



European Securities and  
Markets Authority

# Response to public consultation

**ESMA's response to the EC targeted consultation on the ESAP**



## General questions

1. Please rate the following characteristics of ESAP based on how relevant they are according to you (please rate each item from 1 to 5: "1": fully disagree, "2": somewhat disagree, "3": neutral, "4": somewhat agree, "5": fully agree and "no opinion"):

	1	2	3	4	5	No opinion
The information quality (accuracy and completeness) is most important					x	
The widest possible scope of the information is most important		x				
The timeliness of the information is most important					x	
The source of the information is a key element to know					x	
The immutability of the information is a key element			x			
ESAP should include information made public on a voluntary basis by non-listed companies of any size, including SMEs			x			
ESAP should include information made public on a voluntary basis by financial market actors			x			
Other aspects, if so which ones:						

Please explain your position in the text box below providing your arguments, and where appropriate, concrete examples and data to support your answers:

ESMA believes that the most relevant features of the information which will be included in the ESAP are data quality (accuracy and completeness), reliability and timeliness.

In ESMA's view it is in fact key that users can rely on the highest possible data quality, that information is reliable in terms of content and in terms of its source (i.e. that the source of the information is known and that the platform ensures that information is securely stored and cannot be corrupted) and that information is made available as soon as possible, especially with regards to price-sensitive information.

In ESMA's view, the Commission should adopt a phased approach, starting with a targeted scope but ensuring future scalability. ESMA highlights that a phased approach was also recommended by the High Level Forum on the CMU and would allow satisfying and securing first the most urgent needs.

Against the background of the EFTG pilot project, ESMA understands the term "immutable" to mean that the information stored in the ESAP might not be deleted once uploaded in the blockchain. ESMA encourages the Commission to consider the interaction between such feature and the rights of the data subject, in particular the right to rectification and the right to deletion in accordance with Article 16 and 17 of GDPR. Furthermore, information submitted in the company registers might be legally required to be deleted (e.g. after 10 years, in case of errors, etc). Whilst ESMA does not have a view with regards to the technological solution which may be used to implement the ESAP, and remains available to explore the potential of blockchain for the purpose of the ESAP, ESMA recommends that such questions are carefully considered by the European Commission.

For more details about ESMA's position on the voluntary disclosures by non-listed companies, please refer to the narrative response to question 21.

2. Which channels do you use when searching for, retrieving or using companies' public information? (Multiple choice allowed)

- Company's website
- Data aggregation service providers
- Stock Exchanges
- Public repositories or databases (OAMs, NCAs, ESAs)
- Other

3. Would you say that the cost for retrieving and using companies' public information is?

- Immaterial
- Average
- High

It varies from high (data aggregation services providers) to immaterial (OAMs and companies' websites)

4. In which electronic format is companies' public information provided by these channels?

- XBRL
- PDF
- XML
- HTML
- CSV, TXT
- Excel
- Formats enabling natural language processing
- Other

5. Do you encounter barriers or difficulties when accessing the information?

- YES
- NO



6. Do you encounter barriers or difficulties when using the information?

YES

NO

## The scope of ESAP

7. Should ESAP include information from the hereunder provided list of EU legislations in the financial area? And if so, please specify whether the ESAP should embed this information immediately (as soon as the ESAP starts) or at a later stage (phasing in) (please choose one of the two options for each EU legislation that you agree to include in ESAP).

	Fully disagree	Somewhat disagree	Neutral	Fully agree	Immediately	At a later stage
The Transparency Directive (2004/109/EC) (e.g. annual/half yearly financial reports, acquisition or disposal of major holdings)				x	x	
The Accounting Directive (2013/34/EU) (e.g. financial statements, management report, audit report)				x <sup>1</sup>	x	
The Audit Directive (2014/56/EU) and Audit Regulation (537/2014/EU) (e.g. auditor transparency reports)						x

<sup>1</sup> In so far as public disclosures required by this Directive concern companies with securities admitted to trading on a regulated market

