



STATEMENT

LuxCMA feedback on the establishment of a single access point (ESAP)

Luxembourg, 8 April 2022

LuxCMA feedback on the establishment of a single access point (ESAP)

LuxCMA welcomes the European Commission's objective to provide access to company information at the European Union level and supports measures the establishment of a single access point (ESAP), which could have a positive impact on local capital markets. However, LuxCMA believes that the proposed regulation for the ESAP (the "[ESAP Regulation](#)") has a number of significant shortcomings that need to be addressed in order for this objective to be obtained.

- 1. Overlap and lack of clarity:** The centralisation of information is not new. Similar projects exist, such as (1) the European Financial Transparency Gateway (EFTG), (2) ongoing efforts to create a European business register, and (3) Business Registers Interconnection System (BRIS) developed in accordance with the Company Law Directive. The ESAP Regulation lacks sufficient clarity on its relation to these projects and in the case of BRIS, undue overlap via duplicate procedures that burdens the industry.
- 2. Principle of 'file once':** Companies should only have to report once and to one authority, following the "file once" principle. Additional formatting and reporting requirements should be avoided in order to make sure that, for instance, listing companies still consider to remain in public markets.
- 3. Principle of proportionality:** New reporting-related requirements, such as the qualified electronic seal and the obligation to provide information in an extractable or machine-readable format, must be proportionate. The burden of compliance cannot exceed the benefit of such reporting for users of ESAP. In this respect, it should be noted that the PDF document cannot be considered a format from which data can be easily extracted. Companies should however not be required to provide data in extractable formats that are costly to prepare, while PDF is currently widely accepted.

- 4. Excessive delegated rule-making:** There is too much delegation of important elements (e.g. formats to be used to draw up the information under Article 3 of the ESAP Regulation) to the joint committee of the ESAs and late submission dates for draft ITS (e.g. Article 5(6) of the ESAP Regulation two years after the entry into force). This undermines a proper analysis and assessment of the impact of the ESAP Regulation into the market participants and their reporting obligations.
- 5. Tasks of the collection bodies need to be clarified and well-calibrated:** In several places, the ESAP Regulation lacks clarity or calibration on the tasks of the collection bodies. For example:
- a. The performance of ‘automated validations on the information submitted’ in Article 5(1)(b) of the ESAP Regulation is only feasible on a technical level.
 - b. It is unclear what extent of ‘technical assistance’ is foreseen in Article 5(1)(e) of the ESAP Regulation, while clarity is necessary to evaluate the potential costs of such assistance.
 - c. The requirement in Article 5(1)(f) of the ESAP Regulation to “ensure that the information (...) remains available to ESAP for at least 10 years (...)”, except for personal data (five years), is problematic. It is unclear how it can be implemented.

In addition, the ESAP Regulation lacks clarity regarding the way ESAP will build on the existing OAMs. While the Explanatory Memorandum explains that “This proposal [...] builds on the existing OAMs” (page 7), it fails to set out how ESAP builds on this infrastructure, what are the concrete impacts, costs and challenges to the OAMs.

- 6. The ESAP Regulation does not take a phased approach in terms of scope.** Given that the ESAP Regulation imposes new reporting formalities, the scope of the information included in the ESAP should be gradually expanded, and not be as broad as proposed. In the first phase, it should be limited to established regulatory frameworks, such as the Prospectus Regulation and the Transparency Directive. We do not believe that the market is prepared to start collecting information under the sustainable finance regulations (e.g. the Taxonomy Regulation), as these reporting requirements are new, complex and still evolving.
- 7. The ESAP Regulation is extremely unclear on budgetary implications and does not address the funding of collection bodies.** The information on page 6 of the Explanatory Memorandum does not clearly quantify the implementation and administrative costs for national collection bodies. This aspect is particularly concerning for OAMs which, in certain cases, are run

by private entities and that need to plan for such expenses and changes to their infrastructure. At the same time, the funding sources of collection bodies, in particular OAMs, are not addressed.

- 8. The negative impact of making free of charge data to the industry.** It would be important to highlight that making available for free all possible market data in structured format will have a considerable impact on the industry producing and disseminating today such data. The impact assessment underlying the proposal does not take into consideration how the loss of revenue streams threatens the viability of these business models and negatively affects the availability of market data and related products, on which investors currently rely.
- 9. English should not be mandatory language of disclosure.** Requiring submission in English would disproportionately burden companies in non-English speaking Member States. From the perspective of legal liability, automatic translation is not suitable. Given the costs involved, disclosing information in an additional language (i.e. English) should be compulsory.
- 10. Public national bodies should also have free access.** The list of entities includes any Union institution, agency or body, but not any public body of a Member State, for instance the Ministry of Finance (Article 8(3) of the ESAP Regulation). This lacks symmetry.
- 11. Timeline should be clarified.** According with the ESAP Proposal, ESAP should be established by 31 December 2024 (minimum viable product) and 31 December 2025 (full). However, the obligation to submit information to the ESAP starts with information submitted as of 1 January 2024, which seems to conflict with above implementation by end of 2024.

All those who would like to become a LuxCMA member should visit www.luxcma.com or contact info@luxcma.lu.

ABOUT LUXCMA

The Luxembourg Capital Markets Association (LuxCMA) represents the common interest of all stakeholders of the primary capital markets industry of Luxembourg. Its mission is to promote Luxembourg's capital markets, provide networking and collaboration opportunities and foster innovation in the industry. LuxCMA's is to become the single point of contact for authorities, associations, market practitioners and other actors.

Follow us on:

