12 January 2024
ESMA12-11834

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 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 under the heading '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).

1 General information about respondent

Name of the company / organisation	Deutsches Aktieninstitut e.V.
Activity	Associations, professional bodies, industry representatives
Are you representing an association?	☒
Country / Region	Germany

2 Questions

Q1. 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 do understand that the ESAs wish to develop a future proof concept for validation checks and thus do not wish to detail validation checks for each type of information.

However, we would like to bring to bring to the attention of the ESAs as issue in particular relevant with regard to the specific situation of reports that companies are required to prepare in ESEF, i.e. tagging certain information with iXBRL, according to the ESEF Regulation 2019/815.

iXBRL has proven to be a highly technical and complicated format. There are various opinions or interpretations among companies, auditors, software providers, and authorities such as collection bodies on how the consolidated financial statements should be tagged or the ESEF-File should be prepared in a technical way. The compliance of the created ESEF file is particularly assessed through validations, which may vary widely depending on the software used.

The problem is that the ESEF Regulation does not provide clear guidelines on how the validations should be carried out or describe under what conditions an ESEF-file can be considered compliant in a technical sense. Additional guidelines such as the ESEF Reporting Manual or the ESEF Conformance Suite cannot fill this legal gap. The same issue will arise in the future for sustainability reports that need to be tagged in XBRL format according to the CSRD 2022/2464.

According to the proposed ITS collection bodies should reject information that has not been properly prepared. First of all, we highly welcome and support the statement that validations will be limited to the format of the submission and will not cover the content. Content validations in the sense of whether a certain item has been tagged in a meaningful way would be clearly out of scope of the ITS. However, legal uncertainty remains for technical compliance. As a consequence, companies face a high legal risk in properly preparing an ESEF file, as they do not know which validations collection bodies consider mandatory. Also for this technical compliance, it must be clear to both the collection bodies and the entities what validations are considered legally necessary. This could result in the situation that the same iXBRL-file will be

rejected by a collection body in country A on technical validation checks, whereas another country would accept the same file as compliant.

Against this background, the discussion on the technical compliance held in light of the ITS should address the legal certainty of technical validations. One option could be to limit to checks to the simple question whether the document submitted to the collection bodies *is* an IXBRL-file and prohibiting any further check on national level. An alternative would be to clarify a (small) set of binding validation checks for iXBRL-files on European level. Additionally, new technical validation checks should not be added without clearly communicating these to companies.

<ESMA_QUESTION_ESAP_1>

Q2. 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>

As mentioned for Q1, validations should be limited to the format of the submission rather than the content. Content validations are not subject to clear guidelines and therefore, are attached to significant legal uncertainty.

<ESMA_QUESTION_ESAP_2>

Q3. 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>

As mentioned for Q1, validations should be limited to the format of the submission rather than the content. Content validations are not subject to clear guidelines and therefore, are attached to significant legal uncertainty.

<ESMA_QUESTION_ESAP_3>

Q4. 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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_ESAP_4>

Q5. 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>

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<ESMA_QUESTION_ESAP_5>

Q6. Do you agree that the format of rejection feedback to the submitting entities should be standardised?

<ESMA_QUESTION_ESAP_6>

We have no clear understanding of what could be the consequences of using a standardised format for submitting entities. Though is generally appears to be meaningful to standardise the data points that are included in a rejection notice across Europe, such a standardisation should not result in additional requirements for submitting entities in terms new IT interfaces or other investments in order to be able to receive rejection notices.

<ESMA_QUESTION_ESAP_6>

Q7. Do you agree that the rejection feedback should be provided in a common format in accordance with ISO 20022 methodology?

<ESMA_QUESTION_ESAP_7>

Similar to Question 6, the key interest of submitting entities is that rejection notices are not too technical or cryptic and easily understandable.]

<ESMA_QUESTION_ESAP_7>

Q8. Do you agree that the rejection feedback should be provided within sixty minutes?

<ESMA_QUESTION_ESAP_8>

For submitting entities the key issue is it that rejection feedback should be provided before the information is published on the ESAP (not only after publication). We are therefore concerned about Art. 6 of the proposed ITS (and the last sentence of item 36.) that appears to indicate that rejection notices could be provided "… where content validations are required, no later than sixty minutes after the information is made public following those validations." Our understanding of a rejection notice is to give submitting entities the opportunity to correct rather technical errors in the submitted type of information in order to ensure that collections bodies and ESAP only make public information that has passed validation tests, so that legal certainty is ensured for both collections bodies and submitting entities.

<ESMA_QUESTION_ESAP_8>

Q9. Do you agree that QES under ESAP should be in XAdES, CAdES or PAdES format?

<ESMA_QUESTION_ESAP_9>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_ESAP_9>

Q10. Do you agree that there is no need to use ASiC format under ESAP?

<ESMA_QUESTION_ESAP_10>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_ESAP_10>

Q11. Do you agree that QES under ESAP should be at least at conformance level LT?

<ESMA_QUESTION_ESAP_11>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_ESAP_11>

Q12. 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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_ESAP_12>

Q13. 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>

Q14. 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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_ESAP_14>

Q15. 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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_ESAP_15>

Q16. 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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_ESAP_16>

Q17. Do you agree with the proposed approach with regards to time limits? If not, what alternative approach would you suggest?

<ESMA_QUESTION_ESAP_17>

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<ESMA_QUESTION_ESAP_17>

Q18. [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>

Q19. 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>

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<ESMA_QUESTION_ESAP_19>

Q20. 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>

We have one remark that needs to be clarified to better understand what can be the practical consequences of the proposal for existing notification procedures.

First, the indicative list of formats falling under the definition of “data extractable” are PDF and xHTML (i.e. xHTML without XBRL tags). We wonder how this interacts with the current disclosure regime of the Federal Gazette in Germany where information generally needs to be converted into XML. This XML requirement, however, also covers types of information that has not been put into the scope of “machine readability” by EU Legislation. We therefore believe, that XML should also be considered as “data extractable” in order to avoid forced changes to existing collection mechanism.

<ESMA_QUESTION_ESAP_20>

Q21. 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>

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<ESMA_QUESTION_ESAP_21>

Q22. 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>

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<ESMA_QUESTION_ESAP_22>

Q23. 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>

From the issuers' perspective, it is important that existing collection process of compiling and integrating different types of information in one document will not be put into question. In other words, it has to be avoided that information subject to disclosure would have to be partially broken down into individual components due to the obligation to attach a "type of information flag" to the information.

Against this background we support the ESAs' approach that a single document can be accompanied by metadata indicating several "types of information" so that the document submitted to a collection body will stay unchanged.

A good example for this is the yearly financial report that consists of several types of information. Another would be the management report within the yearly financial report that – in future – will also contain the sustainability information.

With regard to other types of information in particular the renumeration policy and report under the Shareholder Rights Directive (Directive 2007/36/EU), as well as the material transaction with related third parties and voting results also under the Shareholder Rights Directive the same issue exists. However, compared to the financial report which is defined under the TD there is no legally defined "umbrella" type of information.

<ESMA_QUESTION_ESAP_23>

Q24. 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>

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<ESMA_QUESTION_ESAP_24>

Q25. 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>

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<ESMA_QUESTION_ESAP_25>

Q26. 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>

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<ESMA_QUESTION_ESAP_26>

Q27. 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>

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<ESMA_QUESTION_ESAP_27>

Q28. 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>

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<ESMA_QUESTION_ESAP_28>

Q29. 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>

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<ESMA_QUESTION_ESAP_29>