

BVI¹'s position on the European Single Access Point (ESAP)

1. General Comments

We strongly support the EU Commission's proposals published on 25 November 2021 to establish a European Single Access Point (ESAP). From the investor and fund manager point of view, the ESAP is very much welcomed, as it would considerably improve the accessibility and availability of company data and products throughout the EU and at the same time enable member companies to implement in a comparable and cost-efficient manner the various reporting requirements stemming from diverse EU sustainability regulations. In this way the ESAP would also give a visible face to the CMU project – all EU capital markets and company info in one place. Digital businesses, like open finance, can be leveraged. Non-listed companies could improve their access to capital and therefore enhance their visibility to (cross border) investors.

On scope, we consider that among all regulatory mandated financial company information, ESG data is of utmost importance to be included within the ESAP as a first step. Fund managers and other financial market participants are in desperate need of reliable and comparable high-quality ESG data in order to measure their ESG commitments towards investors, but importantly also for reporting purposes under different EU frameworks. The ESAP should thus contain all reports to be published under the Taxonomy Regulation and the future CSRD as well as SFDR in relation to financial market participants and financial products. In this context, we would like to stress that timely adoption of the CSRD regime and introduction of harmonised and comprehensive sustainability reporting obligations for companies is of utmost importance for the financial market's ability to implement investment strategies that select investments based on ESG-relevant criteria and thus, to steer capital flows into sustainable investments.

We see no reason to limit the ability of groups or companies to disclose data in the ESAP on a voluntary basis. Indeed, we hope that the establishment of the ESAP as a central access point for company-related data will provide an incentive for companies not subject to regulatory reporting obligations to provide voluntary disclosures, especially on ESG matters. This also pertains to companies headquartered outside the EU that could use the ESAP as a tool to attract EU investors or because they from part of the global supply chain of EU companies need to provide them with relevant information. In any case, a precondition of any information to be disclosed on a voluntary basis should be compliance with the relevant EU requirements and standards.

Any disclosures on ESG matters, mandatory and voluntary alike, should be in full conformity with the future CSRD (NFRD) requirements including specific reporting standards to be potentially developed at EU level. Obviously, the quality of the voluntary information provided via the ESAP must conform with the general requirements for data supply. It is not practicable for data users to differentiate between information disclosed on a mandatory or voluntary basis when referring to the ESAP as a data base.

¹ BVI represents the interests of the German fund industry at national and international level. The association promotes sensible regulation of the fund business as well as fair competition vis-à-vis policy makers and regulators. Asset Managers act as trustees in the sole interest of the investor and are subject to strict regulation. Funds match funding investors and the capital demands of companies and governments, thus fulfilling an important macro-economic function. BVI's 116 members manage assets of some EUR 4 trillion for retail investors, insurance companies, pension and retirement schemes, banks, churches and foundations. With a share of 27%, Germany represents the largest fund market in the EU. BVI's ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de/en.



2. Conceptual and Technical Comments

We generally embrace the technical set of functionalities (e.g. search functions, API interfaces) for the ESAP suggested by the EU Commission as it will enable all market participants (e.g. fund management companies) to obtain the data in an cost-efficient and user-friendly way. We strongly support the proposal that the ESAP should provide users (e.g. fund management companies) with access to information for free and without any discrimination. In order to incorporate all relevant information in an efficient way within the ESAP, we also share the view of the Commission that the ESAP should leverage as much as possible on the existing data reporting channels and infrastructure which has been successfully implemented within the EU.

However, negative experiences with data projects in the past, such as the introduction of the ESMA operated European Rating Platform (ERP), should be taken into account in the development of ESAP, in order to achieve the greatest possible acceptance among user groups.

We suggest the following specific amendments:

- **Usage of widely accepted (market) machine-readable formats by the reporting stakeholders**

According to the ESAP drafts, market stakeholders (e.g. fund management companies) should submit to the collection bodies the information in a data extractable format or, where required under Union law, in a machine-readable format. Market participants should also accompany the information they submit to the collection bodies with the metadata requested by those collection bodies. The Commission should be empowered to adopt implementing technical standards developed by the relevant European Supervisory Authority specifying the metadata for each piece of information, the data structuring of the information and information for which a machine-readable format is required, and which machine-readable format is to be used in that case.

We assume that the ESAP will define the applicable data delivery standards/formats for the reporting entities (e.g. companies and investment funds), which will not require new reporting obligations in terms of content, but will require the reporting entities to support the newly created (ESAP) technical data formats. This means that companies and investment funds will be faced with considerable IT efforts and costs for the delivery of the data to the ESAP in the required format. The situation is in particular difficult for the investment fund industry, as today there are neither EU wide accounting regulated nor requirement to insure the machine readability of financial reports, prospectuses, annual reports, the issue, sale, repurchase or redemption price of fund units and the key investor Information (KID) made available to investors by investment funds (UCITS). This applies also for the creation and distribution of PRIIPS related document.

