

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

European Parliament should call for unbureaucratic legislation

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, this position paper¹ summarizes some points that still need clarification taking into account the amendments proposed by Members of the European Parliament.

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 anyone (as it is the case with pdf files) that 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.

Therefore, we urge ECON members to follow amendment proposals that do not add new formatting obligations. The legislation should differentiate between data-extractable and machine-readable formats as they are currently established in existing legislation. Here, we are strongly concerned with 2021/0380(COD) amendment no. 178 as it seems to only allow a machine-readable format.

As our experiences with the most recent technical implementation task (i.e. the implementation of ESEF) are rather negative, it will also be essential to set up ESAP in a way that allows for “easy access” and is highly accepted by users as intended. Also, it will be necessary to perform an intensive field test (including ambitious new functionalities such as search functions and translations), which would enable preparers and main users to exchange views with sufficient time.

¹ This position paper is an updated version of our previous position paper. (Deutsches Aktieninstitut, European Single Access Point must not result in additional obligations for listed companies, 8 April 2022).

2. Against the background above, 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.

Accordingly, we agree with amendments (in particular 2021/0380(COD) no. 107, 108, and 109) brought forward by ECON Members ensuring that there are no deviations from existing reporting structures and the “file-only-once”-principle is upheld. We are particularly concerned with the language in the EU Commission's proposal (Art. 15 para 1) that requires issuers to file a Prospectus with ESMA, rather than the competent national authority as currently required. Also, similarly, we encourage ECON members to follow proposals that add no new substantive obligations, such as an electronic seal (2021/0378(COD) no. 159, and 160), minimize the required meta data (2021/0378(COD) no. 82, 135, and 145) as this would otherwise result in additional costs and liabilities and (2021/0378(COD) no. 121 as a general clarification).

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 as it the wording of amendment no. 178 appears to intend (see above). 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 are concerned with the vast number of legislations that are considered to fall within the scope of the European Single Access Point as this again generates additional costs and can lead to new liabilities. Therefore, we welcome the amendments seeking to limit the number of legislations that this regulation covers and oppose proposals that would even include additional existing or upcoming regulation (in particular regarding the

upcoming European Green Bond Standard, 2021/0378(COD) no. 230, 231 and 232)

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). Therefore, we agree with the amendments brought forward by numerous ECON Members urging for the initial timeline for the establishment of the European Single Access Point to be pushed back.
6. We do not understand why „ESMA should bear no liability for the use and re-use of information accessible on ESAP“as proposed by amendment no. 206. 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. This should also be clarified accordingly in the regulation.
7. 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.

8. 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.

Contact

Dr. Gerrit Fey
Head of Capital Markets Department
Phone +49 69 92915-41
fey@dai.de

Frankfurt Office:
Deutsches Aktieninstitut e.V.
Senckenberganlage 28
60325 Frankfurt am Main

EU Liaison Office:
Deutsches Aktieninstitut e.V.
Rue Marie de Bourgogne 58
1000 Brussels

Berlin Office:
Deutsches Aktieninstitut e.V.
Alte Potsdamer Straße 5, Haus Huth
10785 Berlin

Lobbying Register German Bundestag: R000613
Transparency Register: 38064081304-25
www.dai.de

We want capital markets to be strong, so that they empower companies to finance great ideas and to contribute to a better future for our communities.

We act as the voice of capital markets and represent the interests of our members at national and European level.

We promote connections between our members, bringing them closer together and providing them with the most compelling opportunities for exchange.

As a think tank, we deliver facts for the leaders of today and develop ideas for a successful capital markets policy. We do this because companies, investors and society alike benefit from strong capital markets