

ICMA response to requests for feedback

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European Commission proposals of 25 November 2021 for a European single access point (ESAP) for public information

(COM(2021)723, COM(2021)725 and COM(2021)725)

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- 1. Background** – ICMA has previously [responded](#) to the European Commission’s ESAP consultation (in March 2021, with short summary subsequently [published](#)) and included some points on the ESAP in its [Preliminary Thoughts on the Capital Markets Union Package](#) (in November 2021). The feedback below regarding the Commission’s ESAP proposal package ([ESAP Establishment Regulation proposal](#), [related Annex](#), [related Omnibus Regulation proposal](#) and [related Omnibus Directive proposal](#)) as well as the [accompanying impact assessment](#)) follows on from such prior feedback and focuses on aspects relevant to the international bond issuance markets.
 - 2. General** – It is not possible to give detailed or definitive feedback on the Commission’s proposals (including the level of ambition in targeting 37 underlying sectoral regimes within five years*), as much depends on the detail that is still to follow: ESMA’s logistical build and the ESAs’ subsidiary measures (which will presumably involve stakeholder consultation in the context of each of the sectoral regimes). (* The scheduling of the ESAP’s application to individual sectoral regimes by reference to fixed dates could well in practice cause disruption to stakeholders if delays arise in finalisation of either the ESAP Level 1 legislation or the relevant Level 2 technical standards. Application should be scheduled by reference to finalisation of the Level 2 technical standards.)
 - 3. Format of the information accessible via ESAP** – It is welcome that allowance is being made for a ‘**data extractable format**’ (i.e. including PDF with computer-recognisable characters rather than just scanned images) and not only for a ‘**machine-readable format**’. The latter indeed depends to a great extent on the preliminary existence of structured/standardised data (in addition to the use of a taxonomy) that could be inappropriate in many sectoral cases, especially where some semantic interoperability and data searchability (including metadata) is otherwise ensured and commensurate to users’ needs – e.g. in the context of Prospectus Regulation disclosures. (It is interesting to note some information preparers and national authorities raised questions on the suitability of the ESEF format when information is more narrative and less quantitative.) Prospectuses must already be accompanied by structured **metadata** in XML format for the classification in ESMA’s register and one should be careful that (a) requiring any additional metadata in the ESAP context is justified and (b) solutions that have been developed by NCAs to collect such structured metadata can continue to operate in a proportionate and not unduly burdensome manner.
 - 4. Timeliness of information accessibility via ESAP / Collection of the information accessible via ESAP and interconnection of existing collection points** – Capital markets in the EU have indeed

been regulated on a decentralised basis, with e.g. the Transparency Directive organising the collection and dissemination of information from a repository perspective through national Officially Appointed Mechanisms (OAMs) at the Member State level. In this respect it may seem unsurprising that the Commission has decided entities submitting information do so to a collection point that is interconnected with the ESAP at the same time as they make the information public: OAMs, the ESAs (where needed), NCAs (where needed) and other collection points. It is interesting to note however that there was significant stakeholder support for the ESAP (i) allowing direct upload of information by market participants and (ii) being a channel for the timely publication of information (and not just a repository of information). So it may be worth revisiting the Commission's current conclusion that providing real time / initial access to information via the ESAP, albeit ideal, did not seem feasible at this stage considering the need to have an intermediate passage between submitting entities and the ESAP (i.e. the collection points).

5. **Addressing language barriers** – Bearing in mind that the establishment of the ESAP should not generate additional liability for stakeholders, the embedding of an e-translation service into the ESAP (even if just applying to metadata) would indeed need prominent and robust responsibility terms that such service is provided only for logistical convenience and cannot be relied on (with only the original version being legally binding).
6. **Retention period** – In terms of collection bodies needing to ensure that information remains available to the ESAP for at least ten years subject to any specific sectoral rules, it is worth noting that one would expect prospectus information to remain available until the maturity of the securities concerned (which could often exceed ten years by some margin). ICMA has recently highlighted in the context of the European Commission's targeted consultation on the Listing Act that the requirement for prospectuses to remain publicly available for at least 10 years contained in Article 21(7) of the Prospectus Regulation seems rather arbitrary given bonds will have a range of maturities.
7. **Qualified electronic seal** – The concept of a qualified electronic seal is likely to be a novel concept to many stakeholders. It is also interesting to note the Commission's conclusion that the acquisition and maintenance of a legal entity identifier (LEI or other), of a digital certificate and of a signing tool are together estimated to cost around €600 per year. A related consideration is that the qualified electronic seals need to be accessible to multiple selected staff within submitting entities to be practicably operable.
8. **Search function / filtering** – With Article 7.3 of the proposed ESAP Establishment Regulation specifying a limited number of metadata line items for the ESAP search function, it is important that sectoral regime considerations be taken into account (including in respect of the required ESAs classification of the "type of information" line item), as relevant search criteria are likely to vary materially between sectoral regimes.

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