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| 25 September 2015 |

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| Reply form for the Consultation Paper on the European Single Electronic Format (ESEF) |
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| Date: 25 September 2015 |

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in Consultation Paper on the European Single Electronic Format (ESEF), published on the ESMA website.

*Instructions*

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, ESMA will only be able to consider responses which follow the instructions described below:

* use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
* do not remove the tags of type < ESMA\_QUESTION\_ESEF \_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
* if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses are most helpful:

* if they respond to the question stated;
* contain a clear rationale, including on any related costs and benefits; and
* describe any alternatives that ESMA should consider

**Naming protocol**

In order to facilitate the handling of stakeholders responses please save your document using the following format:

ESMA\_ ESEF \_NAMEOFCOMPANY\_REPLYFORM.

E.g. if the respondent were XXXX, the name of the reply form would be:

ESMA\_ESEF\_XXXX\_REPLYFORM

To help you navigate this document more easily, bookmarks are available in “Navigation Pane” for Word 2010 and in “Document Map” for Word 2007.

***Deadline***

Responses must reach us by **24 December 2015.**

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input/Consultations’.

***Publication of responses***

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that a confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

***Data protection***

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the headings ‘Legal notice’ and ‘Data protection’.

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_ESEF\_1>

**ACTEO – AFEP – CLIFF – MEDEF – MIDDLENEXT**

**Joint response to the consultation on the European Single Electronic Format (ESEF)**

#

# EXECUTIVE SUMMARY

French companies consider that the ESEF should not be a priority on the European agenda considering:

* the action plan for a Capital Markets Union launched by the European Commission, which defines more important and structuring priorities;
* the blatant absence of investor and end-user demand regarding a structured reporting format;
* the fact that the costs incurred would outweigh the benefits.

French companies are opposed to a built-in or integrated approach considering the following three rationales:

1. the complexity and significant costs in terms of IT systems development and maintenance related to the implementation of XBRL;
2. the IFRS on which XBRL taxonomies are based and which will be subject to significant changes in the future, thus increasing both complexity and costs on an ongoing basis;
3. the potential negative impacts on financial disclosure and reporting of public companies and issues in terms of liability, which are not currently addressed in a satisfactory manner.

**Since the requirement of the Transparency Directive (TD) is to harmonize the electronic reporting format, the ESMA could adopt an approach based on the practice of the majority of Member States and require a filing of the annual financial reports in a PDF format only.**

French companies underline that the condition of a preliminary cost benefit analysis (CBA) required by the TD to move forward and introduce a structured reporting format, such as XBRL and/or iXBRL, is not met in substance. Consequently, if the Commission decides nevertheless to do so, they call on the Commission and on the ESMA to carry out a new CBA that would secure the involvement of more private stakeholders, including issuers, in particular through open questionnaires and a satisfactory due process (appropriate timing, much longer comment periods, organization of an open hearing). This CBA should identify the real needs of end-users, take into account the feedback on the effective use of XBRL in the Member States or third countries where electronic reporting is implemented, in particular in the USA, and the availability and costs of applications and software necessary to read XBRL documents. The issue of the liability of the issuers should also be addressed before taking any step further.

**If the Commission decides to move forward, French companies would contemplate a possible implementation of XBRL (or another structured format) only if the bolt-on approach were retained to convert quantitative and standardized data. Hence the decision to apply XBRL (or another structured format) to other types of data (qualitative or narrative data) or to implement a built-in approach should be left to the sole judgment of the company itself.**

**In the event of an implementation of XBRL (or another structured format) under the bolt-on approach:**

* **this technology should only apply to consolidated financial statements, excluding the notes, established in accordance with IFRS;**
* **issuers should be allowed to develop extensions to reflect the measures, including non GAAP measures, they use in their financial communication;**
* **a public consultation on the IFRS Taxonomy should be carried out;**
* **a due process for the endorsement of the IFRS Taxonomy by the Commission should be defined;**
* **issuers should only be liable for the annual financial report published in PDF format.**

# I. General comments on the Consultation Paper

The ESMA’s consultation on the Regulatory Technical Standards (RTS) on the European Single Electronic Format (ESEF) constitutes a new opportunity for French companies to reaffirm once again their position, expressed on many occasions[[1]](#footnote-2), regarding the implementation of an ESEF based on a technology that could be the eXtended Business Reporting Language (XBRL) or iXBRL.

**French companies consider that the ESEF should not be a priority on the European agenda considering:**

* **the action plan for a Capital Markets Union (CMU) launched by the European Commission (the «Commission»), which defines more important and structuring priorities;**
* **the blatant absence of investor and end-user demand regarding such a format;**
* **the fact that the costs incurred would outweigh the benefits.**

As a matter of fact, implementing a **structured** electronic reporting format, whatever the technology, would not significantly contribute to improve investor protection and access to information, but would mainly generate additional costs for companies. This would not ease their access to financing sources and lower the cost of funding, although these are key objectives of the CMU Action Plan, and should be the main focus of any action carried out at European level for the next years.

In the context of the Call for Evidence initiated by the Commission on 30 September 2015 regarding the EU Regulatory Framework for Financial Services[[2]](#footnote-3), this matter will be brought to the Commission’s attention in order to reduce unnecessary regulatory burdens, in line with the Commission’s objectives.

