



Brussels, 6.11.2020
C(2020) 7535 final

COMMUNICATION FROM THE COMMISSION

Commission Interpretative Communication on the preparation, audit and publication of the financial statements included in the annual financial reports drawn-up in accordance with Commission Delegated Regulation (EU) 2019/815 on the European Single Electronic Format (ESEF)

COMMUNICATION FROM THE COMMISSION

Commission Interpretative Communication on the preparation, audit and publication of the financial statements included in the annual financial reports drawn-up in accordance with Commission Delegated Regulation (EU) 2019/815 on the European Single Electronic Format (ESEF)

1. INTRODUCTION

The aim of this Interpretative Communication is to clarify certain existing provisions of Union law about the preparation, auditing and publication of the financial statements drawn-up in accordance with Commission Delegated Regulation 2019/815 (ESEF Regulation)¹. These EU provisions stem from Directive 2004/109/EC as amended by Directive 2013/50/EU (Transparency Directive)², Directive 2006/43/EC as amended by Directive 2014/56/EU (Audit Directive)³, and Directive 2013/34/EU (Accounting Directive)⁴.

Statements and opinions provided in this document reflect the view of the European Commission. According to the Treaty on the Functioning of the EU, the Court of Justice has the sole jurisdiction to interpret the acts of the institutions of the European Union.

The ESEF Regulation has introduced a single electronic reporting format for the annual financial reports of issuers with securities listed on the EU regulated markets. It sets out general rules on the format of the annual financial reports as defined in Article 4(2) of the Transparency Directive⁵, and more specific rules on the marking-up of the financial statements included therein. It does not apply to the half-yearly financial reports as defined in Article 5 of the Transparency Directive.

The ESEF Regulation sets out the following main requirements:

- i) Issuers shall draw up and disclose their annual financial reports using the eXtensible HyperText Markup Language (XHTML) format;

¹ Commission Delegated Regulation (EU) 2019/815 with regard to regulatory technical standards on the specification of a single electronic reporting format. This Delegated Regulation supplements Article 4(7) of Directive 2004/109/EC as amended by Directive 2013/50/EU.

² Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, as amended by Directive 2013/50/EU.

³ Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC.

⁴ Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC.

⁵ Article 4(2) specifies that annual financial reports comprise the audited financial statements, the management report, and the issuer's responsibility statements.

ii) Issuers that draw-up their consolidated financial statements in accordance with International Financial Reporting Standards (IFRS) adopted pursuant to Regulation (EC) No 1606/2002 (IFRS as endorsed by the EU)⁶ or with IFRS as referred to in point (a) of the first subparagraph of Article 1 of Decision 2008/961/EC (IFRS as adopted by the IASB)⁷ shall:

- mark-up those consolidated financial statements using inline eXtensible Business Reporting Language (iXBRL);
- block-tag the notes to the financial statements⁸.

iXBRL mark-ups shall comply with the ESEF Taxonomy, which is included in the Annexes to the ESEF Regulation and developed based on the IFRS Taxonomy published by the IFRS Foundation.

The combination of the XHTML format with the iXBRL mark-ups makes the annual financial reports both human-readable and machine-readable, thus enhancing accessibility, analysis and comparability of the information included in the annual financial reports.

Once the ESEF Regulation is applicable, only the annual financial reports drawn-up in the ESEF format will enable issuers to fulfil their disclosure obligations under the Transparency Directive⁹.

The Commission welcomes that several Member States have amended or are amending their national rules to fully comply with ESEF-related requirements in Union law. The Commission encourages all Member States to complete the process where necessary and in due time.

The content of this Communication is relevant to the extent that the ESEF Regulation has entered into application¹⁰.

⁶ Regulation (EC) No 1606/2002 on the application of international accounting standards (IAS Regulation).

⁷ 2008/961/EC: Commission Decision of 12 December 2008 on the use by third countries' issuers of securities of certain third countries' national accounting standards and International Financial Reporting Standards to prepare their consolidated financial statements.

⁸ This requirement will be phased in according to Annex II of the ESEF Regulation.

