

ISDA and GFXD response to the consultation on the European Commission’s proposal to establish a single EU access point for company information

ISDA and GFXD (‘The Associations’) welcome the opportunity to comment on the European Commission’s proposal to establish a European Single Access Point (ESAP) for financial and non-financial company information. In line with our previous commentary, the Associations and its members strongly support the creation of ESAP, which we consider a flagship project under the CMU agenda, as an important step to bridge the gap between information financial market participants must disclose (due to clients’ demand or regulatory requirements) and information provided by companies, in particular with respect to ESG commitments.^{1 2}

In view of ISDA’s broad membership, we are providing various comments that reflect the views of ISDA’s different member institutions, comprised of a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, international and regional banks, and infrastructure providers such as exchanges, clearing houses and repositories. GFXD members comprise 23 global foreign exchange (FX) market participants, collectively representing the majority of the FX inter-dealer market.

In addition, the Associations’ members also support the response of the Association of Financial Markets in Europe (AFME).

Executive Summary

- The Associations strongly support the establishment of ESAP and believes that with appropriate calibration and a considered approach to implementation timelines and scope, should add to the attractiveness of EU capital markets as a place for companies to IPO.
- A focus of ESAP should be company data already required by the Transparency and annual financial statements Directives, the Prospectus and Taxonomy Regulations and the upcoming CSRD.
- The extension of the ESAP scope beyond these core company disclosure requirements should be based on an assessment of concrete use-cases for end investors.
- ESAP should be machine-readable and made accessible to individuals.
- The Associations are concerned about the EC’s suggested time-line and would prefer a more flexible approach.

¹ ISDA response to the EC’s targeted consultation on ESAP: https://www.isda.org/a/xAZTE/ISDA_response_ESAP_EC_final_clean_submitted.pdf

² ISDA response to EC’s Roadmap consultation on ESAP: <https://www.isda.org/a/z9RTE/ISDA-Comments-on-Establishment-of-a-European-Single-Access-Point.pdf>

Scope

The Associations’ members, depending on their business models, size and field of activities, are subject to several EU legislations the European Commission intends to include in the scope of ESAP. In principle, the Associations believe that the ESAP should only contain data points which enable cross-border and SMEs financing, assist with the implementation of regulatory requirements and most importantly constitute a concrete use-case for end-investors.

In this context, the Associations support the prioritisation of data resulting from the following files:

1. Transparency Directive
2. Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports
3. Prospectus Regulation
4. Taxonomy Regulation
5. The upcoming Corporate Sustainability Reporting Directive (CSRD) as soon as practicable due to members’ challenges with respect to the implementation of sustainable finance related requirements.

Whilst the Associations support the principle of a phased-in approach with respect to data points and the prioritisation of ‘raw’ company information, we believe that certain data points stemming from the 37 proposed legislations in scope will likely never be suitable for ESAP. However, based on appropriate calibration of required data points and sensible implementation timelines (see below), ESAP should add to the attractiveness of EU capital markets as a place for companies to IPO. This is for example the case for the following information currently published by ISDA sell-side members. The table below does not include market-related information currently reported by other market actors such as CCPs, CSDs, trade repositories, trading venues and from ESMA on financial instruments or market infrastructures but for which relevance in ESAP could also be questioned.

Market-related Regulations and Directives	Information to be in ESAP
Short Selling Regulation	Details on net short position in relation to shares where the position reaches or falls below the relevant threshold.
EMIR	As clearing member: <ul style="list-style-type: none"> • prices and fees associated with the services provided. • levels of protection and the costs associated with the different levels of segregation that we provide.
SFTR (repo & sec lending)	<ul style="list-style-type: none"> • Reporting obligation and safeguarding in respect of repo and sec lending

	<ul style="list-style-type: none"> • Reuse of financial instruments received under a collateral arrangement
BMR	<p>As administrator:</p> <ul style="list-style-type: none"> • All existing or potential conflicts of interest • Clear guidelines regarding the types of input data, the priority of use of the different types of input data and the exercise of expert judgement • Clear published arrangements that identify the circumstances in which the quantity or quality of input data falls below the standards necessary for the methodology to determine the benchmark accurately and reliably, and that describe whether and how the benchmark is to be calculated in such circumstances. • Compliance statement for significant and non-significant BM <p>The following information from administrator will though be useful in ESAP for a small portion of investors:</p> <ul style="list-style-type: none"> • BM methodologies (key elements, details on the internal review and approval process, changes procedures) • Benchmark statement for each benchmark • Procedure concerning the actions to be taken in the event of changes to or the cessation of a benchmark
MiFID2	Best execution reports (RTS 27 and RTS 28)

These information are not requested by end-investors or only requested from a very small portion of them. Moreover, in the context of the MiFIR Review, the European Commission proposes to delete quarterly best execution reports (MiFID RTS 27) permanently. Additionally, EMIR clearing member disclosures are only relevant for a small number of financial firms that are seeking access to clearing services.

