Legislative proposal of the European Commission on the creation of a European single access point. International Bulletin, March 2022.

In September 2020, the European Commission (EC) published a Communication announcing its new Action Plan to achieve a real Capital Markets Union (CMU)[1]. One of the main proposals contained in this document was the creation of a single access point with financial and non-financial information on companies in the European Union (EU) with the aim of making them more visible and, in this way, increasing the number of cross-border investments.

On 25 November, 2021, the EC published a proposal for a Regulation in which it entrusts the European Securities and Markets Authority (ESMA) with the establishment of this European single access point (ESAP) before 31 December 2024 as well as its subsequent management, the latter in coordination with the other two European Supervisory Authorities (ESAs), the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA).

In turn, to make this project viable, the EC published on the same date a proposal for an Omnibus Directive and another for an Omnibus Regulation, which contain amendments to 16 Directives and 21 sectoral Regulations, respectively, with the aim of introducing references to ESAP in said rules as well as indicating the collection body to which the entities have to send the information, its format, the qualified electronic seal that validates said information and the date from which entities will be obliged to send it.

The EC considers that this initiative, in addition to favouring the visibility of companies and their access to capital, will make it easier for investors to have information that allows them to make more informed investment decisions and to better assess the impact of the risks relating to sustainability.

This initiative, additionally, is in line with the European Data Strategy, the Strategy for Financing the Transition to a Sustainable Economy and the Digital Finance Strategy of the EU.

Scope

The ESAP will allow centralised electronic access to all the information that entities are required to make public – financial and non-financial, including that relating to sustainability or to products– in accordance with the rules that appear in the Annex to the Regulation[2], in addition to any other that is of interest to the capital markets or financial services and that entities decide to include voluntarily in ESAP. The EC considers that this last measure will facilitate access of non-listed companies, basically SMEs, to capital.

However, such information as the entities decide voluntarily to contribute to ESAP, in addition to using a format that allows data to be extracted, must include its metadata and the legal entity identifier (LEI) at the time of delivery to the collection body. It must also be sure not to include personal data, unless these are an essential element of the information on economic activities.

Regarding the metadata, these must include the name of the entity that transmits the information, the LEI, the size of the entity, the type of information and the period during which the information will be available to the public, if relevant.

In any case, ESAP will not give access to information submitted before 1 January 2024.

Furthermore, the information will be made available in this centralised electronic access in a staggered manner, from 2024 to 2026.

Initially, in 2024, ESAP will facilitate access to information that entities are required to disclose under the

Transparency Directive, the Prospectus Regulation, the Short Selling Regulation, the Taxonomy Regulation and the Securities Financing Transactions Regulation[3]. The following are some examples of the information that will be available on ESAP: financial information of listed companies, IPO prospectuses, publication of significant net short positions in equities, information on the manner and extent to which the activities of companies obliged to publish non-financial information are associated with economic activities that are considered environmentally sustainable or aggregate positions by type of securities financing transactions that are notified to the trade repositories.

The EC also proposes that this first phase should include such information as is available in machine-readable format in accordance with sector regulations.

Starting in 2025, ESAP will facilitate access to information that entities are required to provide by the Market Abuse Regulation (MAR), the Sustainable Finance Disclosure Regulation (SFDR), the Takeover Directive and the Shareholder Rights Directive[4], among others. The following are some examples of information that will be available on ESAP: inside information on listed companies (price-sensitive information), information on products with sustainable investments or that promote environmental or social characteristics posted on the website of financial intermediaries, prospectuses of takeover bids and the policy for involving institutional investors, asset managers and proxy advisors.

Finally, from 2026 the rest of the public information will be accessible on ESAP. In the area of securities markets, this last phase will cover, among others, the regulations on collective investment schemes (CIS), the Regulation on Key Information Documents for Packaged Retail and Insurance-based Investment Products (PRIIPs), the Central Securities Depositories Regulation (CSDR), the Markets in Financial Instruments Directive (MiFID) and Regulation (MiFIR) and the European Market Infrastructure Regulation (EMIR) (rules on central counterparties)[5]. The following are some examples of the information that will be available on ESAP: prospectuses of CISs, the Key Information Document (KID) for PRIIPs, information on settlement fails of CSDs, information regarding best execution of transactions, reference data on financial instruments admitted to trading on a regulated market or traded on a multilateral trading facility (MTF)/organised trading facility (OTF) or the governance mechanisms and regulations of central counterparties (CCPs) as well as the admission criteria for their clearing members.

Collection of information

Entities (such as issuers, management companies, auditors, insurance companies or intermediaries, among others) must send the information to the collection bodies indicated by the reference standards, which will make the information available to ESAP automatically through a unique application programming interface (API).

ESMA will have the obligation to publish on its website and keep updated a list with the collection bodies responsible for accepting the information made public by entities. This list will also be published on the ESAP website and the EC will be notified.

The proposal does not seek to impose new obligations on the obliged entities and, therefore, is based on the 'file only once' principle. In cases where neither the Regulations nor the sectoral Directives identify the corresponding collection bodies, it will be understood that this function falls to the officially designated mechanisms mentioned in the Transparency Directive or to a national competent authority (NCA).