⁹ The Transparency Directive sets out disclosure requirements for all "regulated information", a category that also includes the annual financial reports. In addition, Pursuant to Article 9(12) of Regulation (EU) 2017/1129 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 on a regulated market (Prospectus Regulation), issuers may include their annual financial reports in their Universal Registration Document (URD). These issuers can be deemed to have fulfilled their obligation to publish their annual financial report under the Transparency Directive only if certain conditions are met. These conditions include, inter alia, that the annual financial report included in the URD complies with the requirements under Article 4 of the Transparency Directive (including ESEF).

¹⁰ See Article 8 of ESEF Regulation.

2. CLARIFICATIONS ON EXISTING UNION PROVISIONS CONCERNING AUDIT

2.1. Are statutory auditors required to provide an audit opinion on whether the financial statements included in the annual financial reports comply with the relevant statutory requirements laid down in the ESEF Regulation?

Union law requires statutory auditors¹¹ to provide an audit opinion on whether the financial statements included in the annual financial reports comply with the relevant statutory requirements laid down in the ESEF Regulation, i.e. with the provisions of the ESEF Regulation that apply to financial statements.

This conclusion can be drawn from the following legal analysis:

- i. Pursuant to Article 4(7) of the Transparency Directive, issuers with securities listed on the EU regulated markets shall draw-up their annual financial reports in a single electronic reporting format. The requirements for the single electronic reporting format are laid down in the ESEF Regulation, which sets out rules on the format of the annual financial reports as a whole¹², and more specific rules on the marking-up of the financial statements included therein¹³.
- ii. Article 4(4) of the Transparency Directive specifies that the issuers' financial statements shall be audited in accordance with the Accounting Directive¹⁴. Under Article 34(1) of the Accounting Directive, the financial statements of public-interest entities – which include, inter alia, issuers with securities listed on the EU regulated markets¹⁵ – shall be audited by statutory auditors.
- iii. Under Article 28 of the Audit Directive, statutory auditors shall present the results of their audit in an audit report. This audit report shall include an audit opinion of the statutory auditor as to: (i) whether the financial statements give a true and fair view in accordance with the relevant financial reporting framework; and (ii) “*where appropriate*”, whether the financial statements comply with “*statutory requirements*”¹⁶.
- iv. The term “*statutory requirements*” in Article 28(2)(c)(ii) of the Audit Directive means any legal requirement imposed at Union level and/or at national level for the preparation of financial statements. Recital (11) of the ESEF Regulation explicitly states that the requirements provided in the ESEF Regulation constitute “*statutory requirements*”.

¹¹ Any reference to “*statutory auditors*” in this document shall be construed as a reference to “*statutory auditors or audit firms*”.

¹² See Article 3 of the ESEF Regulation.

¹³ See Articles 4, 5 and 6 of the ESEF Regulation.

¹⁴ Article 4(4) of the Transparency Directive cross-refers to Articles 51 and 51a of the Fourth Council Directive 78/660/EEC and to Article 37 of Directive 83/349/EEC, now repealed by the Accounting Directive (the corresponding provisions are Articles 34(1), 34(2), and 35 of the Accounting Directive).

¹⁵ See Article 2(1)(a) of the Accounting Directive.

¹⁶ See Article 28(2)(c)(ii) of the Audit Directive, which applies not only to individual financial statements but also to consolidated financial statements (as specified in paragraph 5 of the same Article).

- v. The term “*where appropriate*” in Article 28(2)(c)(ii) of the Audit Directive means that where Union and/or national law provides for statutory requirements applicable to the financial statements, statutory auditors shall verify compliance of the latter with these statutory requirements and provide an audit opinion.

Statutory auditors are therefore required to check the compliance of the financial statements with any applicable statutory requirement, including the relevant statutory requirements set out in the ESEF Regulation as further explained under Question no. 2.2 below, and to provide an audit opinion on whether the financial statements comply with these requirements.

The policy objectives laid down in the Recitals of the Union legal acts regulating the preparation, publication and audit of listed companies’ financial statements support this legal analysis. These policy objectives aim at:

- (i) enhancing the comparability and public confidence in financial statements¹⁷;
- (ii) ensuring a high level of transparency and comparability of financial reporting from companies with securities listed on the EU regulated markets¹⁸;
- (iii) protecting the interests of the company’s third parties¹⁹;
- (iv) ensuring a harmonized approach to statutory auditing²⁰;
- (v) ensuring a high level of investor protection throughout the Community²¹; and
- (vi) making reporting easier and facilitating accessibility, analysis and comparability of corporate information²²;

To ensure the integrity of the internal market and a homogeneous level of protection for all users of financial statements and annual financial reports, users should be granted the same level of protection irrespective of how they access the information contained in the financial statements, be it for instance via scanned-paper documents or via electronically structured documents.

