative burdens, especially for small-sized entities.

4. The role and function of collection bodies

It should be noted that Officially Appointed Mechanisms (OAMs) cover an essential role in the ESAP proposal since they are identified as the collection body for several legislative files. In some national jurisdictions, the local stock exchange is the designated OAM. We understand that this is the case for Cyprus, Finland, Greece, Ireland, Lithuania, Luxembourg, Malta, Norway, and Slovenia. Hence, FESE Members are key stakeholders in the ESAP proposal.

The Explanatory Memorandum states that the ESAP Proposal “*holds implications in terms of costs and administrative burden for ESMA and national and EU collection bodies, in particular the Officially Appointed Mechanisms (OAMs), [...]*”. These costs are not clearly quantified as they will depend on the implementation choreography to be defined in Level 2 legislation. This aspect is concerning for OAMs which need to plan for such expenses and changes to their infrastructure. Bearing in mind the magnitude of the project in terms of scope, complexity, and timeframe FESE believes that the estimated costs from the impact assessment may not be realistic when considering every new ESAP feature (i.e. qualified electronic seal, automated checks, possible manual checks, and the obligation to reject inappropriate information).

Regarding the overall tasks given to collection bodies, FESE wishes to underline some key points identified so far:

- Article 5(1)(b) of the ESAP Regulation reads that the collection bodies shall, inter alia, “*perform automated validations on the information submitted to verify that the information complies with*” certain requirements. This validation will only be possible on a technical level and not content-wise. Therefore, we propose to amend this point to specify that automated validations are of technical nature.
- Article 5(1)(e) of the ESAP Regulation requires collection bodies to “*provide technical assistance to the entities submitting the information*”. It should be clarified what needs to be covered by such technical assistance as this could have far-reaching consequences for collection bodies depending on the scope.
- Article 5(1)(f) of the ESAP Regulation requires collection bodies to “*ensure that the information (...) remains available to ESAP for at least 10 years (...). Personal data in the information submitted (...) shall not be retained and made available for longer than 5 years (...)*”. FESE wishes to highlight its potential inconsistency since, in most cases, it is not possible to separate personal data from the overall information contained in documents. Hence, there is a mismatch between the two timeframes. It would make more sense if the 10 years floor was for the information (i.e. the document) and the 5 years cap was for specific metadata (and thus easily identifiable) accompanying the document (i.e. not in the documents per se).
- According to the current text, ESMA should establish the ESAP by 31st December 2024 (minimum viable product) and 31st December 2025 (in full). However, the obligation to submit information to the ESAP starts with information dated as of 1st January 2024. This conflicts with the project implementation by end of 2024. FESE would therefore suggest aligning the timelines.

The proposal is not clear on the additional costs that collection bodies, including OAMs, will bear due to (i) maintaining a help desk and (ii) performing automated validations. Also, funding sources of collection bodies, in particular OAMs, are not addressed. A thorough impact assessment should be presented to bring a clear understanding of the impact of the proposal and its (un)intended consequences.

Last but not the least, Article 5(3) foresees that “*Entities may submit information (...) only once to either one of the relevant collection bodies*”, and Article 5(4) foresees that those same entities “*shall ensure the accuracy of the information submit to the collection bodies*”. It is unclear to us which supervisor will have to enforce these obligations. Also, we wish to pinpoint the important difference between the use of “may” and “shall” in these provisions.