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| 29 September 2017 |

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| Response form for the Consultation Paper on  draft guidelines on non-significant benchmarks |
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| Date: 29 September 2017 |

Responding to this paper

ESMA invites responses to the questions set out throughout this Consultation Paper. Responses are most helpful if they:

* respond to the question stated;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

ESMA will consider all responses received by 30 November 2017.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

* Insert your responses to the questions in the Consultation Paper in the form “Response form\_Consultation Paper on scrutiny and approval”, available on ESMA’s website alongside the present Consultation Paper ([www.esma.europa.eu](http://www.esma.europa.eu) 🡪 ‘Your input – Open consultations’ 🡪 ‘Consultation on technical advice under the new Prospectus Regulation’).
* Please do not remove tags of the type <ESMA\_QUESTION\_GBMR\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
* If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
* When you have drafted your response, name your response form according to the following convention: ESMA\_ GBMR \_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_GBMR\_ABCD\_RESPONSEFORM.
* Upload the form containing your responses, in Word format, to ESMA’s website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input – Open consultations’ 🡪 ‘Consultation on technical advice under the new Prospectus Regulation’).

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly indicate by ticking the appropriate checkbox on the website submission page if you do not wish your contribution 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 Consultation Paper

This Consultation Paper may be of particular interest to administrators of benchmarks, contributors to benchmarks and users of benchmarks as well as to any market participant who is affected by the Benchmarks Regulation.

# General information about respondent

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| --- | --- |
| Name of the company / organisation | Deutsche Börse Group |
| Activity | Regulated markets/Exchanges/Trading Systems/Benchmark Administrators |
| Are you representing an association? |  |
| Country/Region | Germany |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_GBMR\_1>

Deutsche Börse Group (DBG) would like to thank ESMA for the opportunity to comment on the Consultation Paper on draft guidelines on non-significant benchmarks.

Among others, DBG organises markets characterised by integrity, transparency and safety for investors who invest capital and for companies that raise capital – markets on which professional traders buy and sell equities, derivatives and other financial instruments according to clear rules and under strict supervision. DBG, with its services and systems, ensures the functioning of these markets and a level playing field for all participants – worldwide.

DBG’s index activities are performed by Deutsche Börse AG (DBAG), which is providing DAX indices, as well as its subsidiary STOXX Ltd. From 2010 to 2015, STOXX Ltd. (STOXX) was a subsidiary of DBAG and SIX Group. In August 2015, DBG fully acquired STOXX. For our customers this means one single point of contact for all index brands. STOXX and DBAG together publish more than 10,850 global indices and benchmarks. STOXX and DAX indices are used as underlyings for financial products such as exchange-traded funds (ETFs), futures and options, and structured products, as well as for risk and performance measurement of investment activities. In addition, STOXX develops and produces indices and benchmarks for other index owners, e.g. issuers of financial products, asset managers or other index providers.

The DAX and STOXX indices reflect DBG’s core values of transparency, reliability and innovation. Since the introduction of the DAX index more than 25 years ago and the EURO STOXX 50 in 1998, we have continuously expanded our index family with objectivity and rules-based construction as guiding principles.

<ESMA\_COMMENT\_GBMR\_1>

1. : Do you have any views on the content of the draft guidelines on the oversight function for administrators of non-significant benchmarks? Would you suggest to include any additional elements or to delete one or more of the elements proposed? Please explain.

<ESMA\_QUESTION\_GBMR\_1>

**Transparency on criteria for the set-up of the Oversight Committee is important**

DBG generally supports ESMAs drafted guidelines on the oversight function for administrators of non-significant benchmarks. However, we would like to point out that we would deem it sensible that even administrators of non-significant benchmarks should include criteria for the set-up of the oversight committee (here referring to Art 3 (1) (c), (e) and (f) of the Final Report of draft technical standards under the Benchmark Regulation). It is important for any benchmark user, to be able to understand the quality and the risks which might come along with an Oversight Committee, including potential conflicts of interest.