¹⁷ Recital (55) of the Accounting Directive.

¹⁸ Recital (3) of Regulation (EC) No 1606/2002 on the application of international accounting standards (IAS Regulation).

¹⁹ Recital (7) of Directive (EU) 2017/1132 relating to certain aspects of company law (Company Law Directive).

²⁰ Recital (3) of the Audit Directive.

²¹ Recital (7) of the Transparency Directive.

²² Recital (26) of Directive 2013/50/EU amending the Transparency Directive and Recital (4) of the ESEF Regulation.

2.2. Which statutory requirements laid down in the ESEF Regulation should statutory auditors check compliance with in order to provide their audit opinion?

In order to provide an audit opinion on whether the financial statements comply with the “relevant statutory requirements” laid down therein, statutory auditors shall check the compliance of the issuers’ financial statements with the provisions of the ESEF Regulation that are applicable to the financial statements²³. The “relevant statutory requirements” are the following:

- i) All the financial statements that are included in the annual financial report shall be prepared in a valid XHTML format²⁴;
- ii) For all consolidated financial statements that are drawn-up in accordance with IFRS as endorsed by the EU or with IFRS as adopted by the IASB²⁵:
 - The disclosures specified in Annex II of the ESEF Regulation shall be marked-up, where those disclosures are present in those consolidated financial statements;
 - All mark-ups, including the voluntary mark-ups of disclosures other than those specified in Annex II, shall meet the following requirements:
 - the XBRL mark-up language shall be used;
 - the elements of the core taxonomy specified in Annex VI of the ESEF Regulation with the closest accounting meaning shall be used, unless an extension taxonomy element is created in compliance with Annex IV of the ESEF Regulation;
 - the mark-ups shall comply with the common rules on mark-ups²⁶.
- iii) For financial statements other than the IFRS consolidated financial statements²⁷:
 - All mark-ups included by the issuer on a voluntary basis or in compliance with national law shall meet the following requirements:
 - the XBRL mark-up language shall be used;
 - a specific taxonomy provided by the Member State in which the issuer is incorporated shall be used;

²³ Guidance on how to check compliance with the relevant statutory requirements in the ESEF Regulation is included in the Guidelines on the auditors’ involvement on financial statements in European Single Electronic Format developed by the Committee of European Auditing Oversight Bodies, available at https://ec.europa.eu/info/files/191128-ceaob-guidelines-auditors-involvement-financial-statements_en

²⁴ Article 3 of the ESEF Regulation - which requires the preparation of the entire annual financial report in XHTML format - shall be read in conjunction with Article 4(2) of the Transparency Directive - which specifies that the annual financial report shall comprise inter alia the audited financial statements. A free validator for XHTML documents is available at <http://validator.w3.org/>.

²⁵ See Article 4 of the ESEF Regulation.

²⁶ See Article 6 of the ESEF Regulation.

²⁷ See Article 5 of the ESEF Regulation. These rules apply to issuers incorporated in Member States.

- the mark-ups shall comply with the common rules on mark-ups²⁸.

2.3. Shall the audit opinion on whether the financial statements comply with the relevant statutory requirements laid down in the ESEF Regulation be included in the audit report or in a separate report?

The audit opinion on whether the financial statements comply with the relevant statutory requirements laid down in the ESEF Regulation shall be included in the audit report.

Under Article 28 of the Audit Directive, statutory auditors shall present the results of their audit in an audit report. Article 28(2)(c)(ii) specifies that the audit report shall include an audit opinion on whether the financial statements give a true and fair view in accordance with the relevant financial reporting framework, as well as an opinion on whether the financial statements comply with the applicable “*statutory requirements*”. In this case, the “statutory requirements” correspond to the “relevant statutory requirements” laid down in the ESEF Regulation (see reply to Question no. 2.2).

2.4. Shall the audit report be included in the ESEF-compliant annual financial report or in a separate document disclosed together with the ESEF-compliant annual financial report?

