Reply Form

**to the Consultation on draft ITS specifying certain tasks of collection bodies and certain functionalities of the European Single Access Point**

**Responding to this Consultation Paper**

ESMA invites comments on all matters in this Consultation Paper and in particular on the specific questions summarised in Annexes. Comments are most helpful if they:

* respond to the question asked;
* indicate the specific question to which the comment relates;
* contain a clear rationale; and
* describe any alternatives ESMA should consider or comment to specific questions irrespective of the preferred option.

ESMA will consider all comments received by **8 March 2024.**

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

**Instructions**

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

* Insert your responses to the questions in the Consultation Paper in this reply form.
* Please do not remove tags of the type < ESMA\_QUESTION\_ESAP\_0>. Your response to each question has to be framed by the two tags corresponding to the question.
* If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
* When you have drafted your responses, save the reply form according to the following convention: ESMA\_CP1\_ESAP \_nameofrespondent.
* For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA\_CP1\_ESAP \_ABCD.
* Upload the Word reply form containing your responses to ESMA’s website (**pdf documents will not be considered except for annexes**). All contributions should be submitted online at www.esma.europa.eu under the heading *‘Your input - Consultations’*.

**Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

**Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘[Data protection](https://www.esma.europa.eu/about-esma/data-protection)’.

**Who should read this paper?**

This Consultation Paper may be of particular interest to securitisation investors/potential investors, securitisation issuers/originators, market infrastructures, securitisation repositories, credit rating agencies as well as public bodies involved in securitisations (market regulators, resolution authorities, supervisory authorities, central banks and standard setters).

# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | FEBIS |
| Activity | Business information Providers |
| Are you representing an association? |[x]
| Country / Region | Germany |

# Questions

1. 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)?

<ESMA\_QUESTION\_ESAP\_1>

We agree to not explicitly specify the validations but in parallel it is relevant to know, out of the technicality, which type of information are guaranteed / validated by the collection body and not only self-declared (i.e. cross-checking them against other public data). The verifications of the accuracy and legitimate character of the information submitted should be done at national level by the registers or the information which will be available in ESAP won’t be accurate.

<ESMA\_QUESTION\_ESAP\_1>

1. 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.

<ESMA\_QUESTION\_ESAP\_2>

We should limit as much as possible or remove completely data-extractable information and prefer/push for having them machine-readable. In the residual cases, collection body should guarantee machine-readable information. The validation should not only consist of extracting the text but also avoiding that the information includes other data (i.e. tables, images, etc.)

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<ESMA\_QUESTION\_ESAP\_2>

1. 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.

<ESMA\_QUESTION\_ESAP\_3>

For both Q2 and Q3, the checks and validation will have to be made by the collection body at filing time by the submitting entity and not at transfer time to ESAP. It is therefore important to ensure that all national collection bodies put in place similar methods or items to validate the data which is made available through ESAP, in order to allow comparisons to be made. Furthermore, it is important to do corrections and amendments at filing time because of the direct contact between the reporting company and the collection body taking place at that time

<ESMA\_QUESTION\_ESAP\_3>

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

<ESMA\_QUESTION\_ESAP\_4>

Regarding the LEI, not all companies having to file their annual accounts cf the directive 2013/34 do have a LEI a present time. If the LEI becomes mandatory, it should be required rapidly at national level. It will be a big challenge if all reporting companies have to register for the LEI in due time and in many countries the application to get an LEI is not that well-known nor transparent. It would be safer to allow in parallel another company identifier ( eg national ID) to be also available.

<ESMA\_QUESTION\_ESAP\_4>

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

<ESMA\_QUESTION\_ESAP\_5>

Yes

<ESMA\_QUESTION\_ESAP\_5>

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

<ESMA\_QUESTION\_ESAP\_6>

Yes, especially for those entities that have to file to different collection bodies because of different reporting requirements. It will also save time to have standardised approach there and the reporting entities should not have to report amended information to a large number of collection bodies but rather to have it in one single place.

It is crucial to ensure that standardized information is shared, so that data items can be compared and are meaning the same thing, otherwise ESAP will miss its purpose. <ESMA\_QUESTION\_ESAP\_6>

1. Do you agree that the rejection feedback should be provided in a common format in accordance with ISO 20022 methodology?

