Association for Financial Markets in Europe

Open Consultation Response

Financial transparency – single EU access point for company information

29 March 2022

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to provide feedback to the European Commission's open consultation on the establishment of a European Single Access Point (ESAP).

In addition, AFME members also support the independent response of the International Swaps and Derivatives Association (ISDA).

AFME

AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society. AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia.

Further information is available at: https://www.afme.eu/.

GFXD

The Global Foreign Exchange Division (GFXD) of the Global Financial Markets Association (GFMA) was formed in co-operation with the Association for Financial Markets in Europe (AFME), the Securities Industry and Financial Markets Association (SIFMA) and the Asia Securities Industry and Financial Markets Association (ASIFMA). Its members comprise 23 global foreign exchange (FX) market participants, collectively representing the majority of the FX inter-dealer market[1] . Both the GFXD and its members are committed to ensuring a robust, open and fair marketplace and welcome the opportunity for continued dialogue with global regulators.

Further information is available at: https://www.gfma.org/foreign-exchange/.

[1] According to Euromoney survey

Association for Financial Markets in Europe
London Office: 39th Floor, 25 Canada Square, London E14 5LQ, United Kingdom T: +44 (0)20 3828 2700
Brussels Office: Rue de la Loi 82, 1040 Brussels, Belgium T: +32 (0)2 788 3971
Frankfurt Office: Bürohaus an der Alten Oper, Neue Mainzer Straße 75, 60311 Frankfurt am Main, Germany
T: +49 (0)69 153 258 963
www.afme.eu

Financial transparency – single EU access point for company information

I. Executive Summary

We welcome and support the ESAP proposal overall and commend the European Commission for launching such a broad and ambitious project, which is likely to make a strong contribution to enhancing the European capital markets by improving the accessibility of key information on EU corporates for current and potential investors.

The objectives of ESAP – to provide the public with easy centralised access to the information in relation to financial services, capital markets and sustainability – are legitimate and, in our view, support the wider objectives of the Capital Markets Union action plan as intended. They should also support the objectives of enhancing the availability and comparability of sustainability information and, more broadly, the European Commission's Strategy for financing the transition to a sustainable economy.

We agree that the ESAP should be populated with financial and non-financial information already publicly disclosed by companies, using existing architecture via the relevant individual member state mechanisms, taxonomies, and standards, where possible. This should mean that no additional disclosure or reporting obligations (aside from the additional administrative requirements outlined below) should be borne by companies. The ESAP proposal should not be used to create new regulatory reporting requirements (which should be driven by the requirements of the underlying directives or regulations) or to attempt to fix ambiguities in other legislation.

To the extent possible, the ESAP should be designed to be compatible with, and build on, existing national and EU IT infrastructures, while remaining within the parameters of increasing the transparency of financial and non-financial ESG information for end investors and other market participants whilst not increasing costs or administrative burdens for corporates or end investors themselves.

II. Scope of the information required and usefulness for investors

A. Useful information for investors

Whilst we agree with the objectives envisaged by the ESAP initiative, we stress that the ESAP should be user-friendly and focused on information that will be relevant to investors and other expected users. In our view, the core purpose of ESAP should be to provide access to sustainability related information and key financial disclosures and corporate documentation either intended for, or likely to be of interest to, a broad and public user base.

These types of data should be given priority and would include generally, regular financial reports and statements, and sustainability risk and impact disclosures.

ESAP should be primarily calibrated to improve the access for investors to existing mandated corporate financial public disclosures and/or ESG information without incurring additional costs or administrative burden for investors and/or corporates, instead of creating a database where its main function is to be used as a regulatory database. The scope of the data within the ESAP should be limited to mandated corporate disclosure information and/or ESG disclosure information which would be useful to potential investors and which is mandated by legislation for public disclosure (or is provided on a strictly voluntary basis at the discretion of the company itself). Information that is

already maintained or published in a single place (i.e., certain ESMA registers) or that is required to contain disclosures and reports which are only intended for, or mostly relevant to, users or clients of specific reporting entities should not be given priority. To this end, we see very limited value in including EMIR Clearing member service offerings, for instance.