In the meantime and since a deadline was unfortunately laid down in 2013 in the course of the revision of the Transparency Directive[[3]](#footnote-4), **we wish to ensure that:**

* **French companies and business organizations are consulted and closely involved in the process;**
* **the ESMA identifies and addresses the right issues regarding the implementation of a structured reporting format**.

Therefore, before answering to the specific questions of the Consultation Paper, we would like to raise the following points. As mentioned above, most of the points described below have already been expressed several times and under different forms, both at European and national levels, since this is not the first time the electronic reporting and XBRL issues are brought up[[4]](#footnote-5).

## 1.1. A thorough cost-benefit analysis would be most instrumental

Article 4 (7) of the amended Transparency Directive stipulates that, with effect from 1 January 2020, all annual financial reports shall be prepared in a single electronic reporting format **provided that a cost-benefit analysis has been undertaken by the ESMA**.

Thus in early August 2014, the ESMA made available, through KPMG, an electronic questionnaire for which responses were expected by mid-September. Based on the practices collected, this questionnaire aimed to help the ESMA to identify, evaluate and determine:

* the technical requirements for the single electronic format;
* the different technological options for consideration by the ESMA in the development of this format;
* a preliminary cost-benefit analysis (CBA) on the technological options.

Following an invitation of the French Competent Authority, the Autorité des Marchés Financiers (AMF), 20 French companies initially volunteered to answer the questionnaire. However, and although the matter was of great interest for all the companies, it appeared that only a limited number of them eventually participated in the pre-consultation due to the timetable adopted, the risk of conflict of interests considering the involvement of KPMG and the characteristics of the consultation’s electronic questionnaire itself[[5]](#footnote-6).

As a result, and as stated in the Consultation Paper, only 22 responses from issuers and 12 responses from users of financial information[[6]](#footnote-7) were collected by the ESMA at European level. As the European Authority puts it : « *the questionnaires sent to* [Market Participants] *achieved a very low response rate with a lack of representatives from major markets and users of financial information. As such, this small sample of respondents prevented ESMA to perform a complete analysis whose results could be adequately interpreted*. »

We regret that the ESMA didn’t mention in its disclaimer the lack of representatives from issuers, taking into account the numbers: **22 responses from issuers out of approximately 9,000 companies listed in the EU and 5,400 companies potentially impacted by the ESEF requirement is by no means meaningful.**

**Therefore we consider as of today that the condition set forth in article 4 (7) of the amended Transparency Directive requiring the ESMA to carry out a CBA is not fulfilled**. We have noted that in the consultation paper, the ESMA is also requesting market participants to answer to some questions relating to the CBA to complement its analysis and we totally disagree with this approach.

Considering the potential impact and costs of the implementation of a structured ESEF, **we are requesting the ESMA to carry out a due separate supplementary CBA in order to collect additional necessary data from market participants before considering any further step. This supplementary CBA, in order to be useful, would:**

* **make a distinction between the possible uses of electronic formats – either as a structured «built-in» or «bolt-on» format;**
* **leave sufficient time to market participants to answer (4 months would be a minimum);**
* **ensure that a sufficient response rate for all stakeholders is achieved;**
* **after the consultation period, include an open hearing to allow issuers, business organizations and end-users to directly express their views and ask questions to the ESMA;**
* **conduct appropriate field tests involving issuers;**
* **clearly analyse and identify the feedback by categories of respondents (including issuers);**
* **include a detailed analysis of the feedback on the effective use of XBRL in the Member States or third countries where electronic reporting and this technology are implemented (in particular in the USA)**.

We believe that such request is consistent with the Commission’s approach, as stated in recital (26) of the 2013 Directive amending the Transparency Directive[[7]](#footnote-8): «*ESMA, when preparing the draft regulatory technical standards,* ***should conduct open public consultations for all stakeholders concerned, make a thorough assessment of the potential impacts of the adoption of the different technological options, and conduct appropriate tests in Member States*** *on which it should report to the Commission when it submits the draft regulatory technical standards*.»

**In this regard, the ESMA’s supplementary CBA should include an assessment of the availability and costs of applications and software allowing end-users to read XBRL files (instance documents). Finally, companies would also like to be informed of how the ESMA intends to conduct the appropriate field tests mentioned in article 4 (7) of the Transparency Directive and to discuss with the ESMA the schedule and implementing conditions of such tests.**

## A flexible approach to electronic reporting would be welcome

The Commission makes a judgement call that « *A harmonised electronic format for reporting would be very beneficial for issuers, investors and competent authorities, since it would make reporting easier and facilitate accessibility, analysis and comparability of annual financial reports*. »[[8]](#footnote-9) **Nevertheless the Commission does not bring any evidence that there is demand from potential users**. The ESMA also fails to demonstrate widespread demand and, as of today, the markets’ appetite for interactive data is roughly the same than in 2009 when the CESR, the ESMA’s predecessor, published the first consultation paper on this matter. Also from our experience, we don’t sense any urgent need nor any pressure from investors, markets professionals and securities regulators to have at hand the adequate technology for mass processing huge volume of financial reports.