	Fully disagree	Somewhat disagree	Neutral	Fully agree	Immediately	At a later stage
The Non-Financial Reporting Directive (NFRD) (2014/95/EU) (e.g. non-financial statement)				x <sup>2</sup>	x	
The Prospectus Regulation (2017/1129/EU) (e.g. Prospectus, Universal Registration Document, SME Growth Markets-information)				x	x	
The Shareholders Rights Directive (2007/36/EC) and (2017/828/EU) (e.g. Remuneration Report)				x	x	
The Market Abuse Regulation (596/2014/EU) and Market Abuse Directive (2014/57/EU) (e.g. inside information)				x	x	
The Resolution and Recovery of Credit institutions and Investment firms Directive (BRRD) (2014/59/EU) (e.g. information on the group financial support agreement)						x
The Covered Bonds Directive (2019/2162) (e.g. information on the cover pool)						x

<sup>2</sup> In so far as public disclosures required by this Directive concern companies with securities admitted to trading on a regulated market

	Fully disagree	Somewhat disagree	Neutral	Fully agree	Immediately	At a later stage
The Capital Requirements Directive (CRD) (2013/36/EU) and Capital Requirements Regulation (CRR) (575/2013/EU) (e.g. prudential information, stress test results)						x
The Credit Ratings Regulation (1060/2009/EU) (e.g. transparency report)						x
The Central Securities Depositories Regulation (909/2014/EU) (e.g. governance arrangements)						x
The Key Information Documents for Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation (1286/2014/EU) (e.g. key information document)						x
The Regulation on European Long-term Investment Funds (ELTIF) (2015/760/EU) (e.g. fund-related information)						x
The European Market Infrastructure Regulation (EMIR) (648/2012/EU) (e.g. prices and fees of services provided, risk management model)						x



	Fully disagree	Somewhat disagree	Neutral	Fully agree	Immediately	At a later stage
The Financial Conglomerates Directive (FICOD) (2011/89/EU) (e.g. corporate structure of the conglomerate)						x
The Directive of Prudential Supervision of Investment Firms (IFD) (2019/2034/EU) and the Regulation of Prudential Requirements of Investment Firms (IFR) (2019/2033/EU) (e.g. aggregated information on high-earners, remuneration arrangements)						x
The Directive on the Activities and Supervision of Institutions for Occupational Retirement Provision (IORP) (2016/2341/EU) (e.g. remuneration policy)						x
The Pan-European Personal Pension Products Regulation (PEPP) (2019/1238/EU) (e.g. key information document)						x
The Regulation on Wholesale Energy Market Integrity and Transparency (REMIT) (1348/2014/EU) (e.g. inside information)						x

	Fully disagree	Somewhat disagree	Neutral	Fully agree	Immediately	At a later stage
The Securities Financing Transactions Regulation (SFTR) (2015/2365/EU) (e.g. aggregate positions)						x
The Solvency II Directive (2009/138/EC) (e.g. solvency and financial condition report)						x
The Short Selling Regulation (236/2012/EU) (e.g. net short position)						x
The Take-Over Bid Directive (2004/25/EC) (e.g. Information in the management report on companies' capital and shareholders, voting rights, governance...)				x	x	
The Directive of Markets in Financial Instruments (MIFID) (2014/65/EU) and Regulation of Markets in Financial Instruments (MIFIR) (600/2014/EU) (e.g. volume and price of certain transactions)						x
The Regulation on European Venture Capital Funds (EuVECA) (345/2013/EU) (e.g. fund-related information)						x

	Fully disagree	Somewhat disagree	Neutral	Fully agree	Immediately	At a later stage
The Regulation on European social entrepreneurship funds (EuSEF) (346/2013/EU) (e.g. fund-related information)						x
The Regulation on Money Market Funds (2017/1131/EU) (e.g. prospectus)						x
The Directive on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (2009/65/EC) (e.g. key investor information)						x
The Directive on Alternative Investment Fund Managers (AIFM) (2011/61/EU) (e.g. investment strategy and objectives of the fund)						x
The Regulation on EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks (EU 2019/2089) (e.g. information on measurable carbon emission reduction)						x
Information on sustainability risks and impacts disclosed pursuant to the Regulation (EU) 2019/2088						x

	Fully disagree	Somewhat disagree	Neutral	Fully agree	Immediately	At a later stage
on sustainability-related disclosure and The Taxonomy Regulation (2020/852/EU) (e.g. sustainability risks integration policies)						
The EU Emissions Trading System (EU ETS)						x
Other aspects, if so which ones:						

Please explain your position in the text box below providing your arguments, and where appropriate, concrete examples and data to support your answers:

ESMA deems that three considerations should drive the prioritisation of the documents to be included in each phase of the development of the ESAP.