From the usability perspective of investors, we have concerns regarding the very broad scope of information proposed to be reported into the ESAP system. Currently, the proposal includes 37 different regulations and directives, with well over 100 different forms of reporting and disclosure included. We are concerned about the relevance of a number of information requirements and believe that there is a risk that such a broad initial reach, including many data points of narrower public interest, could undermine the effectiveness of ESAP by dispersing focus too broadly in the short term. The volume of data required may overwhelm the system and undermine its usability, especially by investors. For example, ESG data may be diluted by various redundant reports. Instead, AFME supports the inclusion in priority of certain data and reports related to ESG (e.g., CSRD, Taxonomy Regulation, SFDR and banks' Pillar 3 requirements) and believes that they should be prioritised with respect to ESAP implementation (see below).

B. ESG Reporting

The provision of ESG data onto ESAP will be a key driver in meeting the sustainability linked objectives of the CMU Action plan by facilitating easy access to information that will allow investors to make informed investment decisions. We believe that ESG-related disclosure and reporting should be prioritised within any ESAP phasing in frameworks.

Improving the availability of sustainability information will be one of the most important functions of the ESAP. Companies will benefit from standardisation and digitalisation to mitigate the reporting burden, while investors will find easier access to crucial information to support their sustainable investment decisions. Enhancing the availability of ESG data is also essential to help banks and other financial market participants support their risk management, target-setting, and compliance with their own disclosure requirements under the Taxonomy Regulation, SFDR, Pillar 3 requirements, as well as the CSRD. In the context of the CSRD legislative discussions, in particular, we support the proposed provisions to report sustainability information in a digital and machine-readable format, as this will contribute to their inclusion in the ESAP.

We also note the industry-led European Working Group (now FinDatEx) has implemented the European ESG Template, or EET. The EET was originally intended to go into effect on 1 January 2022, the date that the Regulatory Technical Standards (RTS) for the SFDR were to take effect across the EEA (which date has now been extended to 1 January 2023).

Under the EET, providers are required to publish a statement of the "principal adverse sustainability impacts" of their investee companies on their website, using the templates in the draft RTS. These include a wide range of mandatory indicators on environmental issues such as greenhouse gas emissions, fossil fuel and non-renewable energy use and hazardous waste; and social and employee issues including the gender pay gap and exposure to controversial weapons.

Additional environmental indicators include investments in companies emitting ozone depleting substances, chemical production or involved in deforestation; and further social indicators such as lacking policies on human trafficking, child labour or discrimination. One effect is that funds that

invest in other funds will need all of the detailed information disclosed by the underlying funds before they can produce their own reports.

In addition, financial advisers will be required to publish their own statements on adverse sustainability impacts to explain, if applicable, which factors from the providers' statements – and in what order – are taken into account when assessing suitable funds. It is important, in these contexts, to carefully consider any interplay between reporting under the EET and under ESAP.

III. Potential Impact on existing regulatory frameworks

A centralised database will be beneficial for investors who may have had to previously rely on a company website to access publicly available information. However, in some instances, ESAP will likely impact on existing regulatory frameworks, for example: PRIIPs Regime, Prospectus Regulation, Transparency Directive, and FX Benchmarks.

A. PRIIPs / UCITs Regimes

In our view, given the high volume of disclosures that would be covered by PRIIPs/UCITs, the potential to include PRIIPs or UCITS in ESAP would be better considered as part of the scheduled review of PRIIPs/UCITS itself rather through the current proposal. This would ensure any pan-EU database is designed appropriately for the intended needs of investors.

Firms are already in the process of implementing changes to their PRIIPs KIDs resulting from the recently amended RTS. As such, a requirement to make further changes at this stage should be avoided unless it has been fully considered in the context of the broader PRIIPs review, to avoid unnecessary and / or duplicative costs.

A key utility of the PRIIPs and UCITS key information / investor documents (KIDS/KIIDs) is their comparability. Several reviews by EU regulators found no demand for a single pan-EU database for storing KIDs/KIIDs because it brought no real value in consideration of the documents utility and investor accessibility. We note that there are mixed views on a platform to directly compare these documents. In any case, it is not clear that the ESAP model would provide the appropriate comparative tools that would be necessary for investors in the EU to undertake comparisons across products and providers. Therefore, we believe it would be inappropriate for KIDs/KIIDs to be included in the ESAP proposal.

B. Prospectus Regulation

The Prospectus Regulation provides a key role in equity issuances and will continue to do so. We believe that an ESAP database would be a useful place to hold prospectuses.