We are concerned that the inclusion of too many data points, part of which will not be useful for investors, would contradict the original objective of ESAP to serve investors’ needs for financial and sustainability information from investee companies.

In the Associations’ view, extension to other use cases could be revisited for future consultations and phases, learning lessons from initial implementation, whilst any individual use-case to leverage the ESAP for a specific regulation would need to be justified by a cost-benefit analysis (CBA). The CBAs should ideally account for the time and effort of firms and EU regulators to keep track of all such changes as well as actual implementation costs. They should also account for frequency of reporting/updates (e.g. frequent disclosures vs. less frequent updates like annual disclosures).

In addition, an analysis of use-cases should consider an accompanying assessment of how a contribution to ESAP could raise compliance challenges or disincentivise non-EU companies, and their products, to become authorised in the EU. To that effect, we wanted to use an

illustrative example the provision of reporting information under the European Benchmarks Regulation (BMR), by third-country benchmark administrators in the context of the ESAP, which could impose undue administrative burden on such entities 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. More specifically, under the BMR, many non-EU benchmark administrators, providing financial benchmarks in the space of equities, commodities, and foreign exchange, are facing significant challenges to have their benchmarks authorised for use in the EU. Without registration, EU users would be prohibited from using these important benchmarks and unable to serve their clients' hedging needs hence reducing competitiveness of EU firms in global markets. This has led the EU co-legislators to extend the transition period for third country benchmarks until June 2023³.

At an initial stage, collection bodies and in scope firms should prioritise data that are useful for a broad range of end-investors. Lastly, we think that ESMA and the European Commission should investigate how out-of-scope firms' voluntary reporting could be incentivised in the ESAP. However, it is important that voluntary participating firms use the same formats as those subject to mandatory ESAP contribution. Voluntary reporting should also only allow to disclose data points which are also required by companies subject to ESAP, to avoid users' confusion and overwhelming of the data base. However, it should be noted that voluntary reporting might be subject to a significant administrative burden given that out-of-scope companies could not rely on currently existing workflows. For example, for some data points, firms subject to mandatory reporting may have an established relationship with a collection body (ESMA, trading venues, CCP etc) and do not directly have to populate ESAP.

Sustainability information

The Associations agree with the European Commission's view, as expressed in the impact assessment, that the ESAP should support investors' access to sustainability-related data to enhance the inclusiveness of green finance and reduce administration costs with a view to mainstreaming sustainable finance. The ESAP as a 'golden source' for 'raw' ESG data should significantly reduce implementation costs while enabling the marketability of ESG-linked financial products. However, it is important to note that, in a similar vein to comments on certain market-related information made above, not all sustainable related data resulting from EU law constitutes 'raw' data. For example, we believe that the inclusion of reports in respect of the ESG amendments to the EU Benchmarks Regulation would not add any value

³ For example, if a European company who engages in India, has a requirement to use Indian rupees (for paying employers, investing in machinery or selling a product), it will ultimately need to convert their costs and revenues into euros and it will consequently be exposed to fluctuations in the exchange rate of euros to rupees (currency risk). 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 recognised benchmark.

given that ESG benchmarks pursue different ESG objectives using specific methodologies. Therefore, such information will not be relevant for the broad majority of ESAP users due to differing investment preferences and ESG strategies pursued.

We invite the European Commission to weigh the ultimate benefits for investors in comparison to their current ability to access KIDs with the additional costs for manufacturers and having in mind the challenging implementation of PRIIPS Regulation between 2017 and 2018. Based on our experience, current infrastructures to give access to KIDs sufficiently in advance to end-investors is working properly.