Against this background, we acknowledge that the Commission intends to accept in the short run the delivery of PDF documents to the ESAP. We are, however, concerned that the ESAP will enable the further development of machine-readable formats only in the long run, and on a case-by-case basis, together with common minimum sets of metadata, with the ability to improve digital use of information.

Already today, investment funds are prepared to deliver data to a multitude of distribution channels and investors in various, also machine-readable data formats, but also unstructured data, including PDF.

Therefore, we strongly encourage the EU Commission and the relevant European Supervisory Authorities to take into consideration for the development of the ESAP machine-readable formats for



(UCITS) investment funds any existing and widely accepted market standards established at national and EU level.

As users, however, fund management companies need machine-readable formats with structured numbers and values information if the ESAP users shall to extract the added value of the data in a cost-efficient way.

Against this background, we see generally a great risk of a significant reduction in the usability of the ESAP data if PDF documents become the main ESAP data collection standard. Fund management companies would have significant difficulties to extract the relevant information from the flood of documents provided by hundreds of thousands of issuers and individual issues, including but not limited to annual reports, sustainability reports, quarterly reports, prospectuses, UCITS-KIIDs and PRIIPS-KIDs.

The lack of an EU-wide standard for structured data PDFs combined with the language barriers existing in the EU will lead to the likely situation that often only the not EU based large data vendors will be able to provide ESAP data to the market participants in structured formats. Only large data vendors (e.g. Bloomberg or MSCI) have the resources to handle such big data analyses. Therefore, many asset managers will not be able to use the ESAP data directly and in full depth but will have to continue to pay large amounts to the data providers in order to obtain structured data across hundreds of thousands of issuers and individual issues.

It is of utmost importance that already with the start of ESAP the contribution of machine-readable, structured data is encouraged with the data sources. The acceptance of existing machine readable, structured fund data standards/formats developed by the relevant reporting stakeholders (e.g. investment fund management companies) will not only reduce the work load of the reporting entities in our industry but will contribute also to the success of the ESAP as widely used database.

- **Reference of the Legal Entity Identifier (LEI) according to ISO 17442**

The Commission proposals refer only to use a “*legal entity identifier*” by the ESAP, without mentioning specifically the LEI according to ISO17442. We fear that this formula is a compromise to allow also for the use of the EU company register number or other identifiers. Usage of different identifiers should be discouraged to minimize the administrative effort and cost of the ESAP in matching and mapping data linked to different identifiers of the same company.

From a user’s point of view, the ESAP data, both of a financial and non-financial (ESG) nature, should be always identifiable with the GLEIF operated LEI ISO 17442. Other identifiers, including but not limited to EU company register numbers should not be used as the primary ESAP entity identifiers. They should primarily be used in the data delivery of issuers and their intermediaries (company registers) to the ESAP.

By basing the ESAP on globally agreed ISO or ISSB in case of ESG data standards the ESAP could morph into a global single access point. As an example of global ISO standards, the Final Report of the High-Level Forum (HLF) on the Capital Markets Union made a specific reference to the LEI (ISO17442) under the recommendation of creation of an EU Single Access Point (ESAP) under the cluster “A. Creating a vibrant and competitive business environment”. In the recently published Digital Finance Strategy for the EU, it is decided that by 2024, the EU aims to put in place the necessary conditions to enable the use of innovative technologies, including RegTech and SupTech tools, for supervisory reporting by regulated entities and supervision by authorities. In this context the Commission will make



full use of available international standards and identifiers, including the LEI. The use of international ISO standards consistently will facilitate the use of RegTech tools for reporting and SupTech tools for data analysis by authorities in a digital environment.

To support machine-readability we support clear ISO standard based identification of all the elements of a report/transaction (LEI, ISIN, etc). The LEI should be leveraged as the cornerstone for legal entity identity as it is already the case within EU legislation and is the only applicable identifier for all EU member states and non-members state legal entities. All publicly listed entities in the EU have a LEI due to the Transparency Directive. The LEI could help such companies, especially SMEs, easily to identify themselves vis-à-vis investors within the EU and in third countries. The LEI could alleviate the difficulties of finding information in local languages as the LEI connects to reference data in the local authoritative language and transliterations of this information. Making the LEI parent information mandatory at the same time would also help to address the beneficiary ownership issue and the identification of the company tree in global supply chain management.

Using the LEI as the primary identifier for legal entities in ESAP rather than regional/national identifiers will render information more easily accessible and therefore more valuable to users. Given the ESAP also aims to include information on entities/investors outside of the EU - at least in the mid or long-term - adoption of a global standard for entity identification will ensure standardized and consistent data within the ESAP platform, please see: (<https://www.gleif.org/en/newsroom/blog/the-missing-ingredient-for-globally-compatible-esg-data-collation-and-reporting-standardized-digital-entity-identification>).