C. Transparency Directive

The Transparency Directive, which sets rules on harmonisation of transparency requirements of issuers, was amended to include, amongst others, a requirement for issuers to prepare their annual financial reports (AFRs) in a single electronic reporting format. ESMA was assigned the responsibility to develop regulatory technical standards (RTS) to specify this electronic reporting format.

The European Single Electronic Format (ESEF) is the electronic reporting format in which issuers on EU regulated markets shall prepare their AFRs, and is intended to make reporting easier for issuers and to facilitate accessibility, analysis and comparability of annual financial reports.

The RTS on ESEF will apply to all issuers subject to the requirements contained in the Transparency Directive to make public AFRs. The ESEF includes very detailed requirements related to forms and labels of the information to be provided.

We support the aims and ambitions of the regulatory technical standards which specify the ESEF, since the objectives are to make reporting easier for issuers and to facilitate accessibility, analysis and comparability of annual financial reports, which are aligned to the aims and ambitions of the CMU in relation to the ESAP proposal. We propose that the requirement to upload the standardised XHTML file onto the ESAP database be given high priority in the implementation timeline because this would facilitate easier access to company financials for investors than having to search for this on the issuers' website.

Further, we generally agree with and support the points raised by ESMA in its response to Question 83 of the EC Listing Consultation[2] urging the European Commission to align the proposed ESAP reporting obligations with the expected review of the underlying reporting obligations under the Transparency Directive, in relation to equivalence decisions taken by NCAs under Article 4(2)(a) and (b). The alignment of regulatory change reduces implementation and operational costs for firms which would benefit from economies of scale in the changes that they would need to make.

We also agree that the same course of action should be taken in relation to the functioning of the equivalence regime under Article 23 given the relevance of the equivalence provisions for ESEF and sustainability reporting.

D. FX Benchmarks

The provision of the Benchmark Regulation(BMR) related information by third-country benchmark administrators captured under the BMR in the context of the ESAP could impose undue administrative burdens on them that might put into question their decision to provide benchmarks across the EEA in the first place, if they have to comply with various reporting requirements under different legislations and we strongly support that they are not included.

With this in mind, we note the Amending Regulation for the European Benchmark Regulation, dated 10 February 2021: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32021R0168&from=EN, which supports the potential impacts should third-country benchmarks not be available:

a) The unavailability of spot foreign exchange benchmarks to calculate the payouts due under currency derivatives would have a negative effect on companies in the Union that export to emerging markets or hold assets or liabilities in those markets, with consequent exposure to fluctuations of emerging market currencies.

b) In order to enable companies in the Union to continue their business activities while mitigating foreign exchange risk, certain spot foreign exchange benchmarks used in financial instruments to

[2] https://www.esma.europa.eu/sites/default/files/library/esma32-384-5357_annex_-_response_to_ec_consultation_on_the_listing_act.pdf

calculate contractual payouts that are designated by the Commission in accordance with certain criteria should be excluded from the scope of Regulation (EU) 2016/1011.

At the time of adoption of Regulation (EU) 2016/1011, the expectation was that by the end of 2021 third countries would adopt similar legislative regimes for financial benchmarks and that the use in the Union by supervised entities of benchmarks administered in third countries would be ensured by equivalence decisions taken by the Commission or by recognition or endorsement granted by competent authorities. However, limited progress was made in that regard. Considering the disparity in scope between the regulatory regime for financial benchmarks in the Union and in third countries, and to ensure the smooth functioning of the market and the availability of third-country benchmarks for use in the Union after the end of the transitional period on 31 December 2021, the Commission should present a report on the review, by 15 June 2023, of the current provisions on the scope, with particular regard to its effect on the use in the Union of third-country benchmarks. In particular, the Commission should analyse the consequences of the far-reaching scope of such regulation for Union administrators and users of benchmarks also with respect to the continued use of benchmarks administered in third countries. The Commission should assess in particular whether there is a need to amend Regulation (EU) 2016/1011 in order to reduce its scope to administrators of only certain categories of benchmarks or to administrators whose benchmarks are widely used in the Union.

Finally, we thought it useful to include an example of how third-country benchmarks are used within the EU. For example, considering a European company who engages in India, has a requirement to use Indian rupees (for paying employers, investing in machinery or selling a product). However, as a European company it will ultimately need to convert their costs and revenues into euros. Consequently, they are exposed to fluctuations in the exchange rate of euros to rupees (currency risk).