The collection bodies, for their part, must check to make sure that the information provided by entities complies with the specifications required by this regulatory initiative and such technical standards as may be issued to develop it. They must also comply with the amendments that it is proposed to introduce in the sector regulations.

Specifically, the collection bodies must check that the information is in an extractable or machine-readable format – if so required by a law or regulation –, is accompanied by the corresponding metadata and has a qualified electronic seal. Moreover, they may even reject the information they receive when the automatic validations show non-compliance with any of these specifications or when it is manifestly inappropriate, abusive or clearly out of scope.

ESMA, for its part, must also carry out automatic validations to ensure that the information received from the collection bodies complies with these specifications and notify them when they do not.

The information, once on ESAP, must be available for 10 years, unless a different period is provided by another law or regulation. In addition, it must comply with the laws and regulations on data protection.

Development of ESAP

The proposal requires ESMA to ensure that ESAP has a series of functionalities that facilitate users' access and search for information.
Specifically, the functionalities mentioned in the proposal are the following: 1) a web portal with a user-friendly interface and in all official EU languages; (2) an API that allows easy access to information; (3) a search function; (4) an information display; (5) an automatic translation service; (6) a download service and (7) a notification service that informs users of the existence of new information. The search functions must be offered in all the official languages of the Union and be based, at a minimum, on the metadata required in the sectoral regulations.

The initiative requires that at least a minimum number of functionalities be operational by 31 December 2024, but gives ESMA an additional period to enable translation and notification services, until 31 December 2025.

Access to information will be, in principle, free, without prejudice to the imposition of a series of conditions that users must comply with. However, the proposal envisages the possibility of ESMA's imposing charges on users that request large volumes of data or frequently updated information.

Likewise, the regulation makes it very clear that access to ESAP by both EU and national institutions or bodies, including NCAs, for the exercise of their functions will always be direct, immediate and free of charge.

Other ESMA obligations

In the first place, ESMA must develop a policy to ensure the IT security of ESAP.

In addition, it must ensure that the use and re-use of the information do not infringe the rights of the databases and that they are not subject to conditions, unless these are objective and non-discriminatory, justified in the public interest or imposed within the framework of open standard licences, in accordance with the provisions of Directive (EU) 2019/1024 of the European Parliament and of the Council[6]. The conditions for granting these standard licences must allow the data and content to be accessed, used, modified and shared free of charge by anyone and for any purpose. However, ESMA will not assume any responsibility for the use and re-use of the information that can be accessed through ESAP.

In particular, Article 11 of the proposal lists a series of tasks that ESMA will have to carry out, in cooperation with EBA and EIOPA and after consulting the group of stakeholders, in relation to the management of ESAP. Among them, the following should be highlighted: (1) ensuring that the information received from the collection bodies is made available on ESAP in a timely manner; (2) providing support to the collection bodies; (3) ensuring access to ESAP at least 95% of the time per month; (4) consulting the collection bodies when necessary on the development and implementation of a quality policy (service level agreement or SLA), the imposition of fees or cybersecurity threats.

ESMA must also monitor the operation of ESAP in cooperation with EBA and EIOPA, based on a series of qualitative and quantitative indicators. Likewise, after consulting the securities and markets stakeholders group as well as the EBA and EIOPA, it must submit an annual report on ESAP to the EC.

The EC, for its part, will review the operation and effectiveness of ESAP every five years.

Finally, the development of this project will require the adoption of level 2 standards, which will be adopted mostly by the Joint Committee of the ESAs and others by ESMA directly.

Costs

The EC has estimated the cost of this proposal at €16.5 million (€2.3 million in administrative costs and €14.2 million in operational costs). In addition, it indicates that €9.6 million of these will come from the Multiannual Financial Framework of the EC for the period 2022-2027.

The EC has also calculated that the cost for ESMA of this project will be €11.5 million during the period 2024-2027, of which €4.6 million will be financed through the EU budget and €6.9 million by the NCAs through their contributions to ESMA's budget. In addition, it foresees that ESMA will require the dedication of three full-time employees for this project.

With regard to the collection bodies, the expected cost of their interconnection with ESAP, at an individual level, has been estimated at around €50,800 initially (one-off) with annual costs of approximately €6,500.

1 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – A Capital Markets Union for people and businesses – new action plan, of 24 September 2020 [COM(2020) 590 final].

2 Also if a European law or regulation provides for centralised electronic access to information through ESAP.

3 Directive 2004/109/EC, Regulation (EU) 2017/1129, Regulation (EU) 236/2012, Regulation (EU) 2017/1129, Regulation (EU) 2020/852 and Regulation (EU) 2015/2365, respectively.

4 Regulation (EU) 596/2014, Regulation (EU) 2019/2088, Directive 2004/25/EC and Directive 2007/36/EC, respectively.

5 Without prejudice to the regulations on CISs, these are: Regulation (EU) 1286/2014, Regulation (EU) 909/2014, Directive 2014/65/EU, Regulation (EU) 600/2014 and Regulation (EU) 648/2012, respectively.

6 Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information (OJ L172, 26 June 2019, p. 56).

Useful links:

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a European single access point providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability

Proposal for a Directive of the European Parliament and of the Council amending certain Directives as regards the establishment and functioning of the European single access point

Proposal for a Regulation of the European Parliament and of the Council amending certain Regulations as regards the establishment and functioning of the European single access point