**Therefore companies, once again, would like to stress the fact that an electronic structured reporting format based on an integrated approach does not meet investor demand**. If such format presented more benefits than disadvantages, companies would undertake or would have undertaken their adaptation efforts without public intervention. Against this background, the requirement introduced in 2013 in the Transparency Directive should provide maximum flexibility in corporate communication and should not lead to prescribe an integrated approach or a structured electronic format which would negatively impact companies’ financial communication or disclosures.

Since the requirement of the Transparency Directive is only to harmonize the electronic format, the ESMA could adopt an approach based on the practice of the majority of Member States and **require a filing of the annual financial reports in PDF**, which is an electronic format. **Member States would have the choice to allow the use of a structured format**, such as XBRL or, in accordance with the state of the art, another technology.

According to the Consultation Paper : the PDF format is already required in 13 Member States[[9]](#footnote-10) and 8 Member States still accept or require a filing of paper documents[[10]](#footnote-11). Requiring annual financial reports to be made public in PDF format would therefore generate limited costs and appear more proportionate considering the objective pursued.

**We consider that a requirement to make public annual financial reports in PDF format would meet the requirement of the Transparency Directive and suffice to meet users’ needs.**

## Companies are opposed to a mandatory use of XBRL/iXBRL under a «built-in» approach

As regards specifically a hypothetical use of XBRL (or iXBRL), the two possible ways this technology can be implemented should be clearly distinguished:

* XBRL can be used at the final stage of the process to generate interactive data in order to facilitate data exchange and analysis (the **bolt-on** approach);
* A second and much more expensive way is the integrated approach, which would have a significant impact on IT systems and reporting of companies (the **built-in** approach).

**If the Commission decides to move forward, companies would contemplate an implementation of XBRL if the bolt-on approach is retained to convert quantitative and standardized data only**. Hence the decision to apply XBRL to other type of data or to implement a built-in approach should be left to the sole judgment of the company itself considering the following three rationales:

1. the complexity and significant costs in terms of IT systems development and maintenance related to the implementation of XBRL;
2. the international financial reporting standards (IFRS) on which XBRL taxonomies are based and which will be subject to significant changes in the future, thus increasing both complexity and costs on an ongoing basis;
3. the potential negative impacts on financial disclosure/reporting of public companies and issues in terms of liability, which are not currently addressed in a satisfactory manner.

Nevertheless, we would like to point out the fact that XBRL was developed more than 10 years ago and could soon be obsolete.

Regarding the issue mentioned in point c) above, **companies consider that they should not be held liable for the consequences stemming from an application of inappropriate taxonomies or the use of a technology that would not allow a fair reflection of the essence nor of the content of their financial communication. Companies should only be liable for financial reports published in PDF format.**

**Therefore before moving forward the liability of issuers regarding any documents or information they make public should be analyzed in a comprehensive manner.**

**Moreover, before any possible adoption of XBRL as the mandatory technology for electronic reporting, several key issues regarding the status, the governance and responsibilities of the XBRL International Consortium as well as the endorsement of the IFRS Taxonomy by the Commission need to be addressed.** Regarding the governance of the consortium in particular, its Board is composed of representatives of audit firms, consulting firms as well as regulators and authorities, which raises questions in terms of conflict of interests and in any case does not allow corporate companies concerns to be appropriately taken into account.

### *Increased complexity and significant costs of implementation*

**In addition to direct costs linked to the tagging of data, a would-be implementation of XBRL – and in particular under the built-in approach – would generate significant indirect costs due to the overhauling of the architecture and content of the companies’ internal IT applications, even for applications that do not use a structured format**. As a matter of fact, most companies’ IT systems include interrelated applications and even a partial use of a structured format would require an overall review of the architecture and potential changes in the systems and/or reorganization of the processes concerned. An implementation of XBRL would also raise issues in terms of internal control regarding the data.

Moreover, the limited costs of an « add-on » application in the bolt-on approach – which constitute a pro argument regularly put forward by the XBRL Consortium and Associations – represent only a small part of the overall potential costs incurred when implementing XBRL or another structured-data format (consulting fees, maintenance or on-going costs, quality costs, etc.). According to the ESMA’s comparative analysis, when considering a built-in approach, these costs can be 5 to 7 times higher for companies[[11]](#footnote-12) depending on the technology. Some companies consider that the costs linked to a built-in approach could amount to at least 10 times the costs of a bolt-on approach. The ESMA should also be aware that credit institutions using XBRL for their prudential reporting are all on a bolt-on approach.

### *Volatility of financial reporting standards and related taxonomies*

The relevance and quality of taxonomies are closely linked to the evolution of the standards on which these taxonomies are based. Each evolution of the standards requires an update of the relevant taxonomies. Such update can have significant impact on the organization and the IT systems of companies. These evolutions obviously increase the on-going costs as well as the risks of errors in the processing and subsequent disclosure of financial data.

**The use of taxonomies based on standards that are not stabilized, increases therefore the workload, the costs and the risks of errors and raises the issue of the liability attached to financial data that are filed with competent authorities and made public**. The high volatility of the IFRS and of their concepts, associated with the difficulty to tag and thus properly process qualitative and narrative data, such as the notes to the financial statements, reduce the pros of implementing XBRL or another structured-data technology, especially when it comes to financial statements. The high volatility of the IFRS also increases the risk of error in the instance documents and therefore the usefulness of XBRL itself.

### *Potential negative effects on corporate communication and liability*

Automated comparisons can only be performed on standardized data and using up-to-date taxonomies. Non standardized data such as narrative or qualitative data that can be found in financial reports and notes to financial statements, for instance, cannot be properly reflected in taxonomies and in reports that would use structured data. Applying a structured-data reporting format to this type of data would lead to results opposite to the aim of the Commission: this would create a **risk of altering corporate communication**, making information understanding and comparability hazardous and, in the end, pose a **serious liability issue for companies**.

**To this regard, XBRL appears to be lacking of flexibility and could lead to an excessive standardization of the data or a rule-based approach which in any case would be burdensome and not appropriate for communication purpose**. It would also be in contradiction with current reflections and work on how to make financial reports more meaningful. Thus we have noted in the Consultation Paper that the ESMA is not in favor of the development of extensions to the IFRS taxonomy in order to allow companies to take into account their sectoral specific characteristics.

Finally and as mentioned above, companies consider that they should not be held liable for the consequences stemming from an application of inappropriate taxonomies or the use of a technology that would not allow a fair reflection of the essence nor of the content of their corporate communication. Companies should only be liable for financial reports published in PDF format.

# ABOUT THE RESPONDANTS

***ACTEO***

ACTEO was formed with the support of the MEDEF (the French employers’ federation) in 1997.  Its original objective was to facilitate the communication of the views and positions of French companies to the various bodies which participate in the international accounting standard-setting process.  Today the consensual positions are taken in common with the MEDEF and the AFEP (the French association of private companies), and the original objective has been enhanced with the addition of the establishment of a network for the exchange of views, consultation and mutual assistance on a broad range of topics relating to both international financial reporting standards and national financial reporting.  ACTEO has some sixty members, including almost all the companies of the CAC 40.

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***Afep***

Transparency Register identification number: **953933297-85**

Since 1982, Afep, the French Association of Large Companies, is the association which brings together large companies operating in France. The Association is based in Paris and Brussels. Afep aims to foster a business-friendly environment and to present the company members’ vision to French public authorities, European institutions and international organisations. Afep has 115 members. More than 8 million people are employed by Afep companies. Their annual combined turnover amounts to €2,000 billion.

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***CLIFF***

Created in 1987, the Cliff is the French association of financial communication professionals. It has more than 220 members from both listed companies representing more than 90% of the Paris market's capitalisation and from consultants and specialists in fields related to financial communication. As such, the Association is a recognized voice for the profession in France. With an active programme fostering the sharing of experiences, a successful education training programme in partnership with a renowned French University (Paris-Dauphine) and its contribution to the annual publication of the "Financial Communications: Framework and Practices" together with the OCF, the CLIFF helps promote the status of Investor Relations professionals.

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***MEDEF***

Transparency R**egister identification number: 43763731235-75**

With **750,000 member companies**, 90% of which are SMEs with under 50 employees, and more than 20,000 authorised representatives to carry out 30,000 mandates, MEDEF is **the largest entrepreneur network in France**. This gives it the advantage of foresight coupled with the power to be proactive and responsive. MEDEF conducts a fully transparent ongoing lobbying effort with all the local, regional, national and European decision-makers to draw attention on the company perspective. MEDEF interacts with every level of civil society, even with stakeholders who are traditionally far removed from the business world, like youths, teachers, journalists, members of the legal community, local officials and artists. It sets in motion a broad range of concrete initiatives with partners in its push to “Make France a Winner.”

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***MiddleNext***

MiddleNext is the independent French association representing listed SMEs and midcaps. MiddleNext was founded in 1987 and represents companies from all different sectors that are listed on Euronext and Alternext. MiddleNext co-chairs the Smaller Issuers Committee of EuropeanIssuers, the leading European association promoting the interests of companies listed on stock exchanges. EuropeanIssuers is present in 15 countries and represents over 9,200 listed companies with market capitalisation of some €8,500 billion.

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<ESMA\_COMMENT\_ESEF\_1>

**Question 1: The provisions included in the amended Transparency Directive requiring a single electronic format were not subject to a formal impact assessment by the European Commission. While from a legal point of view ESMA could not address in this CP whether there is a need for the provisions included in the amended Transparency Directive, do you believe that a wider assessment should be performed on the requirements of introducing a single electronic reporting format in Europe? Please indicate your opinion and provide arguments.**

<ESMA\_QUESTION\_ESEF\_1>

As explained in our general comments on the Consultation Paper, the Commission made a judgement call based on little evidence that there is demand from end-users of financial information for a standardized and structured electronic reporting format. Issuers, whether large companies or small and medium enterprises, do not share this feeling. As mentioned before, if such format presented more benefits than disadvantages, issuers would undertake or would have undertaken their adaptation efforts without the need for public intervention. Companies do not see any demand unlike audit firms, IT consulting firms, Officially Appointed Mechanisms – in the meaning of the Transparency Directive – and software publishers.