A company can use the Indian FX spot benchmark to hedge or off-set this risk by investing in a financial product which correlates with the currency risk, i.e., it allows the company to pre-agree the exchange rate it will receive for future transactions. For example, when the Indian rupee loses its values, the pay-off of the financial product referencing the rupee exchange rate will offset detriment otherwise associated with the relative change in the value of the rupee. The use of the FBIL FX spot benchmarks allows companies to manage the currency risk with respect to Indian rupee.

Should the Indian FBIL spot benchmark not be provided due to increased administration burdens then European companies will be left with two poor alternatives:

a) They will be unable to hedge their Indian rupee currency risks, for example being faced with serious uncertainty relating to their actual investment costs and returns due to the absence of the described risk-management tool, and risk of losses associated with rupee/euro currency fluctuations to the extent it continues to operate in India. Competitors from other jurisdictions, meanwhile will be able to hedge currency risk in India without any such obstacle.

b) They may still agree on a bilateral basis for each hedging transaction (e.g. FX forwards) a rupee fixing reference. Such a fixing would be non-auditable and less efficient than the current globally recognized benchmark.

Unfortunately, the Indian rupee FX benchmark is not the only third country benchmark facing such challenges. Similar concerns apply in respect of jurisdictions such as South Korea, Hong Kong, Taiwan or the Philippines.

IV. Other Regulatory Considerations

We note that there are several situations where market participants currently face challenges in sourcing relevant data that is required to comply with EU regulatory obligations, or where there is uncertainty over whether or how certain data will be reported on ESAP. Further consideration should be given as to whether the ESAP could and should be leveraged to help provide this information, which could significantly reduce costs and complexities for all market participants.

A. Central Securities Depositories Regulation ("CSDR")

The Central Securities Depositories Regulation (Regulation (EU) No. 909/2014, or "CSDR") which contains requirements for a settlement discipline regime, which includes the application of cash penalties on failing settlement instructions. These penalties are calculated and applied by the CSD. In order to determine if a settlement instruction is in-scope of the regime, and to derive the appropriate penalty amount, the CSD is required to obtain information from a number of different public and private data sources, including:

- FIRDS Database
- FITRS Database
- SME Growth Market List
- Short Selling Regulation Exemption List
- ESMA Quarterly Report on trading venues with highest turnover
- Price information from vendors.

The complexity of this process creates a lack of transparency for market participants and increases the probability of calculation errors. Although this might be outside the initial remit of ESAP, we believe that providing a consolidated 'golden source' record of the following key data points is critical to ensuring equal visibility for all market participants and create a simpler calculation process less prone to error:

- In-scope / out-of-scope
- Liquidity flag
- "Sovereign issuer" indicator
- Reference price.

While we recommend that this issue is addressed in the first instance as part of the ongoing CSDR Review process, we suggest that further consideration should be given as to whether the future ESAP infrastructure could and should be leveraged to help provide this information, which could significantly reduce costs and complexities for all market participants.

Similarly, another piece of CSDR-related information that should be held on a central database accessible to all market participants is information as to whether a particular security falls within the scope of the CSDR obligation on reporting on internalized settlement.

B. Shareholder Rights Directive

The Shareholder Rights Directive ("SRD") has been an important tool in protecting the rights of European shareholders by, among other things, providing for the information that must be provided to shareholders by the companies in which they have invested. The inclusion of such information on ESAP would be a welcome and powerful transparency tool for investors.

There is, however, no central source of information as to whether a particular security falls within the scope of SRD2. This creates uncertainty and risk for all parties in the custody chain. As with the examples of CSDR-related information, there would be a major benefit if, pursuant to the goals of ESAP, this information were able to be accessed from one pan European source.

C. Consolidated Tape

MiFID II proposed the creation of a consolidated tape which would act as a single price comparison tool consolidating real time data relating to the trading of financial instruments on trading venues or on systematic internalisers across the EU. This will assist market participants in analysing market liquidity and increase investors' capacity to evaluate the quality of execution of their orders. It was envisaged that a private entity would emerge as a consolidated tape provider (CTP), however a private solution has yet to emerge due to the lack of a commercial incentive to act as a CTP. This lack of emergence may be addressed as part of the MiFID review.

