



European Securities and  
Markets Authority

# Consultation Paper

**Guidelines on methodology to be used in exceptional circumstances and amendment to the guidelines on non-significant benchmarks**



## Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by **30 April 2021** .

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 close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. 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 not to disclose the response 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 heading '[Data protection](#)'.

### Who should read this paper?

This paper may be specifically of interest to administrators of benchmarks and to any investor dealing with financial instruments and financial contracts whose value is determined by a benchmark or with investment funds whose performances are measured by means of a benchmark.



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## Executive Summary

### Reasons for publication

Regulation (EU) 2016/1011<sup>1</sup> (the 'Benchmarks Regulation') was published in the Official Journal of the European Union on the 29 June 2016, entered into force the following day, and is fully applicable since 1 January 2018. On 5 November 2018 the delegated regulations, based on the draft regulatory and implementing technical standards submitted by ESMA, were published in the Official Journal of the European Union. As some of these delegated regulations apply only to critical and significant benchmarks, ESMA published its final report on the guidelines for non-significant benchmarks on 20 December 2018.

These guidelines aim at providing further guidance to market participants and competent authorities on the application of the requirements relating to the use of a methodology for calculating a benchmark in exceptional circumstances.

### Contents

This Consultation Paper (CP) is organised in seven chapters. The introduction summarises the relevant proposals and their objectives and provides an explanation of the policy areas requiring further clarification related to the requirements of the Benchmarks Regulation on the transparency of the methodology, the benchmark statement, the oversight function and the record keeping. The first four chapters briefly summarise the scope, definitions and the purpose of this consultation paper. Finally, the last two chapters detail the content of the draft guidelines.

### Next Steps

ESMA will consider the feedback received to this consultation and expects to publish a final report by Q3 2021.

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<sup>1</sup> Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, OJ L 171, 29.6.2016, p. 1

# Introduction

## Background

1. The COVID-19 pandemic has resulted in unprecedented and exceptional circumstances in financial markets, forcing administrators to act fast. A key decision for administrators was whether to apply the standard methodology or use an alternative methodology for a limited time frame. Under the market conditions caused by COVID-19, a rebalancing<sup>2</sup> according to the standard methodology could have forced users, that track the performance of a benchmark, to adjust the underlying assets of their portfolio in order to continue tracking the benchmark in the context of market illiquidity and extreme volatility. Administrators have taken different approaches to rebalancing. Certain administrators decided to stick to their methodology, while others decided to fully suspend or adjust the rebalancing for all benchmarks or to apply a partial suspension for some benchmarks.
2. In principle, the decision to suspend or adjust rebalancing entails equally pros: (i) protection of some benchmark users; (ii) avoidance of procyclicality in periods of liquidity shortage, and cons: (i) it may result in a benchmark that no longer represents the underlying market; (ii) it exacerbates the risk of conflict of interest as it may discriminate between different types of investors as some may benefit from the suspension while others may be harmed.
3. The actions by administrations have revealed several issues related to the divergent application of some Benchmarks Regulation's requirements, in particular with regard to the transparency of the methodology and the rationale behind the decision to suspend or adjust the rebalancing.
4. The EU regulatory framework for benchmarks, which addresses the use of a methodology for calculating a benchmark in exceptional circumstances, includes requirements related to the transparency of the methodology, the benchmark statement, governance and conflicts of interest and the record keeping as further detailed below.
5. These guidelines are split into two sections, the first set of guidelines deal with the key elements of the methodology and the material changes to the methodology applicable to critical and significant benchmarks, the oversight function of critical and significant benchmarks and the record keeping requirements for all benchmarks. The second set of guidelines amends the existing guidelines for non-significant benchmarks with regard to the key elements of the methodology and the oversight function.

## Proposed content of the guidelines

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<sup>2</sup> The rebalancing refers to the adjustment of the weights of the constituent securities in the benchmark on a regularly scheduled basis.

## Transparency of the methodology

6. Article 13 of the Benchmarks Regulation requires an administrator to develop, operate and administer the benchmark and methodology transparently. The administrator shall publish or make available the following information: *“(a) the key elements of the methodology that the administrator uses for each benchmark provided and published or, when applicable, for each family of benchmarks provided and published; (b) details of the internal review and the approval of a given methodology, as well as the frequency of such review; (c) the procedures for consulting on any proposed material change in the administrator's methodology and the rationale for such changes, including a definition of what constitutes a material change and the circumstances in which the administrator is to notify users of any such changes; [..].”*
7. The procedures, required under point (c) above, shall provide for: (i) an advance notice, with a clear time frame, that gives the opportunity to analyse and comment upon the impact of such proposed material changes; and (ii) any comments together with the administrator's response, to be made accessible after any consultation, except for where the originator of the comments has requested confidentiality.

