

EUROPEAN SINGLE ACCESS POINT PACKAGE (ESAP) AFEP COMMENTS

AFEP, the French Association of Large Companies, welcomes this opportunity to comment on the European Commission's proposals aimed at establishing a European single access point (ESAP) in order to provide centralised access to publicly available information of relevance to financial services, capital markets and sustainability (the ESAP Package¹).

AFEP brings together over 110 large companies operating in France and worldwide which are in majority public interest entities and therefore subject to the disclosure requirements of several pieces of EU legislation listed in the Annex of the ESAP Regulation and in particular the Transparency Directive, the Accounting Directive – including the Non-financial Directive as well as the forthcoming Corporate Sustainability Reporting Directive –, the Prospectus Regulation and the Market Abuse Regulation not to mention sectoral legislations. **AFEP member companies will be major contributors in feeding the ESAP with financial and non-financial information.** The ESAP regulation can therefore have significant structural effects on AFEP member companies.

In this regard, AFEP wishes to insist on the fact that the **establishment of the ESAP should not generate additional costs and liability for companies.** This is a critical point since large public companies will not necessarily in the short-term draw significant benefits from the ESAP: only in the long run, easier access to financial and non-financial information may have beneficial impacts for instance on the costs of financing. ESAP will, in the short term, mainly benefit financial market participants that need to collect data to comply with their own reporting requirements (ESG indicators for instance required by the Pillar 3 ESG, the Taxonomy Regulation or the Sustainable Finance Disclosure Regulation) and data vendors. Additional costs, in particular, can **stem from the following elements:**

- **Changes to the current dissemination and storage rules in force in each Member State;**
- **Too short implementation deadlines;**
- **Disproportionate technical requirements.**

These key points are detailed below.

In addition, AFEP member companies also wish to **comment on the scope of the ESAP proposal.**

¹ Including a proposal for a Regulation establishing a European single access point (ESAP) providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability (the ESAP Regulation), a proposal for a Regulation amending certain Regulations as regards the establishment and functioning of the ESAP and a proposal for a Directive amending certain Directives as regards the establishment and functioning of the ESAP.

1. Scope of the ESAP

As regards the scope of information covered by the ESAP Package, AFEP member companies consider that **supervisory reporting should not fall within the scope** as supervisory reporting 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).
- Given the high volume of disclosures that would be covered by **PRIIPs/UCITS**, the potential to include PRIIPs or UCITS in ESAP would be better considered as part of the scheduled review of **PRIIPs/UCITS** itself rather than through the current proposal. **We believe it would be inappropriate for KIDs/KIIDs to be included in the ESAP proposal.** According to Article 27(1) and 29(1) of the PRIIPs Regulation, the competent authority shall disclose **administrative** sanctions and measures to the public and report these to the competent ESA. Therefore, the relevant NCA should submit the sanctions and measures to the collection body, and not the PRIIPs manufacturer. **We are also concerned by the potential reputation risk stemming from the disclosure of this type of information beyond the national framework.**
- **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. In this regard, the European Commission has already proposed to delete the “RTS 27”² report, with the “RTS 28”³ also being subject to review. We strongly support the former and also encourage the deletion of the latter.

2. ESAP should not impact current dissemination and storage rules

When transposing the Transparency Directive in France, the decision was made to **require listed undertakings to file regulated information with the National Competent Authority (NCA)**, Autorité des Marchés Financiers, which would, in turn, submit the information to the Officially Appointed Mechanism (OAM). **This organisation has proven effective over the last 15 years and should not be changed.** As a matter of fact, the ESAP Package requires entities subject to disclosure requirements to submit the information they must make public, at the same time, to the relevant collection body. Depending on the concerned piece of legislation, the collection body would be the NCA, the OAM or the ESMA. The following table shows for the main pieces of legislation applicable to listed undertakings the differences between the current regime in France and the regime foreseen by the ESAP Package.

² Commission Delegated Regulation (EU) 2017/575 of 8 June 2016.

³ Commission Delegated Regulation (EU) 2017/576 of 8 June 2016.

	Regulated information to be filed with...		
	...under the current regime in France	... under the ESAP Proposal	
Take-over bid Directive (2004/25/EC)	NCA	NCA	✓
Transparency Directive (2004/109/EC)	NCA	OAM	✗
Accounting Directive (2013/34/EU)	NCA	OAM	✗
Market Abuse Regulation (596/2014)	NCA	OAM	✗
Prospectus Regulation (2017/1129)	NCA	ESMA	✗
Taxonomy Regulation (2020/852)	NCA	OAM	✗

Any changes to the current regime will generate costs for reporting companies but also for the NCA and the OAM without proven benefits. AFEP member companies consider therefore that the ESAP Package, and more precisely the proposals for a regulation and a directive amending certain existing regulations and directives as regards the establishment of the ESAP, should **allow flexibility to Member States to appoint the collection body** (please refer to Annex I).