Existing Union law does not specify whether the audit report should be included in the annual financial report or disclosed together with the annual financial report as a separate document.

Under Article 4(4) of the Transparency Directive, the audit report “*shall be disclosed in full to the public together with the annual financial report*”. In the absence of specific rules in force at national/regulated market level, and taking into consideration the technical possibilities on a case-by-case basis, issuers may apply their preferred option.

2.5. Are third-country issuers required to disclose an audit report that includes an audit opinion on whether the financial statements within the annual financial reports comply with the relevant statutory requirements laid down in the ESEF Regulation?

Under the Transparency Directive, third-country issuers are required to disclose annual financial reports drawn-up in accordance with all the requirements in the ESEF Regulation, together with an audit report prepared in accordance with the Audit Directive. As a result, it is the responsibility of a third-country issuer to ensure that its auditors provide an audit opinion on whether the financial statements included in the annual financial report comply with the relevant statutory requirements laid down in the ESEF Regulation.

²⁸ See Article 6 of the ESEF Regulation.

Article 4(4) of the Transparency Directive stipulates that the financial statements to be published within the annual financial reports of any issuer (including third-country issuers) shall be audited in accordance with Articles 34(1), 34(2), and 35 of the Accounting Directive (which cross-refers to Article 28 of the Audit Directive). These provisions refer to the auditors' obligation to audit the financial statements, and to the content of the audit report, respectively²⁹. The content of the audit report shall comply with Article 28 of the Audit Directive, which requires the auditor to provide an audit opinion on whether the financial statements comply with statutory requirements, including the relevant statutory requirements laid down in the ESEF Regulation.

3. CLARIFICATIONS ON UNION PROVISIONS CONCERNING THE USE OF AN E-SIGNATURE

3.1. Shall issuers and/or statutory auditors use an electronic signature (“e-signature”) for signing the annual financial reports and/or the documents included therein and/or the audit reports, respectively?

Existing Union law does not prevent issuers or statutory auditors from using an e-signature for signing the annual financial reports, documents included therein or the audit reports respectively. In the absence of specific rules in force at national/regulated market level, issuers and/or statutory auditors may apply their preferred option including a handwritten or an e-signature.

While Article 4(4) of the Transparency Directive explicitly requires issuers to disclose an audit report that is signed by the auditors responsible for auditing the financial statements³⁰, there is no explicit requirement at Union level as regards whether and how to sign the annual financial reports or documents included therein. However, requirements applying to signatures might be set out in national legislation.

In any case, in line with Article 25(2) of Regulation (EU) No 910/2014 (e-IDAS Regulation)³¹ – which specifies that “*a qualified electronic signature shall have the equivalent legal effect of a handwritten signature*” – the use of a qualified e-signature for signing these reports shall be considered as fulfilling any signature obligation.

²⁹ Article 4(4) of the Transparency Directive cross-refers to Articles 51 and 51a of the Fourth Council Directive 78/660/EEC and to Article 37 of Directive 83/349/EEC. Both Directives were repealed by the Accounting Directive in 2013. According to the correlation table, the references to these Articles of the repealed Directives shall be construed as references to Articles 34(1), 34(2), and 35 of the Accounting Directive.

³⁰ Article 28(4) of the Audit Directive also states that the audit report shall be signed and dated by the statutory auditor.

³¹ Regulation (EU) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC.

4. CLARIFICATIONS ON UNION PROVISIONS CONCERNING THE ISSUERS' RESPONSIBILITY AND LIABILITY

4.1. Is the administrative, management or supervisory body of the issuer responsible for the compliance of the annual financial reports with the requirements of the ESEF regulation?

The issuer's administrative, management or supervisory body is responsible for drawing-up and disclosing the annual financial reports in compliance with the ESEF Regulation.

Pursuant to Article 7 of the Transparency Directive, the responsibility for the information to be drawn-up and made public in accordance with – inter alia – Article 4 of the Transparency Directive “*lies at least with the issuer or its administrative, management or supervisory bodies*”. Article 4(7) of the Transparency Directive requires that annual financial reports are prepared and disclosed in compliance with the ESEF Regulation.

4.2. Are issuers required to include in their annual financial report a responsibility statement regarding the compliance of the annual financial report with the ESEF Regulation?

