

MARCH 2024

AFG'S RESPONSE TO ESAS CONSULTATION

# ITS specifying certain tasks of collection bodies and certain functionalities of the European Single Access Point (ESAP)



**AFG**



The AFG federates the asset management industry for 60 years, serving investors and the economy. It is the collective voice of its members, the asset management companies, whether they are entrepreneurs or subsidiaries of banking or insurance groups, French or foreigners. In France, the asset management industry comprises 700 management companies, with €4600 billion under management and 102,000 jobs, including 27,000 jobs in management companies.

The AFG commits to the growth of the asset management industry, brings out solutions that benefit all players in its ecosystem and makes the industry shine and develop in France, Europe and beyond, in the interests of all. The AFG is fully invested to the future.

# ITS SPECIFYING CERTAIN TASKS OF COLLECTION BODIES AND CERTAIN FUNCTIONALITIES OF THE EUROPEAN SINGLE ACCESS POINT (ESAP)

## I - Introduction:

Access to reliable, comparable and audited non-financial and financial data is essential for asset managers to answer their clients' growing demand for transparency. Yet today, EU financial and sustainability data are scattered between 27 jurisdictions and are provided in 27 different languages and formats which makes them hard to assess and compare. Furthermore, the industry relies heavily on a few non-EU providers who take advantage of their oligopolistic position to keep raising prices while providing less and less reliable, transparent information on their methodology for instance.

That's why we highly support the implementation of a single access point that will source raw, reliable, comparable financial and sustainability data, free to all, accessible in a standardised market format and in all languages. For doing so, the ESAP should leverage as much as possible on the existing data reporting channels and infrastructure which has been successfully implemented within the EU. More generally, the implementation of ESAP must not increase reporting and compliance costs for entities.

AFG therefore thanks ESMA for the opportunity to answer this consultation on draft ITS specifying certain tasks of collection bodies and certain functionalities of ESAP. Indeed, while we are convinced of the benefit such a one-stop-shop can bring, we still want to raise a few points of attention.

## II - 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)?**

Overall, we agree with the validation processes proposed by ESMA. However, we insist on getting a certain level of transparency from the collection bodies (CB) to allow reporting entities to adapt their processes, anticipate and limit any risks of rejections. Precise descriptions of the technical controls conducted by CBs should be made public to entities and a reasonable period of testing should be set before the go live.

Furthermore, some data extractable text can contain graphs and pictures. It should be specified/confirmed that these data extractable documents which contain pictures or graphs will not prevent the CB from validating it under the extractable format.

Regarding machine readable validation, as sectoral legislation will bring precisions on the data and the specifications that will be required, some specific validation may have to be conducted that has not been foreseen yet in the current approach. This parameter needs to be kept in mind.



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**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.**

As explained in Q1, we agree with the proposed approach if it gives sufficient transparency to entities. However, even though we agree that the text should not be in a “picture format” to be qualified as data-extractable, ESAs should specify that documents which contain pictures or graphs but that still allow the text to be extracted, shall be validated by CBs as a data extractable format.

**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.**

As explained in Q1, we agree with the ESAs proposed approach. However, as sectoral legislation will bring precisions on the data and the specifications that will be required in machine-readable format, further validation processes may need to be reviewed in light of these specifications.

**Q4. Do you agree with the above proposal for the validation of the metadata? In case of any challenges foreseen, please propose alternatives.**

See answer to Q1. Overall, we agree with the approach although we understand that precisions will be provided through other ITS or through level 3.

**Q5. Do you agree with the proposed approach to the validation of the electronic seal? In case of any challenges foreseen, please propose alternatives.**

N/A

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

We fully agree that the format of rejection feedback should be standardized to provide consistency.

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

The ISO 20022 methodology is widely used in the financial sector notably in the transaction reporting i.e. EMIR, SFTR. Therefore, we agree that the rejection feedback should be provided in a common format in accordance with the ISO 20022 methodology.

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

We believe that notifying entities of rejection within “a reasonable timeframe” should be understood as “as soon as possible and at least within sixty minutes”.

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

N/A

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

N/A

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

N/A

**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?**

We believe that the ISO 17442 LEI is an attribute that can be used in order to identify the organisation using the seal i.e. the submitting entity.

**Q13. Are there any other characteristics of the QES that should be defined under ESAP?**

N/A

**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?**

We understand that the aim of ESAP consists precisely in promoting an open-sourced approach and facilitating the access and usage of data without specific barriers due to copyright and property rights. This does not mean that any misuse likely to bring prejudice to the reporting entity should not be regulated by common law. Therefore, we agree with the proposed approach to use CCO (Creative Commons Public Domain Dedication) licenses.

**Q15. Do you agree with the proposed characteristics of the API for data collection? If not, what alternative characteristics would you recommend?**

We do not see any particular issue with the proposed characteristics of the API for data collection.

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### **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?**

Although we understand the consultation on ITS concerns metadata which should be provided by the CB to ESMA, and that the ESAs have a separate mandate under certain sectoral legislation to specify additional metadata which reporting entities shall provide CBs, we believe that ESAs should clarify certain of these informations to make sure that CBs will require the same information from reporting entities and to promote consistency.

For instance, certain metadata raise some questions and complexities depending upon the type of information/sectoral legislation concerned.

