

EuroFinuse's Response to the joint ESMA – EBA Consultation on Principles for Benchmarks-Setting Processes in the EU

Reply of the European Federation of Financial Services Users (EuroFinuse)

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EuroFinuse welcomes this joint EBA – ESMA consultation and would like, first of all, to refer to our previous responses to the consultations on benchmark setting from the European Parliament (which you can find [here](#)) and from the European Commission ([here](#))

Question 1: Definition of the activities of benchmark setting

Do you agree with the definitions provided in this section? Is this list of activities complete and accurate?

Yes, we do.

Question 2: Principles for benchmarks

Would you consider a set of principles a useful framework for guiding benchmark setting activities until a possible formal regulatory and supervisory framework has been established in the EU?

Yes, to establish a set of principles to regulate benchmark setting until an EU-wide regulation is established is appropriate; as long as these principles are binding and not only “guiding” (e.g. recommendations or other kinds of soft law). We believe that the extent of the problems as detected at EU-level shows the need for a more enforceable solution.

Another key question to highlight is the scope of the current ESMA and EBA consultation: its scope is narrower than in the previous Commission’s consultation on benchmarks closed late November 2012, as it only deals with benchmark-setting processes only; versus the regulation of indices used as benchmarks. However, Section F of the ESMA/EBA consultation is targeting “users of benchmarks” as well.

Question 3: General principles for benchmarks

Do you agree with the principles cited in this section? Would you add or change any of the principles?

Yes, we do agree on the principles cited in section 3.

An important question that we think should be included in the analysis is that, whenever actual transactions are available, they should serve as the basis for the benchmark’s design (e.g. limit as much as possible cases of non-transaction-based benchmarks).

We would like to point out at the fact that in the same way that conflicts of interest may arise because contributing firms can act discretionarily when submitting data; the same conflicts of interest can be present in other businesses, most particularly in exchange rate setting. We certainly

believe this question should be addressed at EU level.

Also, we are especially concerned by the impact of continuity issues (a recent example are the Lehman Brothers' Bond indices) for savers and investors. The same can apply at the benchmarked product level (for example when the fund managers switch from one index to another).

Question 4: Principles for firms involved in benchmark data submissions

Do you agree with the principles cited in this section? Would you add or change any of the principles?

Yes, we do.

Question 5: Principles for benchmark administrators

Do you agree with the principles cited in this section? Would you add or change any of the principles?

Yes, we do.

Question 6: Principles for benchmark calculation agents

Do you agree with the principles cited in this section? Would you add or change any of the principles?

Yes, we do.

Question 7: Principles for benchmark publishers

Do you agree with the principles cited in this section? Would you add or change any of the principles?

Yes, we do.

Question 8: Principles for users of benchmarks

Do you agree with the principles cited in this section? Would you add or change any of the principles?

We would like to stress that very little or even no access of retail investors to the past performance of retail products' benchmarks. This is a serious issue as retail investor associations found examples of indexed UCITS (reported to the national supervisor and to the EC – re: [EuroFinUse's reply to the EC consultation on the regulation of indices](#)) where the index past performance is either missing or wrong.

The issue is compounded by the fact that **it is almost impossible for the retail client to verify the**

accuracy of most major index/benchmark past performances as they are not published and freely accessible to retail clients, especially by the index providers themselves (including the world leading equity and fixed income index providers). Besides, there is no mentioning or only insufficient mentioning of where to find such data in the KIID.

Protection of intellectual property is legitimate but should not in any circumstances serve as an excuse to prevent retail users from getting such crucial information like the past performances of benchmarks.

As the examples above show, much better enforcement of MiFID and UCITS directives provisions on exact, clear and not misleading information about indices and benchmarks' past performance is required.

Question 9: Practical application of the principles

Are there any areas of benchmarks for which the above principles would be inadequate? If so, please provide details on the relevant benchmarks and the reasons of inadequacy.

N/A

Question 10: Continuity of benchmarks

Which principles/criteria would you consider necessary to be established for the continuity of benchmarks in case of a change to the framework?

N/A