III

(Preparatory acts)

EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 7 June 2022

on the establishment and functioning of the European Single Access Point (ESAP)

(CON/2022/20)

(2022/C 307/03)

Introduction and legal basis

On 25 November 2021 the European Commission published a legislative package ([1]) (hereinafter the 'proposal'), proposing the establishment of a European Single Access Point (ESAP) providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability, as envisaged in the Capital Markets Union (CMU) Action Plan adopted by the Commission in September 2020. The European Central Bank (ECB) considers that the proposal falls within its scope of competence, and has decided to exercise its right, as provided for in the second sentence of Article 127(4) and in Article 282(5) of the Treaty on the Functioning of the European Union, to submit its opinion.

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty since the proposal contains provisions affecting the ECB's tasks relating to the collection of statistics pursuant to Article 5 on the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB') and to the European System of Central Banks' (ESCB) contribution to the smooth conduct of policies pursued by the competent authorities relating to the stability of the financial system pursuant to Article 127(5) of the Treaty and Article 3.3 of the Statute of the ESCB.

In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

1. General observations

1.1. The ECB views the establishment of ESAP as an important milestone in the completion of the CMU and welcomes the proposal's objective to provide centralised Union-wide access to public financial and non-financial information on Union entities and securities, including as regards sustainability, in a non-discriminatory and efficient manner. The information accessible via ESAP will make it easier for investors to identify suitable firms and projects on a cross-border basis and has the potential to give greater visibility to entities that are seeking funding, including small and medium-sized enterprises and companies that are part of smaller national capital markets. ESAP, if well-designed and implemented, will thus allow for a more efficient allocation of capital across the Union, contributing to the further development and integration of capital markets. Deeper integration of capital markets is needed for several reasons. First, they mobilise the resources needed to facilitate market participants' access to green finance

([1]) Proposal for a Regulation of the European Parliament and of the Council establishing a European single access point providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability, COM(2021) 723 final (hereinafter the 'proposed ESAP regulation'); proposal for a Regulation of the European Parliament and of the Council amending certain Regulations as regards the establishment and functioning of the European single access point, COM(2021) 725 final; and proposal for a Directive of the European Parliament and of the Council amending certain Directives as regards the establishment and functioning of the European single access point, COM(2021) 724 final.

and to funding for the transition towards a digital economy. Second, the integration of European capital markets can be expected to improve the transmission of the single monetary policy to all parts of the euro area. Third, deeper and well-integrated capital markets will make the financial system more resilient. Cross-border funding and investments improve risk-sharing across the Union and thus make Member State economies more resilient to shocks. Therefore, the ECB reiterates ([2]) the importance of promptly adopting and implementing the initiatives under the Commission's 2020 CMU Action Plan.

1.2. ESAP is also of relevance to the ECB as its establishment would not only enhance the ESCB's access to public financial and non-financial information, information via a cost free, immediate and direct access to that information for the performance of its tasks, but would also help to overcome some of the main obstacles that arise from the need for deeper statistical and economic analysis of information and datasets stemming from different Union directives and regulations. These include: (i) information being seldomly disclosed centrally nor complemented with adequate meta data; (ii) lack of common standards, interoperable formats and technical functions to disclose and download information in a structured machine-readable layout; (iii) the use of different identifiers for the same entity in different Union directives and regulations; and (iv) lack of or limitations in the user interface to enable rapid search and data processing. Addressing these issues, through the establishment of ESAP as well as through the implementing technical standards, will facilitate the collection of data and their accessibility for statistical purposes, and ultimately their usage and sharing (especially with other Union institutions) in line with the applicable legal framework. It will also improve the ECB's operational and analytical work and thus support its decision-making.

1.3. The ECB further welcomes the integration of sustainability information with financial and non-financial data ([3]). This integration and the establishment of such a 'one-stop shop' containing all key information on an entity, including its sustainability profile, would benefit not only investors – thereby promoting the growth of green capital markets and creating a green CMU – but all private and public stakeholders interested in financial and sustainability reporting. From the ECB's perspective, the improved availability of comparable sustainability-related information, notably stemming from the proposed directive on corporate sustainability reporting ([4]), would support and facilitate informed decisions and their implementation in relation to the monetary policy framework, the prudential supervision of credit institutions and the contribution to the smooth conduct of policies pursued by competent authorities relating to the stability of the financial system. Notably, the concentration of sustainability information within ESAP would support the implementation of the ECB's action plan to incorporate climate change considerations into its monetary policy framework ([5]).

2. **Specific observations**

2.1. *Legal entity identifier*

2.1.1. The ECB welcomes the fact that, to ensure that the information provided to ESAP is free from any undue alteration, the proposal provides that the information submitted by the entities should include a qualified electronic seal which may, if available, include the legal entity identifier (LEI) as a mandatory attribute of said certificate that should be made available to users ([6]).

