

## EuropeanIssuers' Position Paper on the European Single Access Point (ESAP)

October 2022

EuropeanIssuers welcomes the opportunity to comment on the Commission's package for the establishment of the European Single Access Point (ESAP). As the ESAP will have significant impacts and structural effects for issuers across Europe, EuropeanIssuers wishes primarily to insist on the fact that it should not generate new costs and liability for companies. Furthermore, several points need to be taken into consideration when addressing the establishment of the ESAP, and on which we would like to express our views in the following paragraphs.

### I. The scope

As a scope incorrectly set and too broad could have detrimental effects for companies, EuropeanIssuers considers that supervisory reporting should not fall within the scope, as it includes non-public data. Companies consider furthermore that the following information should also be excluded from the scope of the ESAP:

- Disclosure of significant net short positions required under the Short-selling Regulation (Regulation (EU) 236/2012) which can have adverse side effects such as encouraging short-selling practices;
- Given the high volume of disclosures, KIDs and KIIDs published under the PRIIPs Regulation and UCITS legislation;
- Reports on the quality of the execution of client orders and on the top five execution venues published pursuant to MIFID/MIFIR and the associated technical standards, given the lack of interest of the public in these reports;
- Sanctions imposed by National Competent Authorities, considering potential reputation risks stemming from the disclosure of this type of information beyond the national framework and the fact that such information can contain personal data.

### II. Dissemination and storage rules

The ESAP package requires entities subject to disclosure requirements to submit simultaneously the information they must make public to the relevant collection body. Depending on the concerned piece of legislation, the collection body would be the NCA, the OAM or the ESMA. Furthermore, the proposal seems to suggest that, in Member States where more than one OAM are in place, only one collection body should be designated to submit information to ESAP. Concerns arise with regards to issuers that will need to face increased obligations and possible effects of the competition between OAMs.

The approach envisaged under the ESAP proposal is therefore not consistent with the system of collection present in several Member States. EuropeanIssuers considers that the organisation in place should not be changed as any change could generate costs for reporting companies and for the NCA or the OAM without proven benefits. The ESAP proposal should thus allow flexibility to Member States to appoint the collection body.

In addition, EuropeanIssuers considers that the requirement according to which issuers should submit prospectuses to ESMA is not relevant, since prospectuses are approved and filed with the NCA.

### III. Format

We applaud that the ESAP proposal (as well as the ECON draft report and the Council's approach) do not require company to file in a machine-readable format but rest on existing reporting formats. Indeed, from our perspective it is absolutely sufficient that the information in ESAP is accessible in data extractable format.

However, EuropeanIssuers anticipates and is concerned that eventually all information companies are required to make public will have to be published in a machine-readable format. As of today, ESEF is the single electronic machine-readable format applicable to public reporting in accordance with the Transparency Directive. ESEF however is not necessarily the most appropriate format for all regulated information considering the publication frequency of said information, the volume of the disclosures and the number of reports concerned and the fact that ESEF can be subject to cyber-security breaches. Therefore a future transition to publication in machine-readable format only (if there is any) and the choice of the format should be based on a review of existing formats, a detailed assessment of the needs of potential end-users and a robust cost-benefit analysis aimed at striking the right balance between, on the one hand, the need to have comparable and interactive data and, on the other hand, the constraints and costs for preparers. Stakeholders should be consulted with appropriate timeframes.

### IV. Functionalities of ESAP and implementation of technical standards

EuropeanIssuers considers that the list of metadata and functionalities envisaged by the Commission strikes the right balance to ensure that end-users will easily find information on the ESAP. Additional metadata or requirements to the functionalities should not be added to ensure that the ESAP will be fully operational by December 2025. In this regard, EuropeanIssuers considers that draft amendments put forward by the LIBE and JURI Committees of the European Parliament regarding additional metadata and functionalities are not relevant and should not be adopted as they will increase the costs and burden to establish the ESAP without contributing to the objectives of the CMU.

EuropeanIssuers is concerned that implementing technical standards to be drafted by the European Supervisory Authorities (ESAs) will contradict the Commission's intention of not creating new reporting obligations in terms of content and format but building up on the existing data reporting channels and infrastructure. Since the ESAP proposal does not prescribe the format of publication of regulated information, technical standards shall not lead to new requirements in this regard with limited parliamentary control. This applies in particular to ESEF which shall not be extended to other elements of reporting through the ESAP proposal. In a similar vein, we consider that audit requirements shall not be extended nor any translation requirements imposed as a result of the establishment of the ESAP.

## V. Exemption of information available

In order to avoid imposing unnecessary burden, companies consider that an exemption from the obligation to submit information to the relevant collection body should be introduced when said information is included in a document already available on the ESAP or made available simultaneously. Such an exemption could be introduced through a general provision in the ESAP Proposal or through a specific provision in each piece of legislation (directive or regulation) amended by the ESAP Package.

## VI. Timeline

The timeline for the establishment of the ESAP by 31 December 2024 appears to be too ambitious and unclear in terms of the phasing-in of the requirements. EuropeanIssuers supports the Council's approach and ECON draft report to have the ESAP established by 31 December 2025. Rushing in the implementation of the ESAP could generate additional costs but also negatively impact the quality of data which is a key concern for end-users. The technical challenges of the reporting will be extremely complex, even if no additional requirements for listed companies will directly or indirectly result in the course of ESAP implementation. Many aspects of the implementation of these requirements are still unclear at present and the ESAP would be an additional challenge for OAMs (and maybe also the reporting entities).

Moreover, reporting companies will face many regulatory challenges in the next years (e.g. Corporate Social Responsibility Directive, Directive on Corporate Sustainability Due Diligence), which will also affect reporting requirements, in particular the iXBRL-tagging of the management reports. Therefore, when drafting the technical standards, the Joint Committee and ESMA should consult stakeholders and in particular companies within sufficient deadlines to allow preparers to be able to provide input, especially in terms of costs. Engagement with companies could also take the form of outreach events and/or workshops. Furthermore, sufficient deadlines before implementation of the new requirements should be explicitly included in the technical standards (at least 12 months).

## VII. Estimation of costs

We doubt that the cost estimates are realistic. Already the individual actual costs are likely to be significantly higher than the estimated 800 Euros. Experiences show that this amount covers only the direct costs related to the submission of the current ESEF reporting requirements to the national OAM which is only one of one the thirty-seven regulations mentioned in the ESAP proposal. Furthermore and depending on the final Implementing Technical Standard, it cannot be excluded that there will be additional costs for the preparation, the conversion, the validation and maybe also the auditing of the information. In addition, the cost estimates not yet include the costs on the side of ESMA which will have to be recovered by national NCAs and, in many countries, ultimately market participants.

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