Here below are some non-exhaustive examples:

- Legal framework (*Annex I, Table 1, Field 23*): the case where one disclosure obligation is required by one regulation but is embedded in the disclosure of another. This can be the case in [SFDR](#) for example, where articles 8 and 10(1)(c) requires that SFDR pre-contractual disclosures must be disclosed according to the list of article 6(3), which refers to specific regulation. For instance, taking the case of a UCITS, pre-contractual disclosures shall be disclosed through the prospectus (*SFDR, art. 6(3)(g)*). Its therefore not clear which legal framework would have to be shown in ESAP. Clarification on that point through forthcoming ITS per sectoral legislations is of paramount.
- Home member state/Host member state (*Annex I, Table 1, Fields 24 & 25*): Clarification should be brought in case of a product domiciled in one Member State (MS), passported in another and managed by a company domiciled in yet another MS.
- Beginning / End of the publication period (*Annex I, Table 1, Fields 21 & 22*): It is unclear how these fields have to be completed as certain information are not periodic but “permanent” over the life of an entity/product. This is the case of the prospectus of a product for instance. Precision should be brought on that point and clarification on whether it is possible to consider “N/A” as a relevant metadata.

Finally, we would suggest adding the record status as a criterion.

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

N/A

### **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?**

In fact, asset managers need to have access to price and time-sensitive information as part of their job and therefore uses officially appointed mechanisms as well as public and private databases. However, today they get this information at exorbitant cost through a few non-

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EU providers that are usually in an oligopolistic situation and with a certain lack of reliability due to poor transparency on their methodology.

**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?**

The ESAs made it clear in their consultation that the aim of ESAP is not to provide price and time sensitive data. Therefore, without any in-depth analysis and considering the types of data that will be provided through ESAP, such a delay does not seem to be a particular issue. Indeed, in addition to ESAP, investors will still rely on press releases, investor events, companies' website to get a certain type of information and particularly price and time-sensitive issues.

**Q20. Do you agree with the indicative list of formats and characteristics proposed? If not, what alternative formats or characteristics would you recommend?**

The format must remain realistic from a cost/benefit perspective as inappropriately harmonised format could lead asset managers to review regulatory documents related to funds (e.g. annual report). This would incur high costs and would put them in a position where the cost is too high to comply e.g. machine-readable formats. Furthermore, the integration of new format is time consuming and demands high IT developments. Finally, we should not lose human readability (retail).

In that sense we agree on the list of different formats described in ESMA's consultation with data extractable format being the format by default (i.e. PDF and XHTML) unless a machine-readable format is specified through existing sectoral legislation (i.e. XML, JSON, XBRL, XBRL-csv, iXBRL). However, we would suggest adding CSV, TXT and Excel formats to that list.

Moreover, clarification should be made on whether and how a specific format will be required for a specific regulation, type of information and related datapoints. Indeed, if a new type of formats must be introduced through a sectoral legislation through an ITS, we would expect it to follow a thorough impact assessment (advantages and disadvantages, not only on the usage of one vs. multiple formats but on the choice of one specific format vs. another) and we stress the importance for the industry to be consulted. Confirmation from ESMA on the process and the schedule to issue such "sectoral" ITS should therefore be provided. This is important for asset managers, as contributors to ESAP but also as potential users of ESAP's machine readable information.

This remark is particularly true when we see that in their final draft RTS report on SFDR, the ESAs have introduced specific format for all SFDR disclosures (HTM and iXBRL). These formats are different from the ones that were currently used under SFDR i.e. searchable pdfs for data extractable formats, and CSV for some specific machine readable datapoints that are commonly provided through the EET files.

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**Q21. Do you agree with the proposed characteristics of the API for data publication? If not, what alternative characteristics would you recommend?**

We agree on the proposed characteristics but would also ask for a maximum availability of the API during the day.

**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?**

Yes, we believe that using the ISO 17442 LEI code is justified.

**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?**

We agree with option 1 in parag. 109 that provides for granularity and whereby each disclosure obligation is a different type of information. Furthermore, we understand that further information can be made accessible on ESAP by any further legally binding Union act which provides for centralised electronic access to information through ESAP. However, if that is the case, Table 1 of Annex I of ESAP ITS should be amended accordingly to reflect the new type of information required. Therefore, we do not approve of the category “other” which prevents any predictability.

**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”?**

N/A

**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?**

We agree with the general approach regarding the size of the entities that submitted the information and to which the information relates. However, regarding investment firms (Regulation (EU) 2019/2033), we believe it would be pertinent to distinguish between :

- Investment firms subject to CRR/CRD (Class 1);
- Small and non-interconnected Investment Firms (Class 3);
- Investment firms subject to IFR/IFD (Class 1bis & class 2).

**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**



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**additional categories of entities would you add a size category and on the basis of what thresholds?**

See Answer to Q°25

**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?**

We do not believe that leveraging on DORA thresholds for PRIIPS manufacturers is a good ideal for two reasons:

- A PRIIPS manufacturer is not a regulatory category. The regulatory category is rather UCITS management company, insurance company...;
- the thresholds are not that different from the accounting directive thresholds.

**Q28. Do you agree with proposed approach with regards to the categorisation of industry sectors? If not, what approach would you suggest and why?**

We agree with the ESAs that the NACE code might not be appropriate for the industry classification of financial counterparties.

Furthermore, the [benchmark regulation](#) (BMR) does not only apply to critical benchmark but also to significant and non-significant benchmarks (at least today as BMR is currently under review and non-significant BMR might fall out of the scope) i.e. disclosure obligations on their methodology, the benchmark statement, the register. We would therefore suggest modifying what is currently proposed by the ESAs from “Administrator of critical benchmarks as defined in Regulation (EU) 2016/1011” to “Administrator of benchmarks as defined in Regulation (EU) 2016/1011”.

Finally, regarding financial products, only UCITS are shown (NB: “and their management company” can be removed as it is already listed as an entity). We believe other financial products with possible *public* disclosures in ESAP, directly or through other regulation such as Transparency or Prospectus or PRIIPS, should therefore also be identified in Table 3. At the very minimum: “PRIIPS product – other than UCITS”.

**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?**

See Answer to Q°28.



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