([2]) See paragraph 1.4 of Opinion CON/2021/27 of the European Central Bank of 7 September 2021 on a proposal for a Directive amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting (OJ C 446, 3.11.2021, p. 2). All ECB Opinions are available on EUR-Lex. See blog post by Luis de Guindos, Vice-President of the ECB, and Fabio Panetta and Isabel Schnabel, Members of the Executive Board of the ECB, 'Europe needs a fully-fledged capital markets union – now more than ever', available on the ECB website at www.ecb.europa.eu. See also speech by Christine Lagarde, President of the ECB, 'Towards a green capital markets union for Europe', available on the ECB website at www.ecb.europa.eu

([3]) See paragraph 1.4 of Opinion CON/2021/27.

([4]) Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC, and Regulation (EU) No 537/2014, as regards corporate sustainability reporting, COM(2021) 189 final.

([5]) See ECB press release of 8 July 2021, 'ECB presents action plan to include climate change considerations in its monetary policy strategy', available on the ECB website at www.ecb.europa.eu

([6]) See recital 15 of the proposed ESAP regulation.

2.1.2. The ECB would welcome the imposition of the LEI as a mandatory attribute across the Union, ranking above any other generic identifier for the entities concerned by various Union directives and regulation, since this would facilitate not only the identification of these entities but also the accuracy, searchability, retrieval, use and interoperability of the information provided to ESAP.

2.1.3. In the absence of a LEI the ECB recommends highlighting to the collection bodies addressed in the underlying directives and regulations ([7]) alternative means of efficiently ensuring a unique identification of the entities concerned. In particular, this could include a reference to a set of national and industry identifiers commonly used, and thus widely available in the Member States, that is published and maintained by the ECB ([8]). In parallel, such reference could also encourage the collection bodies to incorporate identifiers available via other Union initiatives on business registers ([9]).

2.1.4. Moreover, the requirements for a valid LEI are defined by the International Organization for Standardization (ISO) standard 17442 on LEI ([10]). Pursuant to these standards, a valid LEI is composed of 20 characters that record a set of defined attributes, the last two of which consist of check digits, calculated on the base of a specific scheme. Thus, there is no Union-level harmonisation of the LEI ensuring a uniform means of identifying all the information that may be disclosed or reported by a given entity.

2.1.5. The proposal does not address the problems arising from the lack of a LEI as a mandatory attribute for entities across the Union, and delegates the power to develop draft implementing technical standards specifying the LEI of the entities that submitted the information to the appropriate collection body. The ECB acknowledges the flexibility such delegation may offer. However, the ECB considers that, until the LEI is further defined, the usability of ESAP will be limited and it sees merit in the proposal clarifying that the entities providing the information should use the specified LEI ([11]) or, in the absence of a LEI, other means to ensure unique identification.

([7]) See Annex to the proposed ESAP regulation.

([8]) See the background material published by the ECB in the context of the AnaCredit data collection system on bank loans: available on the ECB website at www.ecb.europa.eu

([9]) See the Business Register Interconnection System (BRIS) based on Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (OJ L 169, 30.6.2017, p. 46) and Commission Implementing Regulation (EU) 2021/1042 of 18 June 2021 laying down rules for the application of Directive (EU) 2017/1132 of the European Parliament and of the Council as regards technical specifications and procedures for the system of interconnection of registers and repealing Commission Implementing Regulation (EU) 2020/2244 (OJ L 225, 25.6.2021, p. 7), or the European framework for statistical business registers based on Regulation (EU) 2019/2152 of the European Parliament and of the Council of 27 November 2019 on European business statistics, repealing 10 legal acts in the field of business statistics (OJ L 327, 17.12.2019, p. 1) and Commission Implementing Regulation (EU) 2020/1197 of 30 July 2020 laying down technical specifications and arrangements pursuant to Regulation (EU) 2019/2152 of the European Parliament and of the Council on European business statistics repealing 10 legal acts in the field of business statistics (OJ L 271, 18.8.2020, p. 1).

([10]) See Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1); Article 11(7) of Commission Implementing Regulation (EU) 2017/394 of 11 November 2016 laying down implementing technical standards with regard to standard forms, templates and procedures for authorisation, review and evaluation of central securities depositories, for the cooperation between authorities of the home Member State and the host Member State, for the consultation of authorities involved in the authorisation to provide banking-type ancillary services, for access involving central securities depositories, and with regard to the format of the records to be maintained by central securities depositories in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council (OJ L 65, 10.3.2017, p. 145); and point 1.10 of the Annex to the proposed ESAP regulation. See also Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds (OJ L 169, 30.6.2017, p. 8); the Annex to Commission Implementing Regulation (EU) 2018/708 of 17 April 2018 laying down implementing technical standards with regard to the template to be used by managers of money market funds when reporting to competent authorities as stipulated by Article 37 of Regulation (EU) 2017/1131 of the European Parliament and of the Council (OJ L 119, 15.5.2018, p. 5); and, point 1.16 of the Annex to the proposed ESAP regulation.

([11]) See the sixth subparagraph of paragraph 2.4 of Opinion CON/2014/49 of the European Central Bank of 24 June 2014 on a proposal for a Regulation of the European Parliament and of the Council on reporting and transparency of securities financing transactions (OJ C 336, 26.9.2014, p. 5); paragraph 2.2 of Opinion CON/2016/15 of the European Central Bank of 17 March 2016 on a proposal for a Regulation of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading (OJ C 195, 2.6.2016, p. 1); paragraph 2.1 of Opinion CON/2016/44 of the European Central Bank of 12 September 2016 on a proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 345/2013 on European venture capital funds and Regulation (EU) No 346/2013 on European social entrepreneurship funds (OJ C 394, 26.10.2016, p. 2); and paragraph 2.5.3 of Opinion CON/2021/27.