Furthermore, AFEP member companies consider that **requiring issuers to submit prospectuses to ESMA is not relevant** since prospectuses are approved by and filed with the NCA.

3. Implementation deadlines should be reasonable

To allow companies to adapt to new technical requirements that will be imposed by the ESAP Package (eg. technical standards that collection bodies will apply to validate information submitted by reporting entities), reasonable timelines should be adopted. **Rushing in the implementation of the ESAP could generate additional costs but also negatively impact the quality of data**, the latter point being a key concern for future end-users. AFEP member companies anticipate that in the long-term all information made public will have to be published in a machine-readable format. This transition to an all-machine-readable regime cannot be realised overnight and sufficient time should be allowed for companies.

Whenever ESMA is empowered with the task to develop implementing technical standards regarding the metadata to be included, the structuring of the data and the use of machine-readable formats, **a minimum period of 12 months before the application of the new requirements should be explicitly included** in the technical standards: the technical standards should apply **12 months** after their adoption by the European Commission. When drafting the technical standards, **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**.

4. New technical requirements should be proportionate

As mentioned above, companies anticipated that eventually all information they are required to make public will have to be published in a machine-readable format. The transition to publication in machine-readable format only and the choice of the format, should build on a **robust cost-benefit analysis and aim 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”. **The needs of potential end-users should be precisely assessed.**

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;
- The format of presentation of the information and the need under certain circumstances to take into account last-minute changes;
- That ESEF can be subject to cyber-security breaches.

Therefore, before mandating a specific format a review of existing formats should be performed in order to determine the best format and **stakeholders should be consulted.**

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ABOUT AFEP

Since 1982, AFEP brings together large companies operating in France. The Association, based in Paris and Brussels, aims to foster a business-friendly environment and to present the company members' vision to French public authorities, European institutions and international organisations. Restoring business competitiveness to achieve growth and sustainable employment in Europe and tackle the challenges of globalisation is AFEP's core priority. AFEP has over 110 members. More than 8 million people are employed by AFEP companies and their annual combined turnover amounts to €2,600 billion. AFEP is involved in drafting cross-sectoral legislation, at French and European level, in the following areas: economy, taxation, company law and corporate governance, corporate finance and financial markets, competition, intellectual property and consumer affairs, labour law and social protection, environment and energy, corporate social responsibility and trade.

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ANNEX I – Proposals for amendments to the ESAP Package

	Commission's proposal	Proposals for amendments
	Proposal for a directive amending certain directives as regards the ESAP	
Transparency Directive	<p>Article 3 Amendments to Directive 2004/109/EC Directive 2004/109/EC is amended as follows: (1) In Directive 2004/109/EC, the following Article 23a is inserted: 'Article 23a Accessibility of information on the European Single Access Point (ESAP) (...) 2. <i>For the purposes paragraph 1, the collection bodies as defined in Article 2, point (3), of Regulation (EU) XX/XXXX [ESAP Regulation] shall be the officially appointed mechanisms designated under Article 21(2) of this Directive.</i></p>	<p>Article 3 Amendments to Directive 2004/109/EC Directive 2004/109/EC is amended as follows: (1) In Directive 2004/109/EC, the following Article 23a is inserted: 'Article 23a Accessibility of information on the European Single Access Point (ESAP) (...) <i>By 31 December 2023, for the purposes of paragraph 1, Member States shall designate the collection body defined in Article 2, point (2), of Regulation (EU) XX/XXXX [ESAP Regulation] and notify the ESMA thereof.</i></p>
Accounting Directive	<p>Article 9 Amendments to Directive 2013/34/EU In Directive 2013/34/EU, the following Article 33a is inserted: 'Article 33a Accessibility of information on the European Single Access Point (ESAP) (...) By 31 December 2024, for the purposes of paragraph 1, Member States shall designate <i>one of the officially appointed mechanisms referred to in Article 21, point (2) of Directive 2004/109/EC</i> as the collection body defined in Article 2, point (2), of Regulation (EU) XX/XXXX [ESAP Regulation] and notify ESMA thereof.</p>	<p>Article 9 Amendments to Directive 2013/34/EU In Directive 2013/34/EU, the following Article 33a is inserted: 'Article 33a Accessibility of information on the European Single Access Point (ESAP) (...) By 31 December 2024, for the purposes of paragraph 1, Member States shall designate the collection body defined in Article 2, point (2), of Regulation (EU) XX/XXXX [ESAP Regulation] and notify <i>the</i> ESMA thereof.</p>
	Proposal for a regulation amending certain regulations as regards the ESAP	
Market Abuse Regulation	<p>Article 8 Amendment to Regulation (EU) 596/2014 In Regulation (EU) 596/2014, the following Article 21a is inserted: 'Article 21a Accessibility of information on the European Single Access Point (ESAP) (...) 3. By 31 December 2024, for the purposes of <i>making accessible on ESAP the information referred to in Article 17(2), Member States shall designate one of the officially appointed mechanisms established under Article 21(2) of Directive 2004/109/EC as the collection body defined in Article 2, point (2), of Regulation (EU) XX/XXXX [ESAP Regulation] and notify ESMA thereof.</i> From 1 January 2025, for the purposes of making accessible on ESAP the information</p>	<p>Article 8 Amendment to Regulation (EU) 596/2014 In Regulation (EU) 596/2014, the following Article 21a is inserted: 'Article 21a Accessibility of information on the European Single Access Point (ESAP) (...) 3. By 31 December 2024, for the purposes of <i>paragraph 1, Member States shall designate the collection body defined in Article 2, point (2), of Regulation (EU) XX/XXXX [ESAP Regulation] and notify the ESMA thereof.</i> From 1 January 2025, for the purposes of making accessible on ESAP the information</p>