Data made available on the consolidated tape is expected to include the price and volume of executed trades across the EU, and can currently be pieced together by subscribing to various data feeds from all European exchanges. The consolidated tape will sit alongside trading venues and investment firms' existing requirements to publish pre and post trade data relating to trading in financial instruments covered by MiFID II.

We note that Action 14 of the Commission's CMU states that the consolidated tape "together with" the ESAP will give investors access to considerably improved information at a pan-European level. We take this to be consistent with our view that although the ESAP applies to MiFID reporting generally the ESAP Proposals do not, and should not, apply to the consolidated tape in its current form. Reporting dynamic transactional information such as the information reported on the consolidated tape would be extremely difficult and would involve additional costs and efforts for little additional benefit and would also not help to achieve the aims and objectives of ESAP.

V. Further Information that we don't believe will be relevant for ESAP

The scope of the data collated within the ESAP should be corporate disclosure information and/or ESG disclosure information which would be demonstrably useful to investors and other market participants and which is currently mandated for public disclosure by companies (or is provided on a strictly voluntary basis at the discretion of the company itself in the case of SME non-listed companies). Supervisory reporting should not fall within the scope of ESAP, as supervisory reporting includes non-public data.

In addition to the concerns raised in relation to PRIIPs and UCITs KIDs and KIIDs respectively, reports such as short selling reports, clearing member reports, and best execution reports, which are not necessarily relevant, have all been incorporated in the Commission's proposal without substantial and individual cost benefit analysis.

In the case of MiFIR Best Execution Reports, in the accompanying MiFIR proposals, the EC has already proposed to delete the "RTS 27" report, with the "RTS 28" also being subject to review, we strongly support the former and also encourage the deletion of the latter. As such, and since this information is not often requested by end-investors, these reports should not be included in ESAP, certainly until they have been reformed and deemed to provide useful information.

VI. Voluntary Information

We believe the ESAP should be populated with listed company financial and non-financial data, with the availability for non-listed companies to report to ESAP on a strictly voluntarily basis, each through the existing mechanisms via the relevant EU national company registers, NCAs and OAMs.

The European Commission have explained that there is scope for non-listed firms to upload additional voluntary disclosure of financial, ESG and relevant information onto the ESAP, by providing relevant metadata etc. We support the possibility for firms to voluntarily report additional information to ESAP, so long as the additional reporting is subject to the same formats and standards as mandatory reports and validated in the same way – we understand this to be the EC's intention.

Further, there is certain additional information that firms currently disclose in order to, for example, add additional information or an explanation to support a regulatory disclosure obligation. As currently envisaged, it is not clear whether it would be possible to upload this type of additional disclosure onto ESAP. This should be taken into account during the design process of ESAP, so that this kind of additional information can be uploaded onto ESAP and is clearly linked or tagged, so that it is clear to investors what kind of information is being provided and the information's relevance for investment and other decisions.

Given the global nature of financial markets, companies and investors, it should also be possible for non-European companies to disclose data on a voluntary basis in the ESAP.

In any case, we support that ESAP is structured so that such additional information can be reported onto ESAP.

VII. Costs and Access Fees

A. Costs and duplication for issuers (market participants)

Whilst it has been made clear that the initiative is intended not to create any additional or duplicative disclosure or reporting requirements, we are concerned that the huge volume of information to be provided under ESAP, combined with the potential technical work to standardise and format information to ensure compatibility with the ESAP system, will create extra incremental cost, duplication and administrative burdens for listed companies, or end investors, which would not be conducive to creating a vibrant and competitive business environment within European capital markets. Not only will implementation costs affect issuers, but there will be ongoing costs to consider. It is not unforeseeable that large-scale changes to, and continuing maintenance of, IT systems will be needed.

It is important to not underestimate these potential costs – for this reason there should be a clear focus in ensuring that the information to be included in the ESAP is valuable to investors and the development of European capital markets – in fact, in most cases we expect there will be incremental upfront and ongoing costs well in excess of EC estimates. These costs will arise where firms are required both to disclose information at present and, in future, additionally report through the new

ESAP mechanism. The specifics of additional reporting attributes (metadata) have been left open for nominated collection bodies to define, which could lead to yet further additional data points being added. We would urge that the proposals be amended to place an obligation on collection bodies to ensure additional metadata is kept to an absolute minimum.

