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Commissioner Mairead McGuinness
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Financial Reporting Technical Committee

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Berlin, 24 March 2022

Dear Commissioner McGuinness,

RE: legislative proposal on a European Single Access Point (ESAP)

On behalf of the Accounting Standards Committee of Germany (ASCG), we are writing to summarise our key points on the European Commission's legislative proposal for a European Single Access Point (ESAP) published on 25 November 2021. We appreciate the opportunity to comment on the European Commission's proposal.

We consider the legislative initiative proposed by the European Commission as important and welcome its objective of establishing free, non-discriminatory access to all company, product and sustainability information that has to be published by any entity under the EU financial markets legislation.

Yet, we think that the specific design of the downstream implementing measures will be decisive for the achievement of this objective and the associated costs for preparers. As those implementing measures cannot be sufficiently assessed at this point in time, we would like to bring the following points to your attention, which we see as important factors for a successful implementation of ESAP.

We welcome that the proposal aims to create no new reporting obligations in terms of content and hope that this premise can be adhered to, as maybe not only technological questions will have to be addressed in the course of the project, but these could also in detail entail technical ('accounting') questions. Additionally, we welcome that the proposal follows a 'file only once'-principle, where data is uploaded once but used for different purposes and addressees.

We consider the timetable outlined for the establishment of the ESAP by 31 December 2024 and the scope of the information to be made available on the ESAP to be very ambitious. Therefore, we support the 'phasing in' approach, i.e., the gradual inclusion of the legal acts, as well as the gradual introduction of data formats. We think that, as a first step, information prepared for financial market participants to comply with their sustainability-related reporting requirements (such as information according to the SFDR that would prospectively be reported under the Corporate Sustainability Reporting Directive (CSRD), especially the quantitative EU

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Taxonomy Templates, and further quantitative sector specific ESG information) should be made available in the ESAP.

In the context of the gradual inclusion of the legal acts, we consider it important that any existing interactions between the individual legal acts are examined with regard to the specific timing of their inclusion. For instance, we observe that under the proposal the information to be disclosed in accordance with Art. 8 of the Regulation (EU) 2020/852 ('Taxonomy Regulation') would need to be made available on the ESAP from 1 January 2024 onwards, while an undertaking's financial statements and management report would not have to be included in the ESAP before 1 January 2025.

Also, the European Commission should consider the submission of voluntary information (e.g., from companies domiciled abroad) from the outset, as challenges are to be expected in this regard as well (e.g., with regard to the interfaces and transmission channels to the ESAP for information that is not already submitted via existing channels).

It must also be ensured that the specifications to be developed can be implemented as smoothly as possible, so as not to place an excessive burden on the companies – as ESAP will entail considerable implementation costs in any case – and jeopardise the implementation plan. This entails developing specific taxonomies for certain industries when defining machine-readable data formats with sufficient lead time for proper implementation.

In this context, we were informed that not only the requirement to mark-up information using a taxonomy specified by the European Commission (i.e., the specification of a machine-readable format), but also the specification of a data-extractable format can pose significant challenges for preparers. For example, the introduction of the XHTML format in the context of the introduction of the European Single Electronic Format (ESEF) was accompanied by technological difficulties, since only a limited number of sufficiently developed software solutions were available on the market at the time of the ESEF implementation in Germany. Therefore, an important prerequisite for a successful implementation of ESAP is that technical solutions (especially validated software solutions) must be available that can meet the European Commission's data format requirements.

With regard to the interaction of the proposed amendments to the Accounting Directive with the CSRD proposals, we note that the extension of the scope of application to all large companies (as proposed by the draft Accounting Directive) would lead to considerable challenges for all non-listed companies concerned, as these companies - unlike listed companies - do not have experience with preparing their annual financial reports in a single electronic reporting format (ESEF). There are considerable concerns that non-listed companies have the necessary resources to introduce a full scale electronic reporting (in a machine-readable format).