**Therefore we consider that a wider assessment should be performed by the Commission on the requirement of introducing a single electronic reporting format in Europe considering, in particular, the fact that :**

* **the costs will outweigh the benefits (implementing a structured electronic format, especially with a built-in approach will significantly impact issuers’ IT systems and generate significant costs with little progress for investor protection);**
* **retail investors, despite the Commission’s assertions on their investment strategies and practices, do not process massive amounts of financial data and institutional investors already have all necessary means to carry out the analyses they need;**
* **it would be inappropriate considering the Commission’s Better Regulation Policy to move forward without a proper impact assessment;**
* **we understand that the mandatory implementation of XBRL in the USA by the Securities and Exchange Commission (SEC) didn’t meet the expectations. Hence the SEC does not recognize the IFRS taxonomy, does not recognize its use by foreign issuers and is now considering the opportunity to turn back.**

We would also like to inform the ESMA that in the context of the Call for Evidence launched in September by the Commission on the regulatory framework of financial services, we will raise this issue and suggest that the provision introduced in the Transparency Directive in 2013 regarding the implementation of an ESEF as from 1st January 2020, be repealed.

<ESMA\_QUESTION\_ESEF\_1>

**Question 2: Do you agree with the description of the policy objectives as included in this section? Are there any further elements that you believe should be analysed? If yes, please indicate them.**

<ESMA\_QUESTION\_ESEF\_2>

**We do not agree with the policy objectives described in section 3 of the Consultation Paper. We consider that a harmonized obligation to make public the annual financial report in PDF format would suffice to meet the objective of the Transparency Directive.**

As regards the Policy objective n°1 (*The electronic reporting should be easier for issuers compared to the current practices*), the ESMA points out the absence of harmonization and the context where issuers are seeking listing in different Member States of the EU. We do not see why this should be an issue since:

* from our experience, the number of issuers seeking a cross-listing of their shares is very limited;
* pursuant to the Transparency Directive (TD) an issuer must file its annual financial report only with the Home Competent Authority and disseminate regulated information according to the provision of article 21 of the TD, meaning according to the rules transposing the said directive in the Home Member State.

However we support the ESMA’s objective to harmonize the format and suggest to adopt the PDF format already mandatory in 13 Member States (see also our general comments in § 1.2).

Regarding the Policy objectives n°2 (*The electronic reporting should facilitate accessibility to investors*), n°3 (*The electronic reporting should improve analysis for investors and competent authorities*) and n°4 (*The electronic reporting should facilitate comparability of annual financial reports*), we would like to point out the following:

* as mentioned in our answer to question 1 above, retail investors do not process massive amounts of financial data and institutional investors already have all necessary means to carry out the analyses they need;
* organizations representing financial analysts have not expressed any need regarding the use of electronic structured data format;
* the use of an electronic structured data format will not improve comparability considering the fact that qualitative information cannot be processed reliably.

This last point is a major criticism put forward by investors and financial analysts: it takes more than numbers to assess the financial situation, the prospects and the risks of a company. The use of XBRL would not meet their needs as notes to the financial statements and the management’s discussion and analysis are also essential.

**According to us, the main issue the ESMA should address is the consistent implementation in the Member States of the provisions of articles 19[[12]](#footnote-13) and 21[[13]](#footnote-14) of the TD in order to improve access to regulated information for all investors.** Access to regulated information will be improved with the creation of an European electronic access point by the ESMA in 2018 but in the meantime we believe that there is way for progress in that particular field in many Member States.

<ESMA\_QUESTION\_ESEF\_2>

**Question 3: Do you believe that the introduction of electronic reporting should serve as a basis for further debate on auditing of electronic structured data? Please explain your reasoning.**

<ESMA\_QUESTION\_ESEF\_3>

Generally speaking we believe that a comprehensive analysis of all the pros and cons of, and when necessary a debate on, any foreseen regulatory measure constitutes a good approach. Considering the Commission’s Better Regulation policy companies do not expect less.

**Therefore we suggest that the issues mentioned in our general comments (see § 1.3 of this paper) regarding the liability of issuers in relation with any document or information made public be discussed before moving further.** The foreseen endorsement of the IFRS taxonomy by the Commission, whose conditions are however still to be determined, should limit the liability of companies regarding any document or information they would publish using a structured format.

As regards the auditing of structured data **we do not see any rationale for imposing a mandatory audit of electronic structured data**. The correct application of the taxonomies could be verified by statutory auditors in the course of their review on the processes for the preparation of financial information.

<ESMA\_QUESTION\_ESEF\_3>

**Question 4: Are you aware of any further elements which are necessary to provide an accurate picture of the current reporting for the purpose of this CP?**

<ESMA\_QUESTION\_ESEF\_4>

The key question the ESMA should cope with in this section is how financial data are used. Unfortunately this matter is not addressed in details in the Consultation Paper, the ESMA merely mentioning that «*there is limited evidence on how data is consumed by users based on the current format* (…)». The Authority then goes on by stating that the use of data depends amongst others on the characteristics of the data available for users and infers from this statement that the need of structured data can be seen as a logical step moving forward.

**We would therefore request the ESMA to carry out a supplementary more detailed analysis focusing amongst others on the use of financial data**. In the course of this supplementary analysis, the ESMA could hold an open hearing, after the consultation period, in order to collect information from end-users on what use they make of financial information disclosed by the companies and whether there is a need for structured data (see also our general comments in § 1.1 of this paper). This would help the ESMA to identify the real needs from end-users.

