

Response Form to the Consultation Paper

Draft Regulatory Technical Standards under the Benchmarks Regulation



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 **9 May 2020**.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

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:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA_QUESTION_CP_BRTS_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. 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.
4. When you have drafted your response, name your response form according to the following convention: ESMA_BRTS_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_BRTS_ABCD_RESPONSEFORM.

5. Upload the form containing your responses, in Word format, to ESMA's website (www.esma.europa.eu under the heading "Your input – Open Consultations" → "Consultation on MiFIR report on Systematic Internalisers in non-equity instruments").

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 publically 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 under the heading [Legal Notice](#).

Who should read this paper

This paper may be specifically of interest to administrators of benchmarks, contributors to 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.

General information about respondent

Name of the company / organisation	Euronext
Activity	Regulated markets/Exchanges/Trading Systems
Are you representing an association?	<input type="checkbox"/>
Country/Region	Netherlands

Introduction

Please make your introductory comments below, if any

<ESMA_COMMENT_CP_BRTS_1>

Euronext is a registered Benchmark Administrator. To date Euronext offers more than 500 benchmarks, of which a significant part are Regulated-Data Benchmarks. In addition, Euronext operates regulated trading venues in 6 EEA countries and in that capacity Euronext also offers trading in products that are making use of benchmarks, such as index options, futures and other structured products and funds.

Euronext believes that the Benchmark Regulation (BMR) brought **consistency, transparency and trust**. We believe that having a clear framework in place will support the further goal of a Capital Markets Union, harmonizing the legal framework that supports trust in long term investments.

From our experience as a Benchmark Administrator to date, we believe some elements of the Benchmark Regulation could be improved to better reflect the goals set out originally by BMR.

Further proportionality – concerns on methodology

The possible impact a benchmark has on the economy and the chances of manipulation of the benchmark formed the basis for a proportional approach and led to establishing different categories of benchmarks under BMR. Although we agree with the current set up of these categories, the actual impact of the regulatory framework and the proportionality necessitates further discussion. Regulated-Data Benchmarks, offered by Euronext, benefit from certain exemptions. These exemptions mainly cover the absence of an active “contribution” as these benchmarks are based on regulated transaction data. **We believe further proportionality might be considered** reflecting the nature of these benchmarks based on regulated transaction data. In respect of the proposed **RTS on Methodology**, **we believe the back testing proposals should be reconsidered**, allowing for more proportionality with respect to benchmarks based on transaction data.

Non-Significant Benchmarks - concerns on disproportional requirements

Euronext offers Significant and Non-Significant Benchmarks. Ensuring compliance with BMR for the Non-Significant Benchmarks requires relatively more attention and scrutiny compared to ensuring compliance of the Significant benchmarks. Especially when considering the goal of policymakers which was to ensure that there would be a calibrated approach relative to the threat the cessation of a benchmarks poses to the wider financial system. **Where it regards Non-Significant Benchmarks that have a very limited use, the governance & control requirements require a disproportionate amount of time and effort.** The output of these benchmarks should not necessitate a full framework of governance, checks and balances considering the relative impact on the economy. With respect to the proposed RTS for Non-Significant Benchmarks we believe that the requirement to **supply additional information** regarding how Benchmark Administrators address requirements they have chosen to opt out of could potentially become a **significant administrative burden**.

Duplication of disclosure

Although Euronext agrees that all information required to be published in the Benchmark Statement is important for transparency reasons, we do question the value of the requirement to integrate all this information in one single document: the information included in the Benchmark Statement is already available, most of it in the methodology and rulebooks. Adding already available information to a benchmark statement (especially where an administrator operates a multitude of benchmarks) leads to **additional administrative burdens without increasing transparency**.

<ESMA_COMMENT_CP_BRTS_1>

Questions

Q1 : Do you agree with the governance arrangements set above? Do you have any additional suggestions? Please specify.

<ESMA_QUESTION_CP_BRTS_1>

We agree on the scope presented by ESMA in paragraph (7) that this RTS only relates to article 4(1) BMR. We do however believe that the draft RTS **does not allow for sufficient proportionality**. While ESMA states in paragraph (5) of the draft RTS that the “concept of “robust governance arrangements” should be interpreted in accordance with the nature, scale and complexity of the Benchmark Administrator”, the proposed RTS only suggests small alleviations for Non-Significant Benchmarks compared to other benchmarks. In addition, we do not agree with ESMA’s statement in paragraph (5) that in case an administrator administers different types (i.e. non-significant, significant or critical) of benchmarks, the most stringent requirements should apply to them. This would negate the regimes applicable to Non-Significant Benchmarks and disapply any proportionality.

In addition, some of the provisions proposed might not be well suited to Exchanges that are also Benchmarks Administrators. As Exchanges are already covered by MiFID II/MiFIR governance requirements they could potentially become subject to overlapping divergent requirements. We would propose where overlapping or conflicting governance arrangements exist, those that are applicable to the broader group should prevail. We do therefore not agree with ESMA’s approach in paragraph (8) where ESMA suggests a cumulative approach. This would not only lead to a disproportionate burden but possibly also to applying rules that in practice could conflict, especially where group policies and benchmark related policies would cover the same topic. Indