FESE response to the ESAs consultation on ESAP Level 2 requirements

8th March 2024, Brussels

Tasks of collection bodies

Q1. Do you agree with the preferred approach outlined above, under which the validations will be defined on a cross-cutting basis without specifying explicitly the types of information to which a given validation should be applied (and understanding that they should be performed always when relevant for a given type of information as set out in the ITS on tasks of collection bodies or sectoral ITS)?

Yes. FESE agrees with ESMA that it is not necessary to specify how the validations should be performed for each type of information separately. That would make the Level 2 legislation prone to technological obsolesce and would need to be updated constantly. Instead, we agree that sufficient technological and procedural flexibility is necessary.

However, one of the legal issues that needs to be addressed by ESMA is the allocation of responsibility for ensuring compliance with GDPR on the ESAP platform. GDPR (Regulation 2016/679) imposes strict obligations on the treatment and storage of personal data, which may affect the information submitted by entities to the collection bodies and the ESAP platform. It is unclear whether the collection bodies, or the ESAP platform, will be considered as data controllers or data processors under GDPR, and what duties they have to inform each other of any deletion or modification of personal data. We suggest that ESMA, or the Commission, should clarify this matter and provide guidance on how to coordinate the data protection obligations between the reporting entities, the collection bodies, and the ESAP platform. This would reduce the administrative burden and legal uncertainty for the collection bodies, who may not have direct access or control over the data stored on the ESAP platform. Furthermore, collection bodies may be legal entities that do not store or collect personal information in their day-to-day operations (like exchanges).

Q2. Do you agree with the above proposal how the collection bodies shall verify that the information is data-extractable? In case of any challenges foreseen, please propose alternatives.

FESE welcomes that the legislation is not mandating specific reporting formats for entities/issuers to use when sending information to their respective collection body. It is 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 concerning 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. However, we believe that the collection/validation of information would be difficult if it is not, at least, in a

machine-readable format. The requirement should be standardised, kept simple, and mandatory for this format.

Regarding data extractability, FESE agrees with the proposal from ESMA, i.e. that text content should be recognised and processed by a machine without resorting to highly sophisticated tools. There is no technical possibility to enforce data-extractable format compliance where the document contains both data-extractable parts and non-data-extractable parts. This would mean that there is no possibility to automatically detect that a document contains a picture of a table containing figures in the middle of a perfectly searchable text.

Q3. Do you agree with the above proposal how the collection bodies shall verify that the information is machine-readable? In case of any challenges foreseen, please propose alternatives.

Yes. FESE believes that the most efficient way to verify that the information is machine-readable, without burdening collection bodies, is a simple check that the format received corresponds to the one mandated by sectorial legislation. There needs to be an easy way to check whether a file is machine-readable, for instance by reading the metadata of a file it is possible to implement such a check. However, the result of these checks will not be consistent.

Q4. Do you agree with the above proposal for the validation of the metadata? In case of any challenges foreseen, please propose alternatives.

FESE agrees. However, should an external source of validation be unavailable (e.g. the GLEIF database cannot be accessed), the collection body should be allowed to perform checks based on previous validations (e.g. use its most recent local version of the GLEIF database) to prevent blocking the entity to fulfil its obligation.

Q5. Do you agree with the proposed approach to the validation of the electronic seal? In case of any challenges foreseen, please propose alternatives.

The validation of the electronic seal should remain optional, and the collection body should be able to sign on behalf of entities. The seal should be added by the entity publishing the document immediately before the publication. Otherwise, there could be issues with reading/parsing the file.

Q6. Do you agree that the format of rejection feedback to the submitting entities should be standardised?

Yes, FESE believes that standardisation of the rejection procedure allows for automated receipt, rejection, and forwarding of mandatory information without delays caused by human intervention. However, we believe this should be considered further. For example, ISO 2022 could be problematic for SMB entities where submission is done through e.g. a web application. Therefore, it may be better if the collection body is able to design its own format in certain circumstances. It is also important for collection bodies to be able to provide additional information for the relevant parties, which might not be of a standard design.

Rejection reports should not be sent to ESMA. Besides the low utility it presents in practical terms, this would further burden collecting bodies and may entail unnecessary costs.

Q7. Do you agree that the rejection feedback should be provided in a common format in accordance with ISO 20022 methodology? If not, please propose suitable alternatives.

Please see the answer to Q6.

Q8. Do you agree that the rejection feedback should be provided as soon as possible? Should an exact timeline be specified in the ITS and, if so, do you consider the proposed timeline adequate? Please clarify potential scenarios in which the proposed timeline could create challenges?

FESE does not support specifying the exact timeline within which the rejection feedback should be sent. Providing such feedback "as soon as possible" already ensures a smooth rejection process and provides the necessary flexibility for collection bodies receiving a wide range of information. We also do not see any clear need for reporting rejection messages to ESAP when the validation is done by the collection body based on inputs set by the entities. If the validation happens prior to the publication, no communication interexchange would happen with other parties.

Q9. Do you agree that QES under ESAP should be in XAdES, CAdES or PAdES format?

FESE agrees.

Q10. Do you agree that there is no need to use ASiC format under ESAP?

FESE agrees.

Q11. Do you agree that QES under ESAP should be at least at conformance level LT?

FESE agrees. However, it is unclear how the scenario should be covered if the documents will be revoked. It is also unclear how older documents should be signed.

Q12. Do you agree with the requirement to include ISO 17442 LEI code as an attribute in the digital certificates whenever the information submitted to ESAP is accompanied by a QES?

FESE agrees.

Q13. Are there any other characteristics of the QES that should be defined under ESAP?

N/A

Q14. Do you agree with the proposed approach to the open standard licences which shall be applied by collection bodies to the datasets to be made available to ESAP? If not, why not and what alternative approach would you suggest?

N/A

Q15. Do you agree with the proposed characteristics of the API for data collection? If not, what alternative characteristics would you recommend?

Yes. FESE agrees with the proposed characteristics of the API for data collection. Collection bodies need to be able to set up automatic procedures to send new or updated records. A timely and standardised feedback on the submission would make it workable in an algorithm.

Q16. Do you agree with the proposed approach to the format, list and characteristics of the metadata? If not, what alternative approach would you recommend?

FESE partially agrees. Metadata should be in no way integrated into the filed information itself. The information is provided by the reporting entity whereas the metadata are provided by the collection bodies. Allowing/requiring metadata to be provided in the information itself for some types of information will also provoke a discrepancy in the processing of metadata.

We otherwise agree on the other points of the proposed approach.

Q17. Do you agree with the proposed approach with regards to time limits? If not, what alternative approach would you suggest?

FESE agrees and fully supports a sensitive approach to time limits. The proposed scenarios for providing information as soon as possible after receipt or necessary verification provide the necessary flexibility for collection bodies. They are supported by a 60-minute delivery rule, which guarantees the required smooth flow of information into ESAP.

Q18. [for users of information only] Do you currently access price and time-sensitive information via the Officially Appointed Mechanisms or other (private or public) databases? If so, which ones? If not, how do you access such information?

ESAP is not structured as a source of time-sensitive information, and its goal of providing long-term information should be followed.

Q19. Do you expect that a maximum time delay of sixty minutes between when information is available at the level of the collection body and when it is available on ESAP will diminish the usefulness of ESAP? If so, what maximum time delay would you consider acceptable?

No. ESAP was not conceived for highly time-sensitive information. Its main purpose is to accumulate historical company information and ESG data for transparency and ease of access purposes. Whether information is made public immediately or with a maximum window of 60 minutes should not affect the value of the information from a user perspective.

In addition, the 60-minute delay should be used in exceptional circumstances, and this requirement could only be enforced during business hours, particularly in cases where manual validations are required.

ESAP functionalities

Q20. Do you agree with the indicative list of formats and characteristics proposed? If not, what alternative formats or characteristics would you recommend?

FESE agrees. However, it may be noted that point 90 states PDF and xHTML as the indicative list of data-extractable formats, whereas point 92 mentions PDF/HTML/iXBRL. We find that the indicative list of data-extractable formats should be PDF and HTML, with

the HTML format including its subcategories such as the xHTML format, which is required under Art. 3 of the ESEF Regulation.

In addition, it could specify a format for free text; for example, JSON.

Q21. Do you agree with the proposed characteristics of the API for data publication? If not, what alternative characteristics would you recommend?

FESE agrees. Open technical standards, such as HTTP REST API, should be used.

Q22. Do you agree with the proposal to specify that the legal entity identifier should be the ISO 17442 LEI code? If not, what other identifier would you suggest and why?

FESE agrees. The code is the most suitable for this purpose, has proven its reliability, and is widely accepted within reporting entities.

However, there is an issue concerning the validation of LEIs by the collection bodies. LEIs are unique identifiers that are required for reporting entities to submit information to the ESAP platform. However, LEIs need to be valid and duly renewed, and it is not clear when the collection bodies should check the validity of LEIs (i.e. at the time of submission or at the end of the reporting period). This may have implications for the quality and timeliness of the data submitted to the ESAP platform, and the potential need to revise or correct the data if the LEIs are found to be invalid or expired. We suggest that ESMA harmonises the criteria and procedures for validating LEIs by the collection bodies and specifies the trigger date for the valid LEI. This would enhance the consistency and reliability of the data submitted to the ESAP platform and avoid unnecessary revisions or corrections of the data.

Q23. Do you agree with the proposed approach with regards to types of information? If not, what additional/ alternative type of information do you recommend?

FESE agrees. The proposed types of information should be followed within the initial introduction of ESAP, and others could be added at a later stage depending on the actual requirements.

Q24. Do you think that information required at national level pursuant to Article 3(1) of the Transparency Directive (so-called gold plating) should be captured by certain specific types of information? Or would you prefer such information be captured by one generic category, namely "Additional regulated information required to be disclosed under the laws of a Member State"?

In general, we find it may be more predictable with certain specific types of information, instead of one generic category that may have a wide and more unclear area of application.

Q25. Do you agree with the proposed approach with regards to the categories of the size of the entities? If not, what alternative approach would you suggest and why?

FESE agrees.

Q26. Do you agree that it would be disproportionate to the purpose of the ESAP search function to introduce new categories by size for reporting regimes where currently no size

category is foreseen in level one legislation? If not, for what additional categories of entities would you add a size category and on the basis of what thresholds?

N/A

Q27. Do you think it would be useful to leverage on the thresholds introduced by DORA for the classification by size of at least some entities in scope of ESAP, such as IDD intermediaries and PRIIS manufacturers? If not, why not? If yes, are there other entities in scope of ESAP for which you think the thresholds defined in DORA would be applicable and/or useful?

N/A

Q28. Do you agree with proposed approach with regards to the categorisation of industry sectors? If not, what approach would you suggest and why?

N/A

Q29. Do you think additional or fewer sectors would be appropriate for the ESAP search function? If so, which ones would you propose to add and/or remove?

N/A