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Annex 2: Scope of ESAP (question 7) - Opportunities and challenges

The Danish Government generally welcomes the idea of digitalising public reporting and providing one single access point for investors and other stakeholder to find and compare financial and non-information about companies. In achieving this ambitious goal, we see both opportunities and challenges. In this section we will outline them in turn focusing on each of the acts listed.

Legal acts where inclusion in ESAP would be beneficial

The upcoming revision of the **Non-Financial Reporting Directive** will potentially include ESG data and information to be reported by non-financial companies. This data will likely feed into the demands for ESG information that the SFDR and Taxonomy regulation will require financial market participants to disclose about underlying investments in financial products. Therefore, the revision of NFRD and the data it provides will play a key role in ensuring transparent information about ESG risks on financial markets. Considering the important role of information on sustainability for financial markets, the new sustainability related data provided by a revision of NFRD might be a good place to start for an ESAP solution and we see an opportunity to create much needed transparency and comparability. However, in doing so it is important to establish standardized digital reporting, respecting the existing flows to Officially Appointed Mechanisms (OAM's) and without creating data validation burdens on national authorities. Further analyses of how the inclusion of sustainability data can be done through an extension to national solutions would be purposeful.

ESG risks can have material impact on investments and there is currently a lack of data, particularly comparable data in the area. Therefore, information on how risks are taken into account and how underlying investments fare in terms of ESG factors could be a very relevant area for inclusion into the ESAP. The reporting templates being set out in accordance with the Sustainable Financial Disclosure Regulation (SFDR) will also result in standardized information thus making the process for implementation less costly with regards to data validation. Information related to sustainable benchmarks could also be relevant to include in ESAP as there continues to be a void in the private arena in that area and it can more easily be designed to fit to ESAP. However, much of the information to be published in accordance with the SFDR will be information available on financial market participants' webpages. Attaining such information even

for NCAs is going to be a technically challenging issue with specific data retrieval processes, which might be too burdensome and difficult to process for an ESAP solution. Considering the vast amount of information in the sphere of sustainability we urge the Commission to ensure that the “file only once”-principle is upheld. We would support the inclusion of SFDR and Taxonomy relevant data into ESAP provided this can be done with a simple solution built on OAMs.

On the matter of the **Short Selling Regulation** we note that a net short selling position above 0.5 per cent of a listed firms issued share capital is to be published each day at the relevant NCA’s web page according to the short selling regulation. This information is highly demanded by both retail and professional investors, as they are likely to benefit from comparing the net short selling positions across different firms. This indicates that an ESAP would be highly appreciated among investors thus meriting an inclusion. The NCA’s already transfer the data on a regular basis to ESMA indicating that a transmission to an ESAP is also possible. If considered one must also look into issues regarding the timing of transmission of the information from one system to another.

The Danish Government supports transparency regarding e.g. remuneration reports. However, it is unclear which information the companies should disclose from the remuneration report. It is a concern that the **Shareholder Rights Directive** is unclear as regards to e.g. how share-based pay is valued which is why it becomes difficult to compare remuneration, including across borders. Furthermore, the European Commission has not yet published the guidelines on standardized presentation of the remuneration report. When this is clarified, we would support an inclusion in the ESAP.

On the matter of the **Accounting Directive** we support the implementation of the information in ESAP. In Denmark we already receive this information in XBRL and inlineXBRL for all non-financial companies, subject to the Danish Financial Statement Act. It would be most welcome to make this information available in ESAP. It should be noted that the information from the annual reports might not be comparable, as the member states can choose different options for recognition and measurement. However, data availability will be an advantage.

Legal acts where the benefits of inclusion in ESAP are unclear or lack demand

We do however also see certain challenges with including many of the acts mentioned in the table in question 7 in ESAP. Generally, we must stress that financial companies operating in the capital markets publish a considerable amount of information. Therefore, implementation of an ESAP reg-

ulation covering capital market participants would have considerable administrative consequences imposing significant burdens to the capital market sector since it would require resources (IT, human etc.) in order to ensure due compliance with the requirements. We would therefore like to underline that such a database should not abolish well-established market-based solutions, should build on existing solutions and be based on a thorough analysis of information demand, added value and assessment of administrative, supervisory and IT burdens and consequences.

There is great variance in the relevance and feasibility of the inclusion of data under the **Transparency Directive** in an ESAP solution. Financial reports could be information relevant for sharing in an ESAP solution, particularly considering that they are already being reported through standardized formats. However, this is not the case for all information relevant under the Transparency Directive. We therefore propose to take a cautious approach where not only a comprehensive mapping is done but also implementation is done with respect to the current Officially Appointed Mechanisms (OAM's) and standardization of reporting formats occurs through revision of regulation. Inclusion of non-standardized information would create burdensome data validation processes for national authorities, which would not align with the scope of possible benefits. Moreover, it would not help the users of ESAP with comparing companies' performances, as the data would not be comparable.

It is unclear how information given under the **Prospectus Regulation** would be beneficial in an ESAP solution. Prospectuses are currently published where the entities' stocks are to be traded, on the issuers' website, on NCA's websites as well through the ESMA prospectus register, where the NCAs facilitate the upload to the two latter systems. Moreover, many are written in the national language, i.e. in Denmark in Danish. Considering these aspects, we see little benefit of including them in ESAP. If prospectuses were to be included, it should be on the basis of transmission from the ESMA register thus avoiding further reporting burdens.