Furthermore, while the legislative proposal on ESAP proposes only to amend the provisions on *publication* in the Accounting Directive, we would like to note, however, that the proposed amendment to the Accounting Directive of the European Commission's proposal for a CSRD would require all large undertakings to *prepare* their (consolidated) financial statements and their (consolidated) management report in the European Single Electronic Format (ESEF). This means that the requirement to *prepare* financial statements and the management report in an electronic format – a provision which has so far been introduced exclusively for issuers by the Transparency Directive (ref. Article 4 para. 7 which was inserted by the Transparency Directive Amending Directive 2013/50/EU) – would apply to all large undertakings that are



within the scope of the proposed amendment to the Accounting Directive. As the *electronically prepared* financial statements and management report would thus be the legal financial statements and management report of the company, a variety of formal, legal and technical issues arise, similar to the questions that have already been extensively discussed in the course of the ESEF introduction resulting from the EU Transparency Directive, such as:

- audit on the company complying with the format requirements by the statutory auditor (as the provisions on the format are to be considered as “statutory requirements” within the meaning of Article 28(2)(c)(ii) of the Audit Directive),
- approval of the financial statements and the management report (prepared in an electronic format) by the annual shareholder’s meeting, and
- responsibility of the supervisory board for the compliance of the financial statements and the management report with the format requirements.

As the introduction of a requirement to prepare the (consolidated) financial statements and the (consolidated) management report in an electronic format is a novelty and many stakeholders (including shareholders, supervisory board members), especially of unlisted companies, are not familiar with such an electronic format, we recommend the European Commission carefully consider whether it is proportionate to require companies to *prepare* their financial statements and management reports in an electronic format.

Additionally, we consider some of the intended functionalities of ESAP as very ambitious. While we think that a (reliable) machine translation service would be valuable, we have concerns about the quality of such translations, especially regarding narrative information, as well as the question of liability for incorrect translations. It is therefore of high importance, that ESMA – as the responsible governing body of the ESAP – performs the necessary due diligence to prevent faulty translations of the tool.

Also, we think that ensuring user-friendliness with regard to the usability of the ‘output’ (e.g., output formats for data downloads and detailed filtering options) is just as important as the appropriate functioning of the ‘input’, i.e., the data transfer to ESAP. Further, with regard to our stipulation that the taxonomies to be developed must be sufficiently specific, we would like to add that this request was highlighted by users as most important. In the case of non-specific taxonomies that entail a large number of ‘extensions’, the comparability of the information would suffer and consequently lead to a low acceptance of the ESAP by users. For instance, as regards to the ESEF implementation, especially companies from the financial sector had to create numerous extensions to mark-up their primary financial statements, as the ESEF core taxonomy does not provide for (sector-specific) taxonomy elements in sufficient detail. Therefore, the information to be made available on ESAP must be standardised – in terms of content and with respect to the taxonomies to be developed by the European Commission – to enable comparability across companies and to provide added value to users.

In addition, instant accessibility of the information is of high importance, as the greater the delay, the less important ESAP would be as a channel for obtaining information. However, we note, that preparing information in a machine-readable format (including a mark-up of that information), as well as the internal quality assurance and external audit of that information, require a certain amount of time. Therefore, preparers would need to anticipate the necessary time in their timetable for preparing the information. As the introduction of ESEF in relation to annual financial reports has revealed, in practice, the introduction of an electronic reporting



format (that is subject to the statutory audit) can have a material impact on the company's timetable for preparing the financial statements.

Depending on the scope and design of the intended functionalities - and considering the intended timeline of ESAP - we think it should be reviewed whether ESMA's planned resources are sufficient.

Regarding the possibility of charging fees for specific services, we would encourage that users who need data to comply with regulatory requirements (such as banks and insurance companies) should be able to obtain it free of charge.

Further, we think that it is important to take into account the experiences and knowledge gained from the ESEF introduction, as comparable objectives to the ESAP were not or only partially achieved so far in the case of the ESEF. As explained above, in practice, there was considerably more complexity (e.g., the extent of the extensions to be created, particularly for financial institutions), especially with regard to technical issues (e.g., anchoring of extension elements to elements in the ESEF taxonomy, the inclusion of content other than XHTML in a stand-alone XHTML file, as well the scope and components of the reporting package to be prepared in XHTML format), than had originally been expected. Based on this, we think it would be helpful to establish a consultative forum that would enable ESMA to exchange views with its stakeholders (including preparers, users, OAMs, service providers, etc.) on issues concerning the implementation of ESAP as well as application issues after the implementation of the ESAP. Additionally, we suggest establishing a transparent and binding process for resolving technical and functional application issues (e.g., similar to the IFRS Interpretation Committee (IFRS IC) of the IFRS Foundation), in a timely manner.

Should you wish to discuss any of the above-mentioned issues in more detail, please feel free to reach out to us at any time.

Yours sincerely,

Sven Morich

Vice President