

Introductory statement for ECON meeting on level 2 Measures under the Benchmarks Regulation (BMR)

Dear Members of the European Parliament,

Ladies and Gentlemen,

1. Thank you for giving us the opportunity to present the Level 2 measures developed by ESMA.
2. Before I provide you with the overview of ESMA's deliverables, I would like to thank the Rapporteur and Shadow Rapporteur for their ongoing interest throughout the process and constructive comments received during consultation phases. We have appreciated the open communication line and good cooperation with ECON Negotiation Team and their staff on this file.
3. Two types of level 2 measures have been developed by ESMA:
 - 1) A technical advice delivered on 10 November 2016 covering 5 areas:
 - a. clarifications for the following definitions: "*making available to the public*", "*administering the arrangements for determining a benchmark*", "*use of a benchmark*" (*Article 3*),
 - b. the measurement of the reference value of benchmarks (*Article 20*),
 - c. the criteria for the identification of critical benchmarks (*Article 20*),
 - d. the endorsement of a benchmark and family of benchmarks provided in a third country (*Article 33*), and
 - e. the transitional provisions (*Article 51(4)*).
 - 2) A number of technical standards delivered on 30 March 2017 and covering:
 - a. procedures, characteristics and positioning of oversight function (*Article 5*),

- b. appropriateness and verifiability of input data (*Article 11*),
 - c. transparency of methodology (*Article 13*),
 - d. specification of elements of the code of conduct of contributors (*Article 15*),
 - e. governance and control requirements for supervised contributors (*Article 16*),
 - f. specification of qualitative criteria for significant benchmarks (*Article 25*),
 - g. template for compliance statement for significant/non-significant benchmarks (*Articles 25 and 26*),
 - h. contents of benchmark statement (*Article 27*),
 - i. information to be provided in applications for authorisation and registration (*Article 34*),
 - j. form and content for the application for recognition by third country administrators (*Article 32*), and
 - k. minimum content of the cooperation arrangements between ESMA and competent authorities (*Article 47*).
4. An additional set of technical standards was delivered on 2 June 2017 and these cover the cooperation arrangements with third countries.
 5. The draft regulatory and implementing technical standards set out specific obligations for administrators and contributors, and will ensure that benchmarks are produced in a transparent and reliable manner. The draft standards include provisions ensuring:
 - the full process of provision of a benchmark is checked by a new oversight function that administrators have to establish;
 - the potential manipulation of benchmarks is minimised, through new rules regarding the methodology of calculation and the contribution of input data;
 - that conflicts of interest of administrators and contributors are properly managed; and
 - a level playing field across different Member States for the authorisation and registration of benchmark's administrators.
 6. In relation to the technical advice, ESMA recommends that data collected from current and forthcoming reporting structures under EMIR (European Markets Infrastructure Regulation), MiFID II (Markets in Financial Instruments Directive), UCITS (Undertakings for Collective Investment in Transferable Securities Directive) and the AIFMD (Alternative Investment Fund Managers Directive) is used to calculate the reference value of benchmarks. This approach was decided also taking into consideration the

feedback from stakeholders, which expressed concerns in particular about duplicative reporting regimes under different pieces of EU legislation.

7. In line with the objectives envisaged in the L1 text, the level 2 measures submitted by ESMA aim at ensuring the accuracy, robustness and integrity of benchmarks and of the benchmark determination process. Where appropriate, ESMA has introduced proportionality, in particular for administrators of non-significant benchmarks, in order to reflect the co-legislators intentions of a less detailed regime applicable to such administrators.
8. In addition, when developing the draft standards, ESMA has maintained a holistic approach ensuring that the proposed provisions can be implemented smoothly, as no duplicative obligations are included in the different draft standards. As a result of this, the draft standards avoid putting excessive administrative burden on administrators of benchmarks.
9. Besides the tasks related to Level 2 measures, additional duties are assigned by the Regulation to ESMA.
10. The Regulation requires ESMA to maintain a public register that contains information on authorised or registered administrators, on benchmarks and administrators that provide those benchmarks by virtue of a positive decision under either the equivalence regime or the recognition regime, on Union administrators or supervised entities that have endorsed benchmarks from a third country, and on any such endorsed benchmarks and their administrators located in a third country.
11. The ESMA register is of paramount importance, as supervised entities in the Union will be able to use a benchmark only if its administrator or the benchmark itself is included in the register. Despite some challenging IT resource constraints, both at ESMA's level and at national competent authorities' level, ESMA will ensure that the register will be functional as of 1 January 2018.
12. Finally, ESMA is also a member in the colleges of critical benchmarks. The activities of the colleges should contribute to the harmonised application of rules under this Regulation and to the convergence of supervisory practices. In this respect, ESMA just published a methodological framework to achieve supervisory convergence in the application of the provisions that set out the process of selecting potential candidates for mandatory contributions to critical benchmarks.
13. Also, ESMA's legally binding mediation within the colleges is a key element of the achievement of coordination, supervisory consistency and convergence of supervisory practices in the context of critical benchmarks.