For regulated data benchmarks, we generally support the option to include external representatives as members of the oversight function. We support this being optional and not mandatory, as inclusion of external representatives could introduce conflicts of interest to benchmark administration. In particular, we would be concerned about any mandatory inclusion of representatives from other, competing trading venues on the oversight committee. However, benchmark users may introduce risks, once they gain access to price sensitive information (such as planned index changes) before other market participants.

<ESMA\_QUESTION\_GBMR\_1>

1. : Do you have any views on the content of the draft guidelines on input data for administrators of non-significant benchmarks? Would you suggest to include any additional elements or to delete one or more of the elements proposed? Please explain.

<ESMA\_QUESTION\_GBMR\_2>

**Input data for non-significant benchmarks**

DBG strongly agrees with ESMAs comment as regards “input data” playing a significant / major role in the benchmark determination process. Unreliable input data will create unreliable and potentially wrong benchmark levels to the detriment of investors as experienced during the LIBOR crisis. Even in case not a big market impact is to be expected in case of non-significant benchmarks, the impact on single investors in non-significant benchmarks may be major for each of them personally.

In this context, we further agree with the regulators on the importance of ensuring proper input data usage, when creating a benchmark. This is especially the case once front office data is being used, regardless if the benchmark is defined as being significant or insignificant.

We need to point out that we strongly agree that regulation should always be proportionate, but for investor protection reasons, no compromise should be made on the data quality. Proportionality should go hand in hand with the quality of the input data rather than with the size of the benchmark.

We strongly support the inclusion of a three level of controls function in the case of front office data contribution (see DBG response to Question 3).

While we provide the comments below within a consultation on non-significant benchmarks they are applicable for significant benchmarks alike and had been submitted to ESMA before in a more detailed format.

However, in terms of the scope of input data there is further clarification necessary to have a clear distinction between contributed data and regulated data as follows:

1. **Readily available data**

Data is readily available when it is not produced for the dedicated purpose only/or primarily of using it in a benchmark. Readily available data is usually used for many purposes, including the provisions of benchmarks. The following classification can be made as regards readily available data:

* “Readily available data” is the opposite of contribution data
* “Regulated data” is a sub- group of “readily available data”
* Regulated transaction data is “regulated data”
* Pre-trade data from a regulated market is “readily available data” but not regulated data
* Third country trading venues data is readily available data – it is not contributor data

Furthermore, no exclusive data usage agreements exist between the data source and the benchmark administrator.

DBG would appreciate clarification accordingly.

1. **Contribution data**

Contributor data is usually obtained in a customized fashion. The benchmark provider enters into a contractual relationship with pre-defined and dedicated contributors, for the provision of specified input data. Such a contract often entails clearly specified requirements for the delivery of input data to the benchmark administrator *(Final Report of draft technical standards under the Benchmark Regulation 13.1.2 Input data Art 1 (1) (c) input data is provided by the contributor in a format specified by the administrator).*

Usually, such a contract constitutes an exclusive arrangement between one benchmark provider and the contributor(s) (e.g. discrimination of any other benchmark provider).

No exclusive contracts are being made available by trading venues, neither within the EU nor outside the EU. Third country trading venues are no contributors in the sense of the BMR.

DBG would appreciate clarification accordingly.

1. **Regulated data**

Consequently, it is necessary to determine that data from regulated trading venues within and outside the EU will be considered regulated data and that trading venues should not be considered contributors. In case that there is no equivalence decision in place with countries of origin of various trading venues, data of such trading venues should at least be considered to be “readily available” data.

1. **Clarification of “directly” within the regulated data definition**

The legal provision requiring regulated data to be sourced “entirely and directly” needs to be further clarified as the Level 1 text does not specify the treatment of data sourced from third party vendors (Market Data Vendors such as Thomson Reuters).

Benchmark administrators of regulated data benchmarks usually obtain data from trading venues via market data service providers (or Market Data Vendors) that provide the technical link between the regulated venue and the benchmark administrator without making any alterations to the raw and unprocessed data. Such purely technically driven practices should generally be deemed to be in line with the provision of a regulated data benchmark, specifically meeting the requirement for the data to be taken ‘entirely and directly from the trading venue’ so long as the data is provided in a raw and unprocessed state by the Market Data Vendor to the Benchmark Administrator.