First, public companies are central to the CMU project and to the new CMU action plan, whose ambition is “to further facilitate the use of market funding and to help companies make use of all available funding sources”<sup>3</sup>. Therefore, priority should be given to financial and non-financial documents prepared by public companies with the aim to make them more visible to cross-border investors, better integrate national capital markets and therefore facilitate access to market funding. In ESMA’s view, this is one of the key sets of data that is missing among the data that is collected and published at European level as of today. This position is also supported by the conclusions of the High Level Forum on the CMU.

---

<sup>3</sup> COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS A Capital Markets Union for people and businesses-new action plan COM/2020/590 final

Secondly, the full benefit of a single depository can be reaped only if information included therein is comparable in terms of content and rendered in a structured / machine readable format. In ESMA's view, these are the necessary conditions for information to be easily consumable by cross-border investors, who need to be able to access information in any of the EU languages, and automatically extract large amounts of data in a seamless way, based on precise definitions of terms and concepts.

Thirdly, the inclusion of a set of documents in the ESAP should be accompanied by the development of checks and the establishment of a clear data governance (i.e. clarity about who owns the data and who enforces data quality). In ESMA's view this is essential to ensure data quality, and therefore usability of the data and the protection of investors. ESMA also wishes to highlight, however, that developing data quality checks implies the need for large-scale IT systems to run such checks and therefore creates operational complexities which should not be underestimated. This is the case especially if data quality checks are performed at the time of submission of information by the preparer – which in ESMA's view is the sole way for enforcers to ensure proper data quality. ESMA highlights that overstressing operational capacities at the beginning risks jeopardising the success of the whole initiative.

In light of these considerations, ESMA thinks that it is most urgent that the ESAP provides central access to financial and non- financial information related to the Transparency Directive, the Accounting Directive and the Non Financial Reporting Directive (in so far as the public disclosures required by these directives concern companies admitted to trading on regulated markets), the Shareholders Rights Directive, the Market Abuse Regulation, the Takeover Bid Directive and the Prospectus Regulation. ESMA highlights that the High Level Forum on the CMU came to similar conclusions with regards to the "first stage" of the ESAP.

ESMA highlights that some of the documents related to such legal acts are already required to be comparable in terms of content and rendered in a structured / machine readable format (for example ESEF annual reports) or accompanied by standardised metadata (for example prospectuses) and are therefore already suited for the ESAP. ESMA deems that, following a cost benefit analysis, the scope of documents to be structured could be extended in a phased approach by developing further technical standards and taxonomies. The effort necessary to develop and implement machine-readability requirements, however, should not be underestimated.

In ESMA's view, documents relating to other legal acts should be considered only for later phases of the development of the ESAP. Each step should be considered when the previous one is fully operational.



## The usability and accessibility

8. In order to improve the digital use and searchability of the information, for which of the hereunder information would you support the use of structured data formats, such as ESEF (XHTML and iXBRL), XML, etc., allowing for machine readability? (Multiple choice allowed)

- Listed companies' half yearly financial reports
- Financial statements
- Management report
- Payments to governments
- Audit report
- Total number of voting rights and capital
- Acquisition or disposal of issuer's own shares
- Home Member State
- Acquisition or disposal of major holdings
- Inside information
- Prospectuses
- Net short position details
- Fund-related information
- Key Information Document
- Public disclosure resulting from prudential requirements
- Remuneration policies



- Corporate structure of the conglomerate
- Governance arrangements
- Covered bonds - related information
- Solvency and financial condition report
- Sustainability - related information
- Other (for example, managers' transactions required by MAR Article 19)

ESMA fully supports the ambition of the EC to improve the digital use and searchability of the information and therefore the use of structured data formats such as ESEF, XML or other formats allowing machine readability. In ESMA's view, information in a structured or machine-readable format has very significant benefits to users.