	<p>referred to in Articles 17(1) and 19(3), the collection body as defined in Article 2, point (2), of Regulation (EU) XX/XXXX [ESAP Regulation] shall be the relevant officially appointed mechanism.</p> <p><i>From 1 January 2025, for the purposes of making accessible on ESAP the information referred to in Article 34(1), the collection body as defined in Article 2, point (2), of Regulation (EU) XX/XXXX [ESAP Regulation] shall be the national competent authority. That information shall be prepared in a data extractable format as defined in Article 2, point (3), of Regulation (EU) XX/XXXX [ESAP Regulation], include the name and, where available, the legal entity identifier of the issuer as specified pursuant to Article 7(4) of that Regulation, and the type of information as classified pursuant to Article 7(4) of that Regulation.</i></p>	<p>referred to in Articles 17(1), 19(3) and 34(1), Member States shall designate the collection body defined in Article 2, point (2), of Regulation (EU) XX/XXXX [ESAP Regulation] and notify the ESMA thereof.</p>
<p>Prospectus Regulation (2017/1129)</p>	<p>Article 15 Amendment to Regulation (EU) 2017/1129</p> <p>In Regulation (EU) 2017/1129, the following Article 21a is inserted: 'Article 21a Accessibility of information on the European Single Access Point (ESAP) (...) 3. For the purposes of making accessible on ESAP the information referred to in paragraph 1, the collection body defined in Article 2, point (2), of Regulation (EU) XX/XXXX [ESAP Regulation] shall be ESMA.</p> <p>From 1 January 2024, for the purposes of making accessible on ESAP the information referred to in Articles 25(1), Article 25(4), and Article 26(2), the collection body defined in Article 2, point (2), of Regulation (EU) XX/XXXX [ESAP Regulation] shall be ESMA. That information shall be prepared in a data extractable format as defined in Article 2, point (3), of Regulation (EU) XX/XXXX [ESAP Regulation], include the names and, where available, the legal entity identifier of the issuer or, where applicable, the offeror as specified pursuant to Article 7(4) of that Regulation, and the type of information as classified pursuant to Article 7(4) of that Regulation.</p>	<p>Article 15 Amendment to Regulation (EU) 2017/1129</p> <p>In Regulation (EU) 2017/1129, the following Article 21a is inserted: 'Article 21a Accessibility of information on the European Single Access Point (ESAP) (...) 3. For the purposes of paragraph 1, Member States shall designate the collection body defined in Article 2, point (2), of Regulation (EU) XX/XXXX [ESAP Regulation] and notify the ESMA thereof.</p> <p>From 1 January 2024, for the purposes of making accessible on ESAP the information referred to in Articles 25(1), Article 25(4), and Article 26(2), Member States shall designate the collection body defined in Article 2, point (2), of Regulation (EU) XX/XXXX [ESAP Regulation] and notify the ESMA thereof.</p>
<p>Taxonomy Regulation (2020/852)</p>	<p>Article 20 Amendment to Regulation (EU) 2020/852</p> <p>In Regulation (EU) 2020/852, the following Article 8a is inserted: 'Article 8a</p>	<p>Article 20 Amendment to Regulation (EU) 2020/852</p> <p>In Regulation (EU) 2020/852, the following Article 8a is inserted: 'Article 8a</p>

	<p>Accessibility of information on the European Single Access Point (ESAP) (...) 3. By 31 December 2023, for the purposes of making accessible on ESAP the information referred to in paragraph 1, Member States shall designate one of the officially appointed mechanisms referred to in Article 21(2) of Directive 2004/109/EC as the collection body defined in Article 2, point (2), of Regulation (EU) XX/XXXX [ESAP Regulation] and notify the ESMA thereof.</p>	<p>Accessibility of information on the European Single Access Point (ESAP) (...) 3. By 31 December 2023, for the purposes of making accessible on ESAP the information referred to in paragraph 1, Member States shall designate the collection body defined in Article 2, point (2), of Regulation (EU) XX/XXXX [ESAP Regulation] and notify the ESMA thereof.</p>
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