

European Single Access Point must not result in additional obligations for listed companies

Position Paper on the EU Commission's proposal on a Regulation establishing a European single access point providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability, 8 April 2022

Deutsches Aktieninstitut generally supports the objective of the European Single Access Point as long as no additional obligations result for listed companies regarding material content or technical aspects of reporting.

The proposal for a regulation establishing a European Single Access Point (ESAP) aims at facilitating access to corporate information for all stakeholders and at promoting the digitalisation of information. In general, Deutsches Aktieninstitut agrees with these goals, although we are concerned that the main burden may ultimately be borne by the preparers of corporate information.

Therefore, some points still need clarification, which we would like to explain in the following paragraphs.

1. First of all, we would like to note that while the intended simplification and increase in efficiency may be true for users, practical experience has shown that this is often not true for the preparers. An example is the requirement to file yearly financial reports in the ESEF format. This obligation has led to a significant increase in complexity of reporting and auditing for issuers though there is still no proof that ESEF reports are intensively used by investors. The machine-readable reports should ultimately be readable by everyone (as it is the case with pdf files), who is interested in reading it, not just users with special software. The more company information is included in the ESEF, the more difficult it is for some users to access this information easily.
2. Against this background we highly support the Commission's intention, that the „proposal does not create any new reporting obligation in terms of content, but rather builds on existing disclosure requirements“. We also support that „ESAP builds as much as possible on the existing data reporting channels and infrastructure“. There should indeed be no dual filing (OAMs/NCAs on the one side, ESAP on the other side) of company information and no new creation of new material and formal reporting obligations. The intention, that the „information to be made publicly accessible on ESAP should be [exclusively] collected by collection bodies designated for the purpose of collecting the information that the entities are under an obligation to make public“ must be ensured, so that ESAP in essence will simply connect existing OAMs and existing filing without adding material or formal aspects to reporting requirements.
3. However, we are concerned that implementing technical standards to be drafted by the European Supervisory Authorities (ESAs) will, in effect, contradict this basic concept. The adoption of the technical standards must not lead to new legal regulations "through the back door" with limited parliamentary control. This applies in particular to ESEF. There

must be no ESEF extension to other elements of reporting with reference to ESAP. In a similar vein, we are concerned that audit requirements may be extended or additional language or translation requirements will result in the course of ESAP implementation without prior political discussion on these issues.

4. We do not understand why „ESMA should bear no liability for the use and re-use of information accessible on ESAP“. In our view, ESMA as the ESAP operator should be subject to the same due diligence obligations as companies. If companies have properly submitted their reports to the OAMs, companies should be able to assume that the information is also properly submitted by the OAMs to the users. Consequently, ESMA or the OAMs should be responsible for any errors that occur, for example, in their processes of validation, conversion and making public.
5. We consider the timetable for the establishment of the ESAP by 31 December 2024 to be too ambitious and appears to be unclear in terms of the phasing-in of requirements. The technical challenges will be very complex, even if no additional requirements for listed companies will directly or indirectly result in the course of ESAP implementation (see above 2. and 3.). A longer lead time for the testing of the new processes, e.g. the needed software solution, will be necessary for observing occurring errors and to fix them. Experience with ESEF has shown that the working software solutions take time. 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. 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).
6. 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 the 37 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.

7. Finally, as the ESAP is, in essence, an additional service for investors and other interested parties and all information to be stored in the ESAP is already freely available, it would be reasonable that users also become more involved in the cost bearing.

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