However, ESMA deems that a necessary condition in order to render information in a machine-readable format is that such information is prepared on the basis of the same or similar standards or sets of requirements. Absent such condition, ESMA thinks that rendering information which is prepared on the basis of different standards or of different requirements into a machine-readable format would be hardly practicable and possibly misleading for users.

ESMA is aware that preparing information in a machine-readable format implies certain costs for preparers. Nevertheless, ESMA thinks that the added value of including in a large database information which is not comparable and not structured is very limited both for preparers and for end users. Therefore, in order to include information in the ESAP, the information disclosed should be machine-readable. This position is also supported by the conclusions of the High Level Forum on the CMU.

9. Which of the following machine-readable formats would you find suitable? Please rate the following information based on how suitable they are according to you (please rate each item from 1 to 5: "5" being the highest rate and "1" the lowest)

	1	2	3	4	5	No opinion
ESEF ( XHTML files + inline XBRL tagging requirements)					x	
XML files					x	
CSV files			x			
Excel	x					
Formats enabling natural language processing		x				
Other:						

Please explain your position in the text box below providing your arguments, and where appropriate, concrete examples and evidence to support your answers:

ESMA thinks that the appropriate machine-readable format depends on the content, level of harmonisation/standardisation of the underlying report, amount of data to be exchanged etc. Nevertheless the multiplication of formats implies cost increase in the implementation side - the more harmonised, the easier and better to implement both for preparers, for users and for regulators.

In light of its current work, ESMA notes that the ESEF (xHTML + iXBRL) and XML have been deemed to be effective machine-readable formats to prepare and exchange documents within ESMA's remit, given the volumes and complexity of the information exchanged, whereas CSV can be used for non-complex information. Other non-standardised or proprietary formats (for example, Excel) should be avoided.

10. How should the information be accessible in ESAP? (Multiple choice allowed)

- Through Application Programming Interfaces (APIs)
- Bulk download
- Web portals





Other:

11. To what extent should the language barrier be tackled? For the following features of the ESAP (web portal, metadata, taxonomy/labels, and content/data), which of the following language arrangements would you favour?

Portals / search tools:

- in a language that is customary in the sphere of international finance
- in multiple or all EU languages

Metadata (where variable text):

- in original language
- in a language that is customary in the sphere of international finance
- in multiple or all EU languages

Taxonomy / labels (if any):

- in original language
- in a language that is customary in the sphere of international finance
- in multiple or all EU languages

Content / data:

- in original language



in a language that is customary in the sphere of international finance

in multiple or all EU languages

Other: to be assessed on the basis of costs to preparers and benefits to users

**Infrastructure and data governance (collection of data + validation of data)**

12. Should specific categories of stakeholders be involved in the governance of ESAP?  
(Multiple choice allowed)

EU authority (ESMA, European Commission etc.) or a consortium of EU authorities. If, so which ones

National Competent Authorities

Investors

Reporting companies

Other

ESMA agrees with the view expressed by the Commission that the body in charge of ESAP should be non-for-profit and should be responsible for coordinating IT systems, maintenance and budgetary aspects.

ESMA considers to be uniquely placed to set up and manage the ESAP, provided that the initial scope is limited to information relating to companies with access to capital markets and that adequate ad hoc funds are made available to ESMA to carry out the project. In light of ESMA's own governance, National Competent Authorities would be automatically involved in the ESAP governance as well.

ESMA notes that this is consistent with the conclusions of the High Level Forum on the CMU, which "recommends that the Commission duly mandates ESMA to set up the European Single Access Point (ESAP)".

13. Considering the point in time at which a company makes public some information that is legally required, what would be the ideal timing for the information to be available on the ESAP?