The cost for retrieving and using companies' public information varies dependent on the characteristics of the company itself. For instance, SME and non-listed companies' financial information is typically less readily available and can therefore be more costly to source.

Companies' mandated public financial disclosures can readily be sourced via existing national and EU registers and databases of company data such as officially Appointed Mechanisms, National Competent Authorities and European Authorities. This can be contrasted by the difficulty and often high expense of sourcing companies' non-financial and/or non-mandated ESG data.

It can entail significant effort, time and resources to compile multiple sources of data into a comparable data set which in it itself translates into costs that must be allocated. The final design of the legislation should take these costs into consideration and ensure appropriate implementation timelines and phasing in arrangements for market participants.

B. Access Fees

We support access to ESAP being free for investors. This would play an essential role in meeting the aims of the sustainability linked objectives of the CMU Action plan by facilitating easy access to sustainability-linked information that will allow investors to make informed investment decisions. Additionally, free access to ESAP will support the accessibility of information for companies across Europe – this is particularly beneficial for the integration and development of SME's, creating a more level playing field.

However, we note that Article 8(2) of the ESAP proposal provides for free access to information available on ESAP, except that ESMA may charge fees for searches involving a very large volume of information or for frequently updated information. We also note that Recital 12 refers to charging fees for "frequent access" (rather than for "frequently updated information"). We believe that charging fees for a user's frequent access, as provided in the Recital, would be more than appropriate than charging fees for access to, for example, information that the provider is required to update under the underlying regulation, or information that the provider voluntarily updates on a frequent basis. With respect to fees related to access to large volumes of information, we believe that ESMA should be permitted to impose reasonable usage fees to recoup those expenses as it would be beneficial for market participants to be able to obtain high quality, high volume access to information in one convenient place.

We also note that some of the information that might be subject to fees under ESAP may already be available for free from other sources, which might discourage investors from using ESAP to obtain the information (examples include certain CSDR information or MiFIR reference data). ESAP should not close off or otherwise negatively affect parties' ability to obtain such information from those other sources.

For the reasons set out above, we believe that ESMA should give careful consideration to those categories of information, or usage, that will require such a fee. Some organisations may be more willing and/or able to pay such fees, while others may not, which might lead to uneven playing fields or otherwise undermine the purposes of the ESAP. In drafting the related technical standards, ESAP

should provide clear guidance on what kinds of information, or searches for information, will be subject to fees, and should determine the associated fee structure.

VIII. Market Utility

The use of a centralised database will drive the standardisation (still discussion to be had regarding desired extent) of data reporting and storage. Whilst we are aware it is highly likely that there will be some initial costs, in the long term, integration will increase which will drive cross boarder investments and capital raising, as well as increasing efficiency and security, and reducing the costs associated with the utility and extraction of data since it will be in a standardised machine-readable format for investors. The ESAP should ensure that information is machine readable and accessible via Application Programming Interfaces (API's), being the preferred industry method for the transmission of data since they provide security and efficiency benefits, and access on a real-time or regular basis.

In addition to the need to make ESAP machine-readable for the needs of advanced market participants, and in line with the aim to encourage the participation of European households in financial markets, AFME also believes that ESAP should be made accessible to individuals. This means that an easy-to-navigate interface should be made available, enabling simple queries from retail investors willing, for instance, to identify companies meeting certain criteria, or to retrieve data or reports for a given company.

Ultimately, this initiative will support the aims of the CMU by aiding market participants as intended, but also increase the efficiency and accessibility for market regulators as a whole.

IX. Implementation and phasing in

Generally, the proposed ESAP reporting structure seems sensible, although the minutia has been left to the design choices of ESMA and the national authorities, which could potentially be problematic and cause fragmentation. Preparers of information (companies) and users of information (end investors) should play primary roles in the design, implementation and governance of the ESAP and implementation should take a phased in approach, allowing affected market participants to assess the utility and costs benefits of the relevant proposal. This will ensure that ESAP remains focussed on the needs of investors and ultimately deliver on the objective of creating a vibrant and competitive business environment in European capital markets. Members would also benefit from clarity regarding the dates from which market participants must report to ESAP and believe that the proposals in relation to infrastructure could be more comprehensive.

