

FESE response to ESMA consultation on Benchmark Regulation guidelines

Brussels 30th April 2021

Introductory comments

FESE welcomes the opportunity to provide a response to the ESMA consultation on methodology to be used in exceptional circumstances and amendments to the guidelines on non-significant benchmarks.

As a general remark we would call for a cautious approach, considering the need for flexibility to be able to deal with unforeseeable developments. The benchmark statement clearly describes the (changing) economic reality and the objective of the benchmark. We believe that the risk that such flexibility could be misused in an arbitrary way is therefore mitigated. Moreover, when making changes to methodology or to the hierarchy of input, data benchmark administrators need to follow governance rules, including fulfilling certain material and formal requirements before being able to make such changes. In instances of market turmoil, it is key that the need to make such changes quickly is considered, including a potential market consultation in case of material changes.

From our perspective, BMR already provides a framework and the experience from March 2020 showed that the system has worked well. The difficulty is rather in understanding prevailing market conditions and finding adequate answers in terms of adjusted benchmark methodologies which reflect the conditions of benchmark users.

Q1 - Do you have any views on the content of the draft guidelines on the details of any methodology to be used to determine a critical or significant benchmark in exceptional circumstances? Would you suggest including any additional elements or to delete one or more of the elements proposed? Please explain.

Article 1(i) of the Draft Guideline V.1 requires administrators to detail the overarching principles for identifying exceptional circumstances, taking into account at least market illiquidity, market volatility and any trading event such as trading interruptions or unexpected market closures.

Exceptional circumstances by nature are rare and, most often, unforeseen. Administrators will need a certain amount of flexibility to respond to unexpected circumstances. While providing users of benchmarks with a framework would create increased transparency in cases that are unforeseen, it should not be overly prescriptive as this may inhibit the flexibility needed to address unforeseen scenarios. Being overly detailed in the methodology could lead to discussions between users and the administrator on whether or not any circumstance qualifies as exceptional.

In addition, it should be made clear that detailing unexpected circumstances and potential remedies by the administrator should not constitute an expectation to act in all cases. The decision to act is ultimately the administrator's, based on the particular circumstances and potential outcomes.

Q2 - Would you suggest including any additional elements to be taken into account for identifying the overarching principles of the exceptional circumstances? Please explain.

No, we refer to our remarks under Question 1.

Q3 - Do you have any views on the content of the draft guidelines on the material changes to the methodology used to determine a critical or significant benchmark? Would you suggest including any additional elements or to delete one or more of the elements proposed? Please explain.

Material changes in the methodology should not be made through a rushed consultation. If swift action is needed in response to an unexpected development, the procedures for such events should provide for exceptional deviating treatment or methodology.

Q4 - Do you have any views on the content of the draft guidelines on the oversight function for critical and significant benchmarks? Would you suggest to include any additional elements or to delete one of the elements proposed? Please explain.

N/A

Q5 - Do you have any views on the content of the draft guidelines on the record keeping requirements? Would you suggest to include any additional elements or to delete one or more of the elements proposed? Please explain.

N/A

Q6 - Would you suggest to further specify any additional elements of the regulatory framework with regard to the use of an alternative methodology in exceptional circumstances? Please explain.

N/A

Q7 - Do you have any views on the content of the draft guidelines amending the guidelines on non-significant benchmarks in respect of any methodology to be used in exceptional circumstances and the oversight function? Would you suggest to include any additional elements or to delete one of the elements proposed? Please explain.

We refer to our response under Q1.