In more detail: Art 3 (1) (5) (b) refers to the “provision of a benchmark” as regards the collection, analysis or the processing of input data for the purpose of determining a benchmark. While we agree that the definition leaves certain room for interpretation we need to point out that a too strict interpretation of the regulatory text could lead to a scenario where thousands of benchmark may not be provided anymore, as hardly any benchmark provider would be in the economic position to connect to tens or hundreds global regulated data sources.

In the above scenario, specialized service providers such as Market Data Vendors act as PURELY technical means to provide access to every relevant regulated markets data (standard data) via one technical access.

DBG would appreciate clarification accordingly.

<ESMA\_QUESTION\_GBMR\_2>

1. : Do you think the proposal to include in the guidelines a requirement for the three levels of control functions appropriate for administrator of non-significant benchmarks?

<ESMA\_QUESTION\_GBMR\_3>

**Three levels of control functions considered to be appropriate for front-office data contributions to benchmarks**

DBG strongly supports ESMA in striving for a proportionate application of the BMR. As lined out already in our response to Question 2, we consider it essential not to compromise on the data quality in the light of investor protection especially when it comes to front office contributions. Most IBOR scandals originated from front-office data, which was not contributed in the adequate and required quality.

The three level of defense as lined out by ESMA seem to be a pre-requisite at least within the front-office environment of contributors and the inclusion of those requirements within the ESMA Level 3 Guidelines is strongly supported by DBG. This should be the case irrespectively if the benchmark is being classified significant or non-significant.

<ESMA\_QUESTION\_GBMR\_3>

1. : Do you agree with the content of the draft guidelines on the transparency of the methodology for administrators of non-significant benchmarks? Would you suggest to include any additional elements or to delete one or more of the elements proposed? Please explain.

<ESMA\_QUESTION\_GBMR\_4>

DBG generally supports ESMAs considerate proposal as regards the transparency of the methodology. However, we agree as well with ESMAs comments made in recital (1) of RTS 13.1.3. Transparency of methodology (Final Report of draft technical standards under the Benchmark Regulation). Here ESMA explains that the importance of a transparent methodology lies in the provision of a better understanding of the nature of the benchmark in question by potential users.

In this context, DBG likes to point out that a reduced transparency for non- significant benchmarks as regards the criteria used by the Benchmark Administrator for selecting the sources of input data (as required for significant benchmarks in Art 1 (1) (c) of RTS 13.1.3), or the criteria for periodically changes to the methodology of significant benchmarks (including frequency of change, or rebalancing of constituent of benchmarks according to Art 1 (1) (k) will not provide any significant relief as regards compliance requirements for non-significant benchmark providers, while it restrains investors to gather important information. Frequent changes in the methodology may increase administration costs for benchmark users, e.g.

DBG therefore, would support the inclusion of the above mentioned Art 1 (1) (c) and (k) of RTS *13.1.2 (Final Report of draft technical standards under the Benchmark Regulation)* as well for non-significant benchmarks.

<ESMA\_QUESTION\_GBMR\_4>

1. : Do you think the proposal to include in the guidelines a requirement for publishing or making available to the public “a description of specific events that may give rise to an internal review including any mechanism used by the administrator to determine whether the methodology is traceable and verifiable” is appropriate for administrator of non-significant benchmarks?

<ESMA\_QUESTION\_GBMR\_5>

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<ESMA\_QUESTION\_GBMR\_5>

1. : Do you agree with the content of the draft guidelines on governance and control requirements for supervised contributors to non-significant benchmarks? Would you suggest to include any additional elements or to delete one or more of the elements proposed? Please explain.

<ESMA\_QUESTION\_GBMR\_6>

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<ESMA\_QUESTION\_GBMR\_6>

1. : Do you think that the proposal to include in the guidelines a requirement of establishing, where appropriate, a physical separation of submitters from other employees of the supervised contributor is suitable also for supervised contributors to non-significant benchmarks?

<ESMA\_QUESTION\_GBMR\_7>

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<ESMA\_QUESTION\_GBMR\_7>