2.2. *Data quality*

2.2.1. The data quality framework envisaged in the proposal ([12]) is limited to automated validations performed by the collection bodies and the European Securities and Markets Authority (ESMA) on the information submitted by the entities for the purposes of verifying (i) the compliance with the required format; (ii) the availability and completeness of the required metadata; (iii) the submission of a qualified electronic seal; and (iv) whether the information is not manifestly inappropriate, abusive, or clearly outside the relevant scope. Besides these automated validations, the accuracy of the information provided in ESAP is not made subject to any quality checks by the collection bodies or ESMA, potentially allowing for inaccurate and unreliable information data to be included in ESAP.

2.2.2. Furthermore, it is not clear from the proposal whether the data quality frameworks that may apply to the different disclosures pursuant to the legal acts referenced in the proposal would by extension be applicable to the submission of said disclosed data to the collection bodies for accessibility via ESAP.

2.2.3. The lack of any system to minimise the risk of inaccuracies could undermine the reliability of the information accessible via ESAP, jeopardising the public's trust in the platform and thereby hindering ESAP's objective of fostering further integration of the Union financial services and capital markets by offering Union-wide access to comparable and reliable information.

2.2.4. The ECB acknowledges the dynamic character of the proposal and the fact that it is envisaged to be further developed over time, finding a balance between feasibility and usability. The inclusion of the possibility for the future development of a data quality framework would provide ESAP with a level of reliability sufficient to attain the purpose of constituting a Union-wide source of comparable and accurate information. Thus, similar to the strategy followed for the phasing in of ESAP functionalities, the development of a data quality framework and a clear data governance, also referencing timeliness, data protection and integrity considerations, could be envisaged in the proposal with a delayed entry into force. This approach would also enable the accumulation of sufficient information in and experience with ESAP for rule-based quality checks to be designed and implemented over time. This aspect could already be considered when developing the draft implementing technical standards.

2.3. *Compliance framework*

2.3.1. The ECB welcomes the fact that entities must ensure the accuracy of the information they submit to the collection bodies ([13]). However, the proposal does not establish any kind of legal consequence in the event that entities fail to transmit accurate information. Thus, while the provision appropriately indicates that neither the collection bodies nor ESMA, as the body operating ESAP, would assume any liability for the accuracy of the information integrated in ESAP, no explicit protection is provided for the users of ESAP against any potential loss or damage which may arise from their use of incorrect or incomplete information from ESAP.

2.3.2. Furthermore, the proposal does not clarify whether the compliance frameworks that may apply to the different disclosures pursuant to the legal acts referenced in the proposal ([14]) would extend to the submission of the disclosed data to the collection bodies for accessibility of such information on ESAP.

2.3.3. A clear and explicit framework establishing the liabilities to which the entities submitting information to the collection bodies would be subject would ensure compliance with their obligation to submit accurate information. This would enhance the quality of the data available on ESAP, contributing to its usability and reliability. As a result, ESAP would build users' trust in its information, effectively attaining its objective of constituting a single Union-wide source of comparable and accurate information.

([12]) See point (b) of Article 5(1) and Articles 5(2) and 10(1) of the proposed ESAP regulation.
([13]) See Article 5(4) of the proposed ESAP regulation.
([14]) See Annex to the proposed ESAP regulation.

2.4. *Scope of data*

2.4.1. The ECB welcomes the fact that ESAP focuses on information that entities are already required to disclose and that it does not introduce additional disclosure or reporting requirements. Furthermore, by enhancing access to existing information, ESAP will facilitate a greater use of data and maximise the benefits of companies' reporting efforts. Given the more limited scope of data accessible via ESAP vis-à-vis the full disclosure requirements pursuant to the legal acts referenced in the proposal ([15]), the ECB recommends applying an automatised system disseminating the data required under ESAP. From the perspective of reporting, this could be done on the basis of pre-defined mapping rules, similar to the Commission's proposal for means of disclosures of small and non-complex institutions ([16]) but applied to all entities.

2.4.2. While ESAP would start collecting information over time following its establishment, the proposal does not envisage collecting historical data released prior to its establishment. It would be possible to create a time series from the onset of ESAP for datasets on financial and sustainability-related data that have already been collected and published for several years before ESAP's establishment. The ECB encourages the inclusion of such historical data for datasets that are available and for which this is feasible, as this would be useful information for investors and authorities who are interested in analysing trends and developments in financial and sustainability-related data.

Done at Frankfurt am Main, 7 June 2022.

The President of the ECB
Christine LAGARDE

([15]) See Annex to the proposed ESAP regulation.
([16]) Proposed point (182) of Article 1 of a proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 575/2013 as regards requirements for credit risk, credit valuation adjustment risk, operational risk, market risk and the output floor, COM(2021) 664 final.