Union law does not prevent issuers from expressing, on a voluntary basis, for instance in the responsibility statement within the annual financial report, a specific statement regarding the compliance of the annual financial report with the ESEF Regulation.

Article 4(2)(c) of the Transparency Directive requires that the annual financial report comprises “*statements made by the persons responsible within the issuer, whose names and functions shall be clearly indicated, to the effect that, to the best of their knowledge, the financial statements prepared in accordance with the applicable set of accounting standards give a true and fair view [...]*”. In the absence of specific rules in force at national/regulated market level, issuers may apply their preferred option. In any case, the administrative, management or supervisory body of the issuer is responsible for drawing-up and disclosing an ESEF-compliant annual financial report pursuant to Article 7 of the Transparency Directive (see also Question no. 4.1).

4.3. Are issuers allowed to disclose additional versions of the annual financial report that are not ESEF-compliant and/or that include ESEF-compliant financial statements for which the ESEF compliance was not checked by the statutory auditors?

Union law does not prevent issuers from disclosing (for instance on their website) additional versions of their annual financial reports that are non-ESEF compliant or that include ESEF-compliant financial statements for which compliance with ESEF was not checked by the statutory auditors³². However, it should be made clear that these additional non-ESEF compliant versions of the annual financial reports constitute non-official versions.

³² These additional versions may include – for instance – annual financial reports prepared in a format different than ESEF or prepared in the ESEF format but that include a non-audited version of ESEF-compliant financial statements (e.g. in the case of ESEF-compliant annual financial reports published in a language different from the one in which the ESEF-compliant financial statements were audited).

Article 4 of the Transparency Directive requires issuers to disclose annual financial reports prepared in accordance with the ESEF Regulation. Once the ESEF Regulation becomes applicable, only the disclosure of ESEF-compliant annual financial reports – together with the audit report on the financial statements included in the annual financial reports – will enable the issuers to fulfil their disclosure obligations under the Transparency Directive. Disclosing (for instance on the issuers’ website) additional non-ESEF compliant versions of the annual financial report that is not ESEF-compliant and/or that includes non-audited ESEF-compliant financial statements is not prohibited by Union law, but is not enough to comply with the Transparency Directive.

5. CLARIFICATIONS ON UNION PROVISIONS CONCERNING THE USE OF ESEF FILES TO FULFIL OTHER UNION OBLIGATIONS

5.1. Are issuers allowed to file ESEF-compliant financial statements with the national Business Register in order to comply with the Accounting Directive publication rules?

In the case of a limited liability company with securities listed on the EU regulated markets, Union law does not prohibit the use of the audited financial statements prepared and published in accordance with the ESEF Regulation to fulfil legal obligations other than the ones stemming from the Transparency Directive. Union law therefore does not prevent the implementation of national and/or administrative rules that would allow issuers to file the ESEF-compliant financial statements as accounting documents with a Business Register.

Article 30(1) of the Accounting Directive requires limited liability companies to publish their audited financial statements within 12 months after the balance sheet date, and cross-refers to Directive 2017/1132/EU (Company Law Directive)³³ as regards the rules for the publication. Article 16 of the Company Law Directive – which applies to limited liability companies regardless of whether their securities are listed on the EU regulated markets – requires companies to submit the accounting documents to the national Business Register.

Neither the Accounting Directive nor the Company Law Directive specify the format for drawing up and submitting the audited financial statements, which can be electronic. There is in principle no obstacle for Member States to allow limited liability companies with securities listed on the EU regulated markets to file ESEF-compliant financial statements with the Business Register in order to fulfil their obligations under Article 30(1) of the Accounting Directive and Article 16 of the Company Law Directive.

6. CLARIFICATIONS ON UNION PROVISIONS CONCERNING THE OFFICIALLY APPOINTED MECHANISMS

6.1. Are the Officially Appointed Mechanisms allowed to disseminate annual financial reports in formats other than ESEF?

The Officially Appointed Mechanisms (OAMs) are required to disseminate at least the ESEF-compliant annual financial reports submitted by the issuers.

³³ Directive (EU) 2017/1132 relating to certain aspects of company law.

Article 21 of the Transparency Directive requires Member States to establish OAMs for the central storage and the provision of easy access to end users.