Machine-readability

The Associations support the approach taken by the European Commission, to focus the Level 1 legislation on governance and scope and clarify technical parameters of ESAP in Level 2 legislation. However, we would like to stress that machine-readability and usability of ESAP will be of utmost importance for the purpose of reducing search and implementation costs. Each report will require some form of further consultation/engagement to develop appropriate proposals around meta-data and machine-readability, which will be an enormous task for industry and regulators. In this context, we believe that the non-financial data universe should also align with clear open standards in a similar vein to the reporting of financial information. Building the ESAP based on reliable digital standards and data models such as the Common Domain Model (CDM) is a prerequisite for this digital opportunity to be exploited.⁴ Sequentially, building on a foundation of digital standards would help to resolve data issues in tracking and reporting of sustainability risks and factors to reduce the operational challenge of conforming to new reporting requirements as well as supporting companies with responding to the growing demand for sustainable products. Therefore, available, reliable and fully exploitable data could encourage credit institutions and financial market participants, to expand their offerings of sustainable financing solutions and innovative financial products such as ESG-linked derivatives. The Associations would welcome the opportunity to discuss the use of such data standards and models with the EC and ESMA for the purpose of setting technical parameters for the ESAP.

On top of 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, the Associations also believe 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.

Timing

With the current proposed timeline, there is a risk that requirements are not fully and consistently implemented and the proposed information resulting from 37 regulations needs to be added to the ESAP in the near term, there is a risk that ESMA, the various nominated “collection bodies” and in-scope firms would not have sufficient bandwidth to focus on the truly useful use-cases identified and ensure these are successful. Moreover, in view of the ambitious timing foreseen, many firms and regulators would be subject to multiple

⁴ Common Domain Model: <https://www.isda.org/2019/10/14/isda-common-domain-model/>

concurrent/overlapping planning and implementation programmes, which does not seem to be accounted for in the phasing or impact assessment. In light of the above-mentioned challenges, the Associations believe that the European Commission should refrain from the current approach, i.e. setting concrete application dates in Level 1 legislation. Instead, we believe a more dynamic approach should be taken, allowing for impact assessments, deliberations on Level 2 specifications and sufficient time for regulators, collecting bodies and in-scope firms to implement requirements when Level 1, 2 (and possibly Level 3) legislation is finalised. To ensure each item is designed effectively will require extensive industry engagement. Therefore, we would respectfully call on the European Commission to consider a more spread-out implementation based on key priorities.

In addition, it is important to note that phasing does not appear to allow for an opportunity to pause, take stock, and adapt ESAP before adding more reports as it only applies different go live dates. We would very much welcome clarity on whether any reporting for legislations either where the reporting is not yet in place (SFDR/Taxonomy) or is subject to review during the phase-in period (MiFIR, SSR, PRIIPs, MAR) should be included with a fixed go-live date, rather than having the date set within those regulations as they are updated/finalised. Therefore, we believe that legislation and relevant data points which are set to be reviewed within the next few years should not be added to the suggested timeline in the event the European Commission intends to move forward with the current approach of fixed application dates in Level 1.

It is also extremely important to ensure that the timing of the adoption and of the entry into force both of Level 1 and of Level 2 rules are adequately synchronized. This is key to enabling financial markets participants to duly comply with their obligations leveraging on a clear, reliable and exhaustive legal framework. For example, the Draft ITSs, specifying 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 by each relevant ESA well in advance of the date when the obligation to feed into ESAP “in scope” information is due to apply. Moreover, this concern becomes even more compelling considering that, pursuant to the EC proposal of Regulation establishing the ESAP:

- i) financial market participants are under the obligation to ensure the “accuracy” of the information they submit to the collection bodies. This means that financial market participants may face, in all likelihood, potential legal liabilities in case they do not comply with the above-mentioned obligation.
- ii) collection bodies are under the duty to reject information submitted by financial market participants in case this information does not meet the requirements envisaged under the Level 1 rules and further specified in Level 2 rules.

Another particularly sensitive issue relates to the concrete implementation of the “proportionality principle” informing the ESAP legislative package as a whole. Consistently with this principle, we would deem advisable that each relevant ESA 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 financial market participants.

About ISDA

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 980 member institutions from 78 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website: www.isda.org. Follow us on [Twitter](#), [LinkedIn](#), [Facebook](#) and [YouTube](#).

About the GFXD

About the 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 market⁵. 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.

⁵ According to Euromoney survey