<ESMA\_QUESTION\_ESAP\_7>

Yes

<ESMA\_QUESTION\_ESAP\_7>

1. Do you agree that the rejection feedback should be provided within sixty minutes?

<ESMA\_QUESTION\_ESAP\_8>

60 minutes is a workable timeline between the availability of the information from the reporting entity to the collection body and the availability of information in ESAP. We could extend the timeline of 60 minutes in order to allow more broad and distributed validations from collection units. It is key that the process undergo a formal validation and that there is a feedback mechanism working, the performance of it is not key in the process. I would extend to at least a 1-day turnaround.

<ESMA\_QUESTION\_ESAP\_8>

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

<ESMA\_QUESTION\_ESAP\_9>

We alert on the fact that, at present time, the use of QES quite often generates technical problems for submitting entities. A very rigorous testing of QES will have to be made before they are required to submitting entities

<ESMA\_QUESTION\_ESAP\_9>

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

<ESMA\_QUESTION\_ESAP\_10>

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<ESMA\_QUESTION\_ESAP\_10>

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

<ESMA\_QUESTION\_ESAP\_11>

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<ESMA\_QUESTION\_ESAP\_11>

1. 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?

<ESMA\_QUESTION\_ESAP\_12>

Regarding the LEI, not all companies having to file their annual accounts according to the directive 2013/34 do have an LEI a present time. If the LEI becomes mandatory, it should be required rapidly at national level, taking into account also the use of confidentiality options that can be made by national transposition of the accounting directive 2013/34/EC. <ESMA\_QUESTION\_ESAP\_12>

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

<ESMA\_QUESTION\_ESAP\_13>

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<ESMA\_QUESTION\_ESAP\_13>

1. 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?

<ESMA\_QUESTION\_ESAP\_14>

As data to be made available through ESAP already have to be publicly disclosed according to company law / financial regulations for third party information, and as the directive 2019/1024 should already be transposed and applied all over EU, it seems to us that the proposed option is the mandatory one. The only point that should be underlined is that not all countries in the world do give access to those data as easily.

Furthermore, there might be some issues in getting comparable cross-border data as the transposition and requirements of filing information may differ from one country to the other.

It is on the other hand quite important to ensure that national collection bodies do not exercise database rights nor charge prohibitive access fees to re-users wanting to access this information which has to be mandatorily made public by reporting entities.

<ESMA\_QUESTION\_ESAP\_14>

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

<ESMA\_QUESTION\_ESAP\_15>

The proposed solution is based on a “push” model where the collection bodies notify ESAP when there is a change instead of a “pull” model where ESAP would check on a consistent and constant basis if some changes haven been made to national reporting elements. The push solution can work well, provided that data is validated , accurate and is kept as much up-to-date as possible by the national registers and the national collection bodies. Data should be ultimately uniform and accessible; it does not matter to support multiple formats

<ESMA\_QUESTION\_ESAP\_15>

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

<ESMA\_QUESTION\_ESAP\_16>

Cf the § 73 p), the reference to the directives should be added by the collection body cf the § 76. As a matter of fact, as a directive has been transposed into national law, submitting entities often do not know its reference.

For what concerns “the industry sector(s) of the economic activities of the natural and legal person to which the information relates” “the list of possible items to populate this field should be based on the taxonomy of elements”. Now, it is needed to disclose the information both in NACE code structure as well as using taxonomy dictionaries.

Given LEI code is considered the unique identifier of companies, to be documented if/how it is expected to be addressed the fact that not all companies have a LEI code assigned. As of December 2023, only 1.6M entities were assigned with a LEI number by GLEIF in all EU.

<ESMA\_QUESTION\_ESAP\_16>

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

<ESMA\_QUESTION\_ESAP\_17>

No, the timeliness of the information is key but on the other side the size of data published might not be irrelevant. A full day delay between publication in local collection sites and ESAP is acceptable and allows better distribution of the workload using also nightly cycles.

<ESMA\_QUESTION\_ESAP\_17>

1. [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?

<ESMA\_QUESTION\_ESAP\_18>

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<ESMA\_QUESTION\_ESAP\_18>

1. 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?

<ESMA\_QUESTION\_ESAP\_19>

It depends of the type of information and even one day could be an acceptable time for publishing information

We would also like to stress the issue of the scope which has been greatly enlarged from the original Commission proposal which was focusing on listed companies only. As the ESAM webinar has made clear that the scope of ESAP was now on all companies having to report at national level, FEBIS members stress that the costs incurred to manage this will be much higher than what was expected in the original Impact Assessment and that it obviously won’t be possible to rely on public money to sustain this. Moreover, the change of scope raises questions regarding fair competitive landscape with private actors and the validation checks that will need to be done to ensure that illegitimate reuse of what will be free and open data is not made.