In the area of **Market Abuse** information on inside information, managers' transactions etc. might be of relevance to investor decisions. However, this information is already in the OAM and as the timeliness and precision in this area is very important it is unclear how a transfer of data to ESAP would retain the integrity, i.e. not compromise these aspects. We therefore urge to take a cautious approach with thorough mapping and cost-benefit analyses before introducing this as part of an ESAP, and thus this should only be considered at a later stage.

The exact benefits of including information from the realm of the **Directive on Takeover bids** are unclear to us. This information is in principle directed towards existing shareholders and has the vital requirement of actually reaching all relevant jurisdictions given the nature of the information. We believe further clarification through a mapping and cost-benefit analysis is necessary to assess any further benefit from inclusion in the ESAP as well as costs for changing OAM's and the non-standardized formats.

In the area of **MIFID** we draw attention to the fact that a vast amount of information is already available through private market actors such as Bloomberg, Eikon, etc. on the issue of transaction transparency. For instance, according to Bloomberg's own marketing material they have developed a large-scale set-up to address the market and information fragmentation. As a result, they currently cover approximately 90% of all equity trades in the EU. While there might be further non-aggregated information in the area of Approved Public Arrangements (APAs) the European Commission is already looking at initiatives to establish a consolidated tape provider (CTP) to increase trade transparency and handle the market data issues even though the business case for this project is still uncertain. Therefore, a market failure or information gap in this area is not evident, and there is a strong risk of duplicating efforts if this area is included in the ESAP. The comparative advantage of an ESAP solution therefore remains unclear, and we would not recommend the Commission to include this area in ESAP.

Sectors where the benefits of inclusion in ESAP lack demand

In the area of **Pension and Insurance** we believe that the relevant information for investors would be that reported in accordance with the NFRD and the coming SFDR. Therefore, we do not see the case for further publication or inclusion of information in the ESAP. We also note that in Denmark a large amount of insurance companies as well as IORPs are owned by the members and very few are listed companies, thus there would generally be no public interest nor investment decisions to support that would warrant inclusion in the ESAP.

Further to the area of MIFID and **investment funds** we see no need for establishing an EU-wide database allowing for the comparison between different types of investment products accessible across the EU. Enhanced transparency enabling investors to more easily compare different types of investment products accessible across EU are more adequately achieved by ensuring that national competent authorities are granted sufficient powers to take the needed supervisory measures to enhance transparency of accessible investment products. We kindly refer to the same Danish response to Q37 in the recent public consultation on the review of the MiFID II/MiFIR regulatory framework as submitted on 15 May 2020. In this manner, it is

also possible to ensure incorporation of well-established behavioural studies to support investor and consumer activity as well as cater for accessibility of information for the end-users. These comments do not concern ESG-aspects, as covered above.

An important aspect to take into account is that when companies disclose investor documents in accordance with the EU-regulation such as MIFID, UCITS, AIFMD and PRIIP-regulation, these documents are usually disclosed in the national language (i.e. in Danish in Denmark). This is required to ensure the document is an appropriate tool to increase the transparency and reduce asymmetry of information between the company and investors. Since documents are disclosed in national languages, may be adapted to the specific national investor protection needs, particularly for retail investors, and cannot nor should stand alone without adequate investment advice and product governance rules, we see little to no merits of letting such documents be included in an EU-wide database.

With regard to the **Covered Bonds** we see merit in having a European solution providing for transparency and access of information to investors. However, there is already a well-established market-based solution provided by the European Covered Bond Council/European Mortgage Federation (EMF/ECBC). This solution not only established a Harmonised Transparency Template, and the legal requirements of the Covered Bonds Directive with regard to investor information and quarterly publication to the public of information reflects the practice established by the “Covered Bond Label”. We kindly also refer to the fact that the broadly supported foundation for negotiations of this directive was to ensure the continuation of this market-based system and prevent unnecessary bureaucracy or burdens for the issuers by additional reporting requirements or systems. This basis should not now be undermined. Any inclusion of this area should therefore seek to build upon the existing solution.

Regarding **the BRRD, CRD, CRR, CSD, EMIR, SFTR, IORP, Solvency II** as well as broadly the rules concerning **investment funds** it is currently far from obvious that there is a demand for this type of information from a sufficiently large number of investors which would justify inclusion in the ESAP. Furthermore, it is likely to be sophisticated investors that demand this type of information making it more likely that they will need additional information than what could be provided through ESAP. Hence, this should be carefully analysed in a cost-benefit analysis. Specifically, on the CRR we might see a possibility to include pillar III reports in accordance with section 8 of the CRR in the ESAP. That said we do not see these risk reports as the primary sources of relevance for an investment decision and thus, also not primary to achieving the aim of the CMU and the ESAP by remov-

ing barriers to investments in the EU. However, the EBA is already contemplating work in 2022 on creating a central hub for the publication of this information. It is therefore highly relevant to consider how to avoid duplicative work and burdens on all authorities as well as stakeholders.

In conclusion, we support the goal of an ESAP for financial and non-financial information. As outlined, we do however see many challenges and risks of overlaps with existing systems as well as privately provided services. We therefore strongly recommend that a thorough mapping and cost-benefit analysis is performed to allow the Commission to move swiftly forward in the areas where there is a strong demand and need for transparency and easily accessible comparable data, such as for ESG data, while waiting or even refraining from including very specialised data only relevant to a subset of investors.

In this regard, we find that only considering inclusion based on two scenarios of “immediately” or “at a later stage” is not specific enough for an exercise of this magnitude. Considering the potential vastness of the scope we strongly encourage a further stepwise inclusion process to be considered, potentially also considering different parts of the directives, or applying the requirements to certain sizes of companies or companies within certain sectors in a first step.