### *Key elements of the methodology*

8. The Transparency of the Methodology Delegated Regulation<sup>3</sup> and the guidelines for non-significant benchmarks further specify the requirements of Article 13 of the Benchmarks Regulation. Pursuant to Article 2 of the delegated regulation on the key elements of the methodology, the administrator shall disclose the potential limitations of the methodology and details (or indications for non-significant benchmarks) of any methodology to be used in exceptional circumstances, including in the case of an illiquid market or in periods of stress or where transaction data sources may be insufficient, inaccurate or unreliable (Article 2(1)(l) of the Transparency of the Methodology Delegated Regulation and paragraph 27(i) of the Guidelines for non-significant benchmarks).
9. In order to enhance transparency to users of benchmarks when the administrator decides to use an alternative methodology to calculate a particular benchmark, ESMA suggests to further elaborate on the application of the requirement under Article 2 of the Transparency of the Methodology Delegated Regulation.
10. First, the methodology should specify the overarching principles for identifying exceptional circumstances that may lead to the use of an alternative methodology to calculate a benchmark. While ESMA acknowledges the difficulty in including an exhaustive list of the exceptional circumstances that may prohibit the administrator from using the standard methodology in the future, the expectation is to identify the principles of these exceptional circumstances. These principles should take into account market illiquidity; market volatility and any trading event such as trading interruptions or unexpected market closures.

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<sup>3</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2018:274:FULL&from=ENas%20of%20274/36>

11. Further, the methodology should, to the extent possible, include the alternative ways to calculate the benchmarks in case of exceptional circumstances or indicate any key element of the methodology that will not be performed. For example, in the case of methodologies considering rebalancing at specific frequency, it is expected to include in which instances, for example illiquidity of the market, the rebalancing according to the normal schedule may not be performed.
12. The methodology should also include the scope of application of the alternative methodology and the expected period of its use, for example at the next rebalancing schedule. Any renewal should be avoided.
13. In particular, if the use of an alternative methodology applies only to a subset of the benchmarks provided within the same asset class, the key aspects of the assessment performed to differentiate between different benchmarks within that same asset class should be provided.
14. ESMA further believes that for transparency reasons and in order to provide users of benchmarks with the most accurate information in these exceptional circumstances the administrator should notify whether the use of the alternative methodology will have an impact on the value of the benchmark.
15. In order to ensure proportionality between the different types of benchmarks provided and in order to align these guidelines with the guidelines on non-significant benchmarks, that mention that an indication of any methodology to be used in exceptional circumstances should be provided, ESMA has reduced the requirements applicable to non-significant benchmarks with regard to the impact on the value of the benchmark and the expected period during which the alternative methodology will be used to calculate the benchmark.

*Material changes to the methodology*

16. In the event of any proposed material change to the methodology, including where an alternative methodology is envisaged in the key elements of the methodology, the administrator has to comply with Article 13(c) of the Benchmarks Regulation on the procedures for consulting on any proposed material change in the administrator's methodology. The transparency of the methodology delegated regulation further specifies this provision by indicating the information the administrator of a critical or significant benchmark has to provide in case a consultation takes place within a shorter time frame.
17. Pursuant to Article 4(1)(c) of the Transparency of the Methodology Delegated Regulation, the information the administrators disclose in case of material changes to the methodology should include the circumstances in which a consultation may take place within a shorter time frame and a description of the procedures to be followed when undertaking a consultation within a shorter time frame.
18. In order to enhance transparency to users of benchmarks where the administrator decides to use an alternative methodology to calculate a particular benchmark, ESMA suggests to further elaborate on the application of the above mentioned requirement.

19. In the specific circumstances specified in Article 4(1)(c) of the Transparency of the Methodology Delegated Regulation, ESMA believes that the shorter period of time for the consultation should be adequate to permit users and potential users to consider the subject matter of the consultation. This timeframe should consider the complexity of the changes proposed and their impact on the benchmark. While ESMA acknowledges the need for a swift action from administrators in some specific circumstances of stressed market conditions, it remains important to give users and potential users the opportunity to analyse and comment upon the impact of such proposed material changes.
20. Further, the procedure to be followed when undertaking a consultation within a shorter time frame should be clear to enable users and potential users to understand the steps of the consultation process, including the assessment by the administrator of the responses received and whether a feedback statement summarising the responses will be provided together with the rationale behind the outcome of the consultation.