<ESMA\_QUESTION\_ESAP\_19>

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

<ESMA\_QUESTION\_ESAP\_20>

Yes, we agree that the definition of “machine readable” should be XML, JSON, XBRL and iXBRL (i.e. xHTML with XBRL tags) and that the definition of “data extractable” should be PDF and xHTML (i.e. xHTML without XBRL tags).

<ESMA\_QUESTION\_ESAP\_20>

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

<ESMA\_QUESTION\_ESAP\_21>

We agree but take the opportunity to highlight how important it is to have technical documentation that matches perfectly well with files content.Il is also imperative that APIs and servers can manage a high number of requests, without implementing quotas. Re “However, in light of the empowerment allowing ESMA to charge fees for specific services (article 8, paragraph 2), access to the API could be subject to authentication and access control for users of those specific services which may be subject to fees.” It is required to rule which are the services and fees

<ESMA\_QUESTION\_ESAP\_21>

1. 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?

<ESMA\_QUESTION\_ESAP\_22>

We do understand the reason, but have also noticed that “It should be clarified that all legal entities in scope of ESAP will be expected to obtain an LEI since an LEI is available to them”

The question is not so much to obtain an LEI than to know that it will be soon mandatory to have one. The examples given in the § 101 are financial markets legislation. Which is not the case of the directive 2013/34, that also impacts non listed companies and companies outside the financial sector.

Information available from the GLEIF database are not always fully accurate / up to date.

Therefore, we do strongly suggest to add a national identifier, which should be checked by the collecting body.

<ESMA\_QUESTION\_ESAP\_22>

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

<ESMA\_QUESTION\_ESAP\_23>

We do agree with the approach described in § 110. Not all users will be informed ones, and for sure not about the different options to be used by each national legislation.

<ESMA\_QUESTION\_ESAP\_23>

1. 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”?

<ESMA\_QUESTION\_ESAP\_24>

We strongly encourage not to use generic categories and to be as specific as possible in order to allow comparison and comparable data. If possible to split it into specific types it could ease the consumption of the data not forcing the user to know the laws of member states

<ESMA\_QUESTION\_ESAP\_24>

1. 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?

<ESMA\_QUESTION\_ESAP\_25>

As the same size category might mean different things under different regulations and directives, there is no other option than selecting 1) the specific legislation and then 2) the size.

According to directives, we alert about the potential use by Member States of options cf the size, such as for example the confidentiality option of annual accounts for micro and small companies triggered by France in its implementation of the 2013/34/EC directive. And, cf our answer to Q16, as a directive has been transposed into national law, submitting entities and users often do not know its reference. In that case, some reference to national law would be welcome.

Unless it is possible to provide a unique classification of company size harmonized across all legislations otherwise it is not a viable approach to have a not standardized approach. Worst but most effective compromise between ease of use and different interpretations is to provide as many classifications as currently regulated. I.e. there will not be 1 metadata company size but company size + regulation (so that the same company will be known as S for directive X and M for directive Y). It looses standardization but allows easy lookup by use-case

<ESMA\_QUESTION\_ESAP\_25>

1. 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?

<ESMA\_QUESTION\_ESAP\_26>

Yes, not only disporportionate but most likely to fail as approach. Suggested to use ESAP to report all classifications of the companies as per existing directives, when new directives will come in force will be assigned with dedicated metadata, complementary to the others

<ESMA\_QUESTION\_ESAP\_26>

1. 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?

<ESMA\_QUESTION\_ESAP\_27>

It would be useful to add scope and size descriptions put in place by DORA but this risks also to jeopardise the fluidity of the user experience and the possibility to have comparable data.

<ESMA\_QUESTION\_ESAP\_27>

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

<ESMA\_QUESTION\_ESAP\_28>

We suggest to use the 2d level of the NACE classification, as the 1st one is too generic. And also the NACE code but also providing the EU taxonomy related mapping

<ESMA\_QUESTION\_ESAP\_28>

1. 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?

<ESMA\_QUESTION\_ESAP\_29>

No, we should leverage already existing and standard classification codes. The only one next to NACE is EU taxonomy activities

<ESMA\_QUESTION\_ESAP\_29>