Moreover, we consider it important that the implementation of Level 1 and of Level 2 rules are also adequately synchronized. This will provide a clear, reliable and exhaustive legal framework, enabling banks to duly comply with their obligations, rather than operating within an unclear fragmented regulatory environment. For example, the Draft ITS which specifies i) metadata to accompany the information ii) structuring of data in the information and iii) information to be provided in a machine-readable format, should be adopted well in advance of the date when the obligation to feed into ESAP "in scope" information is due to apply (meaning "in scope information" information required under the Directives and Regulations falling under the scope of the ESAP). This becomes fundamentally more concerning when considering i) banks (and other "entities"), under the EC proposal of Regulation establishing the ESAP, are obliged to ensure the "accuracy" of the information they submit to collection bodies, may face potential legal liabilities as a consequence in cases of non-conformance, and ii) collection bodies are under the duty to reject information submitted by banks and other entities in event that the information does not meet the requirements envisaged under the Level 1 rules and

further specified in Level 2 rules. Therefore, we believe that it is very important that Level 1 and Level 2 rules are also adequately synchronized and phased in appropriately.

A phased in approach by type of Regulation would be optimal for facilitating an efficient and orderly implementation of ESAP. Considering that numerous ESG-related disclosure and reporting requirements are being considered at the same time as ESAP (and that ESAP is specifically intended to capture ESG-related disclosure and reporting information), it is logical for its implementation to begin with, and prioritise, ESG related disclosures. It is very important that timing of implementation between ESAP and ESG-related information is coordinated where possible, which would lessen confusion for the market and make it easier for contributors to comply with each of the overlapping frameworks. Regulations should be prioritised by level and importance and ESAP should be used to complement those regulations that are considered crucial.

We would suggest financial information as the next regulatory priority for ESAP. Mandatory non-financial public disclosure will be a new obligation for issuers, aligning these changes will greatly benefit all stakeholders generally, and in particular those issuers who fall within the requirements of EMIR, MiFIR/D, CSDR and other relevant regulations.

For some more complex or frequent reports, we would anticipate that design and build may require extensive engagements with regulators to prepare systems. It is vital that all relevant technical standards and guidelines have been finalised well in advance of any go-live, and as such we urge the removal of fixed implementation dates in the Level 1 text, with these to be set instead as dynamic relative dates, for instance applying go lives 6-12 months after all relevant secondary and tertiary rules have been published in the Official Journal or otherwise publicly finalised.

Data quality and integrity are essential to the success of ESAP, and as such the role of collection bodies in validating reports before publication to ESAP is to be welcomed. However, it should be acknowledged that this new step also implies further additional cost and complexity for many, and certainly for those reporting firms who will need to implement processes to review and manage data exceptions and rejections that they do not today. In any case, the ESAP should allow the amendment of incorrect data with commensurate data security safeguards, and the ability to trace the relevant data. We also acknowledge the EC's willingness to reduce as much as possible the burden on entities, so that benefits gained are proportionate. We suggest, for example, that each relevant ESA, by way of an example, in its Draft ITS i) does not prescribe too much metadata, in addition to metadata already envisaged in the Level 1 rules, and ii) provides clear guidance regarding the structuring of data in the information, thereby minimizing the whole set of compliance efforts for Banks.

In addition, the ESAP proposal appears to be unnecessarily broad (as outlined above) and does not contain a cost benefit analysis for investors concerning the proposed disclosures/reports. Whilst we note that a form of phase in has been proposed (with reports scheduled to go live in 2025, 2026 or 2027), we are concerned that this does not provide sufficient time for all proposed reports to be built efficiently and effectively, or to allow for post go-live remediation of any issues before further reports are added. It also does not allow for application of priority to certain reports. We would recommend a staged approach where the go live date for subsequent phases of reports is only finalised when there is certainty around the success of the prior phase. Otherwise, many issuers and regulators would be faced with difficulties caused by multiple, overlapping implementation programmes, causing additional burdens and costs.

AFME Contacts

Gary Simmons

Managing Director, High Yield and Equity Capital Markets

Gary.Simmons@afme.eu

Oscar Newman

Intern, ECM and High Yield

Oscar.Newman@afme.eu

Pablo Portugal

Managing Director, Advocacy

Pablo.portugal@afme.eu

GFMA Contact

James Kemp

Managing Director, Global Foreign Exchange Division

jkemp@eu.gfma.org