Also, the integrity of the information and the credibility of the source of data used should be ensured where possible, when it is made accessible in ESAP by using EIDAS certification, including the LEI of the entity issuing the report/document, and the LEI of the individuals acting in a business capacity, e.g. board members, on documents requiring signature. For a practical example, see GLEIF annual (XBRL) report available at www.gleif.org.

- **Stakeholder involvements to support the set up of the ESAP**

The Commission proposal does not provide sufficient stakeholder involvement to build up the ESAP data platform in the respect to project management capabilities, neither on the data source nor on the data user side. The proposal that ESMA shall consult the Securities and Markets Stakeholders Group (please compare Article 11 para (2) and 12 para (3) of the ESAP regulation proposal) is not appropriate given the complex task to build up an EU wide holistic data base covering tens of thousands of companies and their data aggregators (e.g. company registers) which today maintain very different data delivery standards. Therefore, we suggest installing a permanent and dedicated ESAP Expert Group (Steering Committee) covering all data contributor and data user sectors to help both with the set-up as well as the ongoing maintenance of ESAP. A similar approach has been taken by the EU Commission with respect to the proposed EU Consolidated Tape market data aggregation efforts. Please see the proposal for Article 22 (b) of the MiFIR (new) reform.

- **Copyright and database rights of data sources (Article 8 and 9 of the ESAP regulation)**

In the context of the analysis of Article 8 and 9 of the ESAP regulation, we are wondering how the license and fee free use of the ESAP data in the value chain can be best insured in the regulation. A situation needs to be avoided where third party data contributors to the ESAP can use the ESAP project to force ESAP to become a “reseller” of their data. This would be the case if the data contributors can require the ESAP to pass on their data fees and licenses to ESAP data users (e.g. fund management



companies) and also to all downstream user clients of the ESAP data user (e.g. all investors in a UCITS fund).

On the ESAP side, however, we do not oppose in principle ESAP redistribution/reseller licenses for commercial data vendors of ESAP data. These vendors should be clearly defined by either using the ICT third-party service providers definition in DORA (Article 3 (15)) or by excluding any EU regulated financial services entity from the definition of data vendor in ESAP regulation. This exclusion of financial services firms from the definition of data vendor is justified as all EU regulated financial services entities and corporate issuers are already defined as for free data contributors in the various other parts of the ESAP package. Furthermore, only the financial services firms but not the data vendor community will participate in the financing of the ESAP through the contributions of the NCAs to the ESAP budget (see budgetary implications, p.8 of the proposal).

Furthermore, we urge to introduce a clarifying exception that any copyrights and database rights of the data sources are not applicable anymore after their data are passed on by the ESAP. This rule is imperative in order to ensure the third-party data is acquired and provided fee and license-free by the ESAP. Only with such legal protections in place the ESAP can guarantee the license and fee free acquisition of the data by the first user of the ESAP data and the subsequent fee and license free use of ESAP data in the downstream users' value chain which is required to enable a Digital UNION based on data which entities are required to publish for the public.

By way of justification, we point to the lack of regulation for copyright and database rights of the data sources in the Credit Rating Regulation for the ESMA Rating Database ERP. Article 11 (a) of the CRA Regulation was introduced in 2013 to provide another source of information about credit ratings. It required ESMA to establish the ERP, a public website which publishes details of the individual credit ratings issued by CRAs. The aim of the ERP was to allow users to compare the credit ratings issued by different CRAs. Article 13 of the CRA Regulation specifies that the information on credit ratings disclosed through the ERP and on CRAs' websites under Articles 8 to 12 of the CRA Regulation shall be made available free of charge. In order to access information about credit ratings through the ERP, users must agree to a disclaimer, similar to the terms of use on CRAs' websites. Once they have done so, users enter the search screen of the ERP. They must then complete a captcha to be able to search for EU issued credit ratings by keyword or by rated entity, issuer or instrument. Information on individual credit ratings can then be viewed on the ERP.

In practice, however, this database is hardly used despite the fact that it is free of charge, since ESMA cannot ensure the license-free, internal and external (e.g. in client reporting) use of the rating data due to an insufficient basis for regulation. Users explained to ESMA that they found the terms of the disclaimer on the ERP to be unclear as to whether they were able to download individual credit ratings from the ERP without first entering into a separate data licence from the CRAs' affiliates. This situation should be avoided if the ESAP wants to be successful. For details, please see OPINION OF THE EUROPEAN SECURITIES AND MARKETS AUTHORITY of 22 September 2021 on improving access to and use of credit ratings in the European Union in accordance with Regulation (EC) No 1060/2009 at p. 9 et seq. (Para 43 et seq.)