A feedback from the Member States and third countries where structured data reporting is implemented, whether on a voluntary basis or as a requirement, would also be very useful in order to analyse whether the use and practices have changed and whether such decision has improved access to regulated information and investor protection.

<ESMA\_QUESTION\_ESEF\_4>

**Question 5: Do you agree with the description of the technologies included in the CP?**

<ESMA\_QUESTION\_ESEF\_5>

**Once again, we consider that a harmonized obligation to make public the annual financial report in PDF format would suffice to meet the objective of the Transparency Directive.**

Moreover we note that section 5 of the Consultation Paper (*Analysis of the relevant elements for the development of the ESEF*) contains no study of the applications or software available and of their costs in order to be able to read instance documents, whether XML or HTML documents. Since the objective is to improve access to financial information and allow manipulation and extraction of data this should also be a major concern for the ESMA.

<ESMA\_QUESTION\_ESEF\_5>

**Question 6: Do you agree with the choice of the technologies to be further analysed as part of the CBA? If not, please indicate which other technologies you would propose for further analysis.**

<ESMA\_QUESTION\_ESEF\_6>

**We disagree with the ESMA’s analysis that a structured format is necessary.**

As stated in our answer to question 5 and in our general comments (see § 1.2) the main objective should be to harmonize the current reporting formats and ensure an effective enforcement of the provisions of the Transparency Directive in terms of dissemination of regulated information (see also our answer to question 2). Moreover the PDF format has evolved in a more interactive technology and will continue evolving. We acknowledge that the mark-up PDF technology, as indicated in the Consultation Paper, is still under development but disagree with the conclusion that this technology should be discarded. Contrary to the ESMA’s conclusion, we believe that future developments of the mark-up PDF technology should be followed.

As regards the technology analysed by the ESMA, we acknowledge that XBRL is already used in several Member States, under the bolt-on approach, and third countries for the purpose of reporting and agree that it should be included in the scope of the CBA. As far as the 2 last options described in the Consultation Paper are concerned, namely option 3 (development of a new XML standard) and option 4 (development of a new HTML/XHTML standard), we do not have enough time to collect information and receive input from companies to really analyse the pros and cons of these options and assess the costs and workload that the development of a new standard would require. **Generally speaking, companies would not be in favor of developing a new standard.**

<ESMA\_QUESTION\_ESEF\_6>

**Question 7: Do you agree with ESMA’s proposal to use the IFRS taxonomy as issued by the IFRS Foundation for reporting under IFRS, subject to formal endorsement in the European Union?**

<ESMA\_QUESTION\_ESEF\_7>

**We agree on the principle to use the IFRS taxonomy as issued by the IFRS Foundation but would like to hear more about the EU endorsement process.**

Moreover we would like to draw the ESMA’s attention on the following issues:

* Any part the IASB and the IFRS Foundation could play in the development of the taxonomies should be subject to a public consultation whose conditions are to be determined.
* Issuers should be closely involved in the development of such taxonomies.
* As mentioned in our general comments (see § 1.3 b) ) the use of taxonomies based on financial reporting standards that are not stabilized, increases the workload, the costs and the risks of errors and raises the issue of the liability attached to financial data.
* The recognition of the IFRS taxonomy by the SEC needs to be addressed.

<ESMA\_QUESTION\_ESEF\_7>

**Question 8: Do you agree with ESMA’s preliminary conclusions not to use regulatory and entity specific extensions? Please provide arguments in your answer in relation to the impact on issuers and users.**

<ESMA\_QUESTION\_ESEF\_8>

**We disagree with the ESMA’s proposal to impose a structured reporting format. However if the Commission decides to move forward, the use of specific extensions should be allowed**

As a matter of fact, the IFRS do not include many financial indicators, which are essential to both issuers and end-users. In practice, issuers use non-GAAP measures to explain their performance, depending on their activities and environment, which cannot be reflected in taxonomies. A lack of flexibility in the implementation of XBRL could lead to an excessive standardization of the data or a rule-based approach which in any case would be burdensome and not appropriate for communication purpose. This could create a risk of altering corporate communication, making information understanding and comparability hazardous and, in the end, pose a serious liability issue for companies (see also § 1.3 c) ).

<ESMA\_QUESTION\_ESEF\_8>

**Question 9: Do you agree with the proposed approach in relation to the taxonomies of third countries GAAPs deemed equivalent to IFRS?**

<ESMA\_QUESTION\_ESEF\_9>

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<ESMA\_QUESTION\_ESEF\_9>

**Question 10: Do you believe that taxonomy shall be developed for other parts of the AFR (outside financial statements)? If yes, please indicate which ones and explain why.**

<ESMA\_QUESTION\_ESEF\_10>

Companies are opposed to the mandatory application of a structured format (XBRL or another technology) to the financial statements included in the annual financial report (AFR). **They are therefore also opposed to the application of a structured format to any other part of the AFR.**

<ESMA\_QUESTION\_ESEF\_10>

**Question 11: Do you agree that non-structured electronic reporting should be required for the entire Annual Financial Report? Do you agree that the format used shall be PDF? If you disagree, please explain your opinion by providing arguments on the policy objectives and impact on the CBA.**

<ESMA\_QUESTION\_ESEF\_11>

**Yes we agree with the proposal to require the publication of the entire annual financial report in PDF format**. This is the case in France as well as in 12 other Member States according to the ESMA’s analysis of current reporting practices in the EU. Adopting the PDF format would therefore induce limited changes and impact a very limited number of Member States, considering that the PDF format is also accepted in 14 Member States besides the 13 Member States mentioned above.