### **Benchmark Statement**

21. Finally, to allow users of benchmarks to make an informed decision and understand the risks of a particular benchmark it is important to clearly state what a benchmark intends to measure and its susceptibility to manipulation. The benchmark statement is meant to provide a summary of the methodology applied by the administrator. Therefore, pursuant to Article 27(2) of the Benchmarks Regulation, the administrator should publish a benchmark statement specifying, inter-alia, (i) the procedures which govern the determination of the benchmark in periods of stress or periods where transaction data sources may be insufficient, or inaccurate or unreliable and the potential limitations of the benchmark in such periods; (ii) the identification of potential limitations of the benchmark, including its operation in illiquid or fragmented markets and the possible concentration of inputs.
22. In particular, pursuant to Article 1(3) of the Benchmark Statement Delegated Regulation<sup>4</sup>, in defining the potential limitations of the benchmark and the circumstances in which the measurement of the market or economic reality may become unreliable, the benchmark statement shall include at least:
- a description of the circumstances in which the administrator would lack sufficient input data to determine the benchmark in accordance with the methodology;
  - where relevant, a description of instances when the accuracy and reliability of the methodology used for determining the benchmark can no longer be ensured, such as when the administrator deems the liquidity in the underlying market as insufficient;
  - any other information that the administrator reasonably considers to be relevant or useful to help users and potential users to understand the circumstances in which

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<sup>4</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2018.274.01.0029.01.ENG&toc=OJ:L:2018:274:TOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2018.274.01.0029.01.ENG&toc=OJ:L:2018:274:TOC)

the measurement of the market or economic reality may become unreliable, including a description of what might constitute an exceptional market event.

23. In ESMA's view, the information already provided in the delegated regulation as it stands today includes a description of the circumstances in which the input data is no longer available or the accuracy and reliability of the methodology is no longer ensured. Therefore, ESMA does not suggest to further specify the benchmark statement delegated regulation.

### **Oversight function**

24. The oversight function should ensure oversight of all aspects of the provision of the benchmark. Pursuant to Article 5(3) of the Benchmarks Regulation, the oversight function is responsible for, inter-alia, (i) reviewing the benchmark's definition and methodology at least annually and (ii) overseeing any changes to the benchmark methodology and being able to request the administrator to consult on such changes. Pursuant to Annex I of the Benchmarks Regulation the independence of the oversight committee is only required in case of interest rate benchmarks. In addition, in accordance with Article 4(3) of the Benchmarks Regulation applicable to all types of benchmarks, the oversight function should be independent only when conflicts of interests linked to the group structure of the administrator cannot be mitigated.
25. The composition of the oversight function is further specified in Article 1(3) of the Oversight Function Delegated Regulation<sup>5</sup> and paragraph 12 of the guidelines for non-significant benchmarks. In particular, the oversight function shall be composed of members who combined have the skills and expertise appropriate to the oversight of the provision of a particular benchmark and to the responsibilities that the oversight function is required to fulfil. Members of the oversight function shall have appropriate knowledge of the underlying market or economic reality that the benchmark seeks to measure.
26. Further, Article 1(5) of the Oversight Function Delegated Regulation and paragraph 14 of the guidelines for non-significant benchmarks include a reference to contributors and users of benchmarks being members of the oversight function and the management of the related conflicts of interest: " *Where a benchmark is based on contributions and representatives of its contributors or of supervised entities that use the benchmark are members of the oversight function, the administrator shall ensure that the number of members with conflicts of interest does not amount to or exceed a simple majority.[...]*"
27. ESMA suggests to further elaborate on the application of the above mentioned requirement. In this context, the administrator should ensure that the members of the oversight function combined have a comprehensive overview and knowledge of the different types of users of the benchmark as well as its contributors and are able to adapt accordingly the oversight of the provision of the benchmark. This would allow to ensure

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<sup>5</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1637&rid=5>

that the decisions of the oversight function are suitable for the majority of users of or contributors to the benchmark.

28. Further, as specified in the Oversight Function Delegated Regulation, for significant and non-significant benchmarks, it may be possible for a single natural person to act as the oversight function, when the natural person can commit an appropriate amount of time to the oversight of the relevant benchmarks. Therefore, where the oversight function is a natural person, such oversight function is exempted from these guidelines as the proposed requirement is only appropriate to a committee.

### **Record keeping**

29. Article 8(1)(e) of the Benchmarks Regulation on the record keeping requirements requires an administrator to keep records of “other changes in or deviations from standard procedures and methodologies, including those made during periods of market stress or disruption”.

30. These record keeping requirements are not subject to any further specification in the form of a Level 2 or Level 3 measures.

31. In order to ensure the audit trail of such decisions and that the historical values of the benchmark could be reconstructed for traceability purposes, ESMA believes that the administrator should ensure to keep records of:

- the details of the methodology and input data used in exceptional circumstances;
- the period of the deviation from the standard methodology;
- the rationale behind the decision to deviate from the standard methodology;
- the approval of the decision to deviate from the standard methodology.



## **I. Scope**

### **Who?**

32. These guidelines apply to the competent authorities designated under Article 40(2) and (3) of the Benchmarks Regulation and administrators as defined in Article 3(1)(6) of the Benchmarks Regulation.

### **What?**

33. The guidelines, set out in Section V, apply in relation to Article 2(1)(l) and Article 4(1)(c) of the Methodology Delegated Regulation, Article 1(3) of the Oversight function Delegated Regulation and Article 8(1)(e) of the Benchmarks Regulation.

34. The guidelines, set out in Section VI, amend paragraphs 12 and 27(i) of the guidelines on non-significant benchmarks.

### **When?**

35. These guidelines will apply from Q3 2021.

## II. Legislative references

### Legislative references

<i>Benchmarks Regulation</i>	Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 <sup>6</sup>
<i>ESMA Regulation</i>	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC <sup>7</sup>
<i>Oversight function Delegated Regulation</i>	Commission Delegated Regulation (EU) 2018/1637 of 13 July 2018 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards for the procedures and characteristics of the oversight function <sup>8</sup>
<i>Methodology Delegated Regulation</i>	Commission Delegated Regulation (EU) 2018/1641 of 13 July 2018 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further the information to be provided by administrators of critical or significant benchmarks on the methodology used to determine the benchmark, the internal review and approval of the methodology and on the procedures for making material changes in the methodology <sup>9</sup>
<i>Benchmark statement Delegated Regulation</i>	Commission Delegated Regulation (EU) 2018/1643 of 13 July 2018 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further the contents of, and cases where updates are required to, the benchmark statement to be published by the administrator of a benchmark <sup>10</sup>

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<sup>6</sup> OJ L 171, 29.6.2016, p. 1.

<sup>7</sup> OJ L 331, 15.12.2010, p. 84.

<sup>8</sup> OJ L 274, 5.11.2018, p. 1.

<sup>9</sup> OJ L 274, 5.11.2018, p. 21.

<sup>10</sup> OJ L 274, 5.11.2018, p. 29



*Guidelines on non-significant benchmarks*

Guidelines on non-significant benchmarks under the Benchmarks Regulation<sup>11</sup>

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<sup>11</sup> ESMA70-145-1209



### **III. Purpose**

36. The guidelines, set out in Section V, are based on Article 16(1) of the ESMA Regulation. The objectives of these guidelines are to establish consistent, efficient and effective supervisory practices within the European System of Financial Supervision (ESFS) and to ensure the common, uniform and consistent application of the requirements related to material changes to the methodology or the use of an alternative methodology in exceptional circumstances. In particular, these guidelines achieve those objectives by ensuring that administrators of critical and significant benchmarks have in place a transparent framework when consulting on material changes to the methodology or using an alternative methodology in exceptional circumstances, together with an adequate oversight function. Furthermore, the guidelines clarify the record-keeping requirements related to the use of an alternative methodology for all benchmark administrators.
  
37. The guidelines, set out in Section VI, are based on Articles 5(6) and 13(4) of the Benchmarks Regulation. The purpose of the guidelines is to clarify and further specify certain aspects of the guidelines on non-significant benchmarks concerning the oversight function of and the use of an alternative methodology in exceptional circumstances by administrators of non-significant benchmarks.



## **IV. Compliance and reporting obligations**

### **Status of the guidelines**

38. In accordance with Article 16(3) of the ESMA Regulation, competent authorities and financial market participants must make every effort to comply with these guidelines.
39. Competent authorities to which the guidelines apply should comply by incorporating them into their supervisory frameworks, including where particular guidelines are directed primarily at financial market participants. In this case, competent authorities should ensure through their supervision that financial market participants comply with the guidelines.

### **Reporting requirements**

40. Within two months of the date of publication of the guidelines on ESMA's website in all EU official languages, competent authorities to which these guidelines apply must notify ESMA whether they (i) comply, (ii) do not comply, but intend to comply, or (iii) do not comply and do not intend to comply with the guidelines.
41. In case of non-compliance, competent authorities must also notify ESMA within two months of the date of publication of the guidelines on ESMA's website in all EU official languages of their reasons for not complying with the guidelines.

A template for notifications is available on ESMA's website. Once the template has been filled in, it shall be transmitted to ESMA.

42. Administrators are not required to report whether they comply with these guidelines.

## **V. Draft guidelines on the use of a methodology in exceptional circumstances and related governance and record keeping requirements**

### **V.1 Draft guidelines on the details of any methodology to be used to determine a critical or significant benchmark in exceptional circumstances pursuant to Article 2(1)(l) of the Methodology Delegated Regulation**

1. An administrator of critical or significant benchmarks or, where applicable, family of benchmarks should specify as part of the details of any methodology to be used in exceptional circumstances at least the following elements, insofar as they are relevant to that benchmark or family of benchmarks or to the input data used to determine it:

(i) the overarching principles for identifying the exceptional circumstances, taking into account at least market illiquidity, market volatility and any trading event such as trading interruptions or unexpected market closures;

(ii) to the extent possible, the alternative ways to calculate the benchmark or any key element of the methodology which may not be performed in exceptional circumstances;

(iii) to the extent possible, the scope of application of any methodology to be used in exceptional circumstances, taking into account the type of underlying assets of the benchmark provided;

(iv) the rationale behind the use of any methodology referred to in point (iii) above, taking into account the scope of application of such methodology;

(v) where possible, the time period during which any methodology referred to in point (iii) above is expected to be used to calculate the benchmark;

(vi) whether the use of any methodology referred to in point (iii) above is expected to have an impact on the value of the benchmark.

**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.**

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

## **V.2 Draft guidelines on material changes to the methodology used to determine a critical or significant benchmark pursuant to Article 4(1)(c) of the Methodology Delegated Regulation**

2. An administrator of critical or significant benchmarks or, where applicable, family of benchmarks should ensure to the extent possible that the shorter time frame in which a consultation on proposed material changes in the administrator's methodology may take place is nonetheless adequate to enable users and potential users of the benchmark to assess the proposed material changes.
3. To this end, the administrator should have regard to the complexity and nature of the proposed changes, to the impact which they would have on the benchmark and to the urgency of their implementation.
4. The procedures for a consultation within a shorter time frame should be set out in a sufficiently clear manner to enable users and potential users of the benchmark to understand what are the steps of the consultation process, including the assessment by the administrator of the responses received and whether a feedback statement summarising the responses will be provided together with the rationale behind the outcome of the consultation.

**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.**

## **V.3 Draft guidelines on the oversight function for critical and significant benchmarks pursuant to Article 1(3) of the Oversight Function Delegated Regulation**

5. In order to ensure that the oversight function is composed of members who together have the skills and expertise appropriate to the oversight of the provision of a particular benchmark and to the responsibilities that the oversight function is required to fulfil, an administrator of critical and significant benchmarks should ensure that, to the extent possible depending on the governance of the oversight function, the members of the oversight function together have a complete overview and understanding of the different types of users of the benchmark and its contributors and are able to adapt accordingly the oversight of the provision of the benchmark.
6. Where the oversight function is carried out by a natural person, paragraph 5 does not apply.

**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.**

## **V.4 Draft guidelines on the record keeping requirements pursuant to Article 8(1)(e) of the Benchmarks Regulation**

7. An administrator of critical, significant and non-significant benchmarks should keep records of:

- (i) the details of the methodology and input data used in exceptional circumstances;
- (ii) the time period of the deviation from the standard methodology;
- (iii) the rationale behind the decision to deviate from the standard methodology;
- (iv) the approval process of the decision to deviate from the standard methodology.

**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.**

**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.**

## VI. Draft guidelines amending the guidelines on non-significant benchmarks

8. The guidelines on non-significant benchmarks are amended as follows:

(1) The following guideline is added:

(27a) For the purposes of point (i) of guideline 27, an administrator of a non-significant benchmark or family of non-significant benchmarks should specify the following, where applicable:

(i) the overarching principles for identifying the exceptional circumstances, taking into account at least market illiquidity, market volatility and any trading event such as trading interruptions or unexpected market closures;

(ii) where possible, a summary of the alternative ways to calculate the benchmark or any key elements of the methodology which may not be performed in exceptional circumstances;

(iii) where possible, the scope of application of any methodology to be used in exceptional circumstances, taking into account the underlying assets of the benchmark provided;

(iv) where possible, the rationale behind the use of any methodology referred to in point (iii) above, taking into account the scope of application of such methodology.

(2) Guideline 12 is replaced by the following:

The oversight function should be composed of one or more members who together have the skills and expertise appropriate to the oversight of the provision of a particular benchmark and to the responsibilities the oversight function is required to fulfil. Members of the oversight function should have appropriate knowledge of the underlying market or economic reality that the benchmark seeks to measure and, to the extent possible, also of the different types of users of the benchmark and its contributors.

**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.**



## **VII. Annexes**

### **Annex 1 - Summary of questions**

**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.**

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

**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.**

**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.**

**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.**

**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.**

**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.**

## Annex II - Preliminary cost-benefit analysis

### Draft guidelines on transparency of the methodology

<p><i>Benefits</i></p>	<p>The proposed minimum list of key elements of the methodology to be disclosed by administrators would promote common and consistent transparency principles across different administrators of such benchmarks, mainly to the benefit of users and potential users. This will provide additional transparency to the market on the potential changes to the methodology in case of exceptional circumstances.</p> <p>The key elements of the methodology would be available to all market participants who would have access to the minimum list of information required and thus have a better view on the potential changes that could impact the benchmark.</p> <p>Further, the proposed information to be provided by administrators of critical and significant benchmarks in the context of a consultation for material changes to the methodology that may take place within a shorter time frame will further enhance transparency across different administrators of such benchmarks and will be beneficial to users of benchmarks. This will provide additional transparency to the market on the procedure that administrators will apply to any material change to the methodology in case of exceptional circumstances.</p>
<p><i>Costs</i></p>	<p>Potential costs arising from these draft guidelines will be borne by administrators.</p> <p>The incremental costs stemming from the proposed transparency of the methodology are not expected to be significant. Indeed, the draft guidelines specify further the requirements already included in the Benchmarks Regulation and the related delegated regulation regarding the publication of the key elements of the methodology, the specific procedure for material changes to the methodology.</p> <p>Additionally, the draft guidelines have been designed in a way to minimise the administrative burden on administrators of non-significant benchmarks, in accordance with the principle of proportionality which is a general requirement under the Benchmarks Regulation. Only the necessary information to be disclosed has been included in these draft guidelines, which are less burdensome for administrators of non-significant benchmarks.</p>

### Draft guidelines on the oversight function

<p><i>Benefits</i></p>	<p>The main benefit of the proposed draft guidelines is to further specify a key aspect of the composition of the oversight function so as to provide administrators with further guidance on how to implement Article 1(3) of the oversight function delegated regulation.</p> <p>For this reason, administrators would be the ones who will benefit the most from the proposed draft guidelines. Also investors and consumers would indirectly benefit from the guidelines, because the guidelines focus on the avoidance of potential conflicts of interest. This should allow benchmarks provided under the control of an appropriate oversight function that is established in compliance with the guidelines to be more robust against potential conflict of interest enhancing the integrity of the benchmark.</p>
<p><i>Costs</i></p>	<p>Potential additional costs will be borne by administrators.</p> <p>The proposed draft guidelines further specify the requirements already included in the Benchmarks Regulation and the relevant delegated regulation regarding the composition of the oversight function. When the oversight function already includes as members users and contributors, administrators would need to ensure that these members together have a complete overview and knowledge of the different types of users of the benchmark and its contributors.</p>

### **Draft guidelines on the record keeping requirements**

<p><i>Benefits</i></p>	<p>The proposed draft guidelines further specify the record keeping requirements that administrators should have in place in case of deviations from standard procedures and methodologies, including those made during periods of market stress or disruption. These guidelines would promote common and consistent record keeping across different administrators to the principal benefit of users and potential users.</p> <p>The draft guidelines focus on the record to be kept by administrators in exceptional circumstances. This should facilitate the ex-post analysis and evidence to be conducted in particular when the input data or methodology are changed in exceptional circumstances.</p> <p>Such ex-post analysis on input data and the methodology aims at strengthening the reliability of benchmarks through ensuring the integrity and accuracy of the input data and reliability of the methodology used.</p>
<p><i>Costs</i></p>	<p>Potential additional costs will be borne by administrators.</p>

	<p>The incremental costs stemming from the proposed draft guidelines on the record keeping requirements are not expected to be significant as they further specify the requirements already included in the Benchmarks Regulation regarding the record keeping requirements in exceptional circumstances.</p>
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