ESMA thinks that information submitted by preparers should become immediately available to end users. This is especially so for price-sensitive information. In addition, ESMA notes that



the relevance of an EU-level access point would be greatly diminished if information became available therein only after it becomes available elsewhere (for example, the company's website or the OAM).

14. Should the integrity of the information and the credibility of the source of data used be ensured, when it is made accessible in ESAP?

- By electronic seals or electronic signatures embedded at source
- By the ESAP platform
- By other means / trust services

ESMA thinks that it is essential that information prepared in a machine-readable format is secured and that it cannot be corrupted whilst stored in a central platform. Depending on the type of information and its format, ESMA thinks the source of such information could be ensured by encryption mechanisms and electronic signature embedded by the preparer. In addition, however, it is essential that users can fully trust that the information included in the ESAP is the original one and that it has not been unduly corrupted or modified.

15. Should the information in ESAP be subject to quality checks?

- YES
- NO
- Other

16. Should a quality check be needed, what would need to be checked? (Multiple choice allowed)

- Compliance with IT formats
- Certain key tests (matching figures, units, ...)
- Use of a correct taxonomy



- Completeness
- Availability of metadata
- Other: it depends on the type of format

In ESMA's view data quality checks and a clear data governance (i.e. clarity about who owns the data and who enforces data quality) are essential in order to ensure usability of the data and the protection of investors. ESMA thinks that quality checks should ideally be performed at the time of submission of information by the preparer – which in ESMA's view is the sole way for enforcers to ensure proper data quality.

ESMA highlights that the exact type of checks which should be performed depends on the type of format used.

### **Targeted questions regarding entities with no access to capital markets (non-listed entities), including SMEs**

17. Should it be possible for companies other than those with securities listed on EU regulated markets to disclose information on ESAP on a voluntary basis?

- YES
- NO

17.1 If you replied yes to question 17, please specify, which type of entities should be allowed to disclose data on a voluntary basis in the ESAP? (Multiple choice allowed)

- Companies with securities listed on a SME growth-market
- Companies with securities listed on other non-regulated markets
- Pre-IPO companies not yet listed on an exchange
- Any unlisted companies
- Other entities:



18. What type of information should be disclosed on a voluntary basis in the ESAP? (Multiple choice allowed)

- A set of predefined key financial information, allowing to compare data
- Any financial information that the issuer would be willing to render public via ESAP
- A set of predefined key sustainable related information, allowing to compare the data
- Any sustainability related information that the issuer would be willing to render public via ESAP
- Other (give a few examples)

19. As regards frequency of the submission of the voluntary information to ESAP, when should it occur?

- Following predefined periodic submission dates (if, so please specify frequency)
- On an ongoing basis as soon as available

20. In which language should entities with no access to capital markets be able to encode the voluntary information, please choose one or more preferred language from the list below:

- National language
- A language that is customary in the sphere of international finance
- Any language
- Other (please explain)

21. Should filings done on a voluntary basis by SMEs and non-listed companies follow all the rules of the ESAP as regards for instance identification, data structuring and formats, quality checks, etc.?

- Yes



No

Please explain your position in the text box below: [textbox]

Whilst ESMA does not provide detailed input to the consultation questions 17 to 21 as these fall outside ESMA's remit, we encourage the EC to consider the following issues with regards to the possibility for companies to file information on a voluntary basis.

Whilst ESMA agrees with the EC that the lack of integrated data management at EU level may be detrimental to entities with no access to capital markets and that therefore it might be beneficial for such companies to disclose information in the ESAP, ESMA highlights that when information can be provided on a voluntary basis, the risks exists that only "positive" information will be disclosed, thus resulting in bias. Moreover, lack of assurance by auditors and of enforcement powers by regulators is likely to impact data quality and therefore put investors' protection at risk.

Furthermore, as mentioned in earlier sections, ESMA thinks that the added value of including in a large database information which is not comparable, not structured or not of high data quality is very limited both for preparers and for end users. Therefore in order to include information in the ESAP, the information disclosed by companies with no access to capital markets should be prepared on the basis of comparable standards or requirements and be machine-readable or at least accompanied by standardised metadata.