Moreover the PDF format has evolved in a more interactive technology and will continue evolving. We acknowledge that the mark-up PDF technology as indicated in the Consultation Paper is still under development but disagree with the ESMA conclusion to discard this technology.

**Finally we consider that a requirement to make public annual financial reports in PDF format will meet the requirement of the Transparency Directive and suffice to meet users’ needs.**

<ESMA\_QUESTION\_ESEF\_11>

**Question 12: Do you agree with the solution of a single electronic format composed of structured and non-structured data (option B)? If not, please explain your opinion as well as the impact on the CBA.**

<ESMA\_QUESTION\_ESEF\_12>

**No, we disagree with the ESMA. As explained in our general comments and above we consider that a requirement to make public annual financial reports in PDF format will meet the requirement of the Transparency Directive and suffice to meet users’ needs.**

Requiring the publication of the annual financial report in a non-structured format and of the financial statements in a structured format would not constitute a single electronic format but 2 different formats and generate additional costs for issuers. In our view the easiest way forward would be to require the publication of the annual financial report in a non-structured electronic format only. Since the PDF format is required in 13 Member States and accepted in 14 other Member States, we strongly support the choice of this format.

<ESMA\_QUESTION\_ESEF\_12>

**Question 13: Do you agree that iXBRL and XBRL are the most relevant options available for the ESEF?**

<ESMA\_QUESTION\_ESEF\_13>

No we disagree with the ESMA. **As explained in our general comments and above we consider that a requirement to make public annual financial reports in PDF format will meet the requirement of the Transparency Directive and suffice to meet users’ needs** (see also our answer to question 11).

**However if the Commission decides to move forward with iXBRL or XBRL, we would like to stress the fact that a built-in approach would raise many issues in terms of IT systems and generate significant costs (see § 1.3). Therefore companies are not be in favor of this approach and would only agree for a bolt-on approach.**

In any case and before a would-be adoption of iXBRL or XBRL as the mandatory technology, several critical issues would need to be addressed first including:

* the analysis of the feedback from Member States and third countries where XBRL is implemented;
* the liability of the issuers;
* the governance of the XBRL International Consortium;
* the endorsement of the IFRS Taxonomy by the Commission;
* the recognition of the IFRS Taxonomy by the US SEC;
* the development and use of extensions by issuers.

<ESMA\_QUESTION\_ESEF\_13>

**Question 14: Could you please indicate what is your preferred solution between iXBRL and XBRL? Please explain the reasons.**

<ESMA\_QUESTION\_ESEF\_14>

We understand from the description provided by the ESMA in its Consultation Paper that iXBRL is an evolution of XBRL centered around electronic rendering of financial information encoded in an XBRL document in order to obtain human-readable documents. As a matter of fact end-users, in a typical usage, will be provided with XBRL documents (instance files), containing primarily the information (business facts) being reported, and one or several taxonomies which define metadata about these information. End-users will then need a specific application to be able to read these documents.

**This said, we would like to stress the following points:**

* **First of all, a structured reporting format should not be made mandatory considering the lack of demand from end-users and all the reasons mentioned above.**
	+ **If the Commission decides to move on and impose a structured reporting format, companies**
	+ **consider that the choice of XBRL or iXBRL should be left to the issuers.**

<ESMA\_QUESTION\_ESEF\_14>

**Question 15: Do you agree that structured reporting format should in a first stage be required for consolidated IFRS financial statements and eventually in a second stage for individual financial statements?**

<ESMA\_QUESTION\_ESEF\_15>

We disagree with the ESMA’s proposal to require a structured reporting format in a first stage for consolidated IFRS financial statements and eventually in a second stage for individual financial statements. **When an issuer establishes consolidated financial statements, a would-be structured reporting format should only be requested for the consolidated financial statements.**

Once again, we consider that a structured reporting format should not be made mandatory. Nevertheless if the Commission decides to impose such a requirement, the reporting in a structured format should only be applicable to consolidated financial statements. As a matter of fact when a company establishes consolidated financial statements investors will not base their analysis and decision to invest or divest on the individual financial statements. Since this requirement would be mainly aimed at investors in order to facilitate accessibility, analysis and comparability of financial information, it would make no sense to apply the requirement to individual financial statements. Such a decision should remain in the remit of each Member State.

<ESMA\_QUESTION\_ESEF\_15>

**Question 16a: Do you agree with a different approach for the financial statements under national GAAPs compared to IFRS on the grounds of the existence of a taxonomy?**

<ESMA\_QUESTION\_ESEF\_16a>

**We consider that any decision regarding individual financial statements should be left to each Member State.** Please refer also to our answer to question 15.

<ESMA\_QUESTION\_ESEF\_16a>

**Question 16b: Do you agree with the proposed approach in terms of potential development of a EU core taxonomy to be used for national GAAPs in the future?**

<ESMA\_QUESTION\_ESEF\_16b>

**We consider that any decision regarding individual financial statements should be left to each Member State.** Please refer also to our answer to question 15.

<ESMA\_QUESTION\_ESEF\_16b>

**Question 17: Do you agree that a single electronic format should not be required for financial statements under third country GAAP?**

<ESMA\_QUESTION\_ESEF\_17>

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<ESMA\_QUESTION\_ESEF\_17>

**Question 18: Would you be in favour for a phased approach for SMEs, if it would be allowed under the legal mandate? Would it be relevant in the context of the development of the Capital Markets Union?**

<ESMA\_QUESTION\_ESEF\_18>

**In view of all the above arguments and in view of their size, SMEs are opposed to a mandatory application of XBRL or another electronic structured format.** As a matter of fact the costs incurred for SMEs are likely to far outweigh the benefits.

<ESMA\_QUESTION\_ESEF\_18>

**Question 19: Do you have any other comment to make?**

<ESMA\_QUESTION\_ESEF\_19>

As mentioned in our general comments (see § 1.1.) **we consider that the condition set forth in article 4 (7) of the amended Transparency Directive requiring the ESMA to carry out a CBA is not fulfilled**.

As a matter of fact, only 22 responses from issuers and 12 responses from users of financial information[[14]](#footnote-15) were collected by the ESMA during the CBA on an European level. We consider that this very low response rate prevented the ESMA to perform a complete analysis and draw any relevant conclusion : **22 responses from issuers out of approximately 9,000 companies listed in the EU and 5,400 companies potentially impacted by the ESEF requirement is by no means meaningful.** Although we have noted that in the Consultation Paper the ESMA is also requesting market participants to answer to some questions relating to the CBA to complement its analysis, we disagree with this approach.

**Considering the potential impact and costs of the implementation of a structured ESEF, we are requesting the ESMA to carry out a due separate supplementary CBA in order to collect additional necessary data from market participants before considering any further step. This supplementary CBA in order to be useful should include the elements described in our general comments (see § 1.1.):**

* **make a distinction between the possible uses of electronic formats – either as a structured «built-in» or «bolt-on» format;**
* **leave sufficient time to market participants to answer (4 months would be a minimum);**
* **ensure that a sufficient response rate for all stakeholders is achieved;**
* **after the consultation period, include an open hearing to allow issuers, business organisations and end-users to directly express their views and ask questions to the ESMA;**
* **conduct appropriate field tests involving issuers;**
* **clearly analyse and identify the feedback by categories of respondents (including issuers);**
* **include a detailed analysis of the feedback on the effective use of XBRL in the Member States or third countries where electronic reporting and this technology are implemented (in particular in the USA);**
* **include an assessment of the availability and costs of applications and software allowing end-users to read instance documents.**

<ESMA\_QUESTION\_ESEF\_19>

1. Please refer amongst others to Afep’s letters addressed to Ms Verena Ross, Executive Director, and Mr Laurent Degabriel, Head of the Investment and Reporting Division, on 22 September 2014. [↑](#footnote-ref-2)
2. <http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/index_en.htm> [↑](#footnote-ref-3)
3. [↑](#footnote-ref-4)
4. In its response, dated August 2010, to the Commission’s consultation on the review of the Transparency Directive, EuropeanIssuers expressed similar views regarding the use of XBRL. More recently in May 2015, in its answer to the Commission’s Green Paper on the CMU, Afep called again for lighter reporting requirements and highlighted the major concerns related to technical options being considered by the ESMA regarding the ESEF and a would-be implementation of XBRL. [↑](#footnote-ref-5)
5. Refer to our letters mentioned in footnote n°1 for more details regarding these 3 points. [↑](#footnote-ref-6)
6. Annex III, « Cost Benefit Analysis for the European Single Electronic Format (ESEF) », p. 72, of the Consultation Paper (2015/ESMA/1463). [↑](#footnote-ref-7)
7. Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC. [↑](#footnote-ref-8)
8. Recital (26) of the 2013 Directive amending the Transparency Directive. [↑](#footnote-ref-9)
9. Austria, Belgium, Croatia, Czech Republic, Finland, France, Greece, Hungary, Luxembourg, Malta, Portugal, Romania, Sweden. [↑](#footnote-ref-10)
10. Bulgaria, Cyprus, Estonia, Ireland, Lithuania, Malta, the Netherlands, Spain. [↑](#footnote-ref-11)
11. According to the data collected by the ESMA, the maximum potential costs incurred by issuers in the built-in approach would amount to around €12 Millions for the implementation of XBRL and iXBRL compared to, in the bolt-on approach, €1.7 Million for XBRL (x7) and €2,2 Millions for iXBRL (x5). (4.2.1 Comparative analysis – Costs, page 114 of the Consultation Paper). [↑](#footnote-ref-12)
12. Home Member State control [↑](#footnote-ref-13)
13. Access to regulated information [↑](#footnote-ref-14)
14. Annex III, « Cost Benefit Analysis for the European Single Electronic Format (ESEF) », p. 72, of the Consultation Paper (2015/ESMA/1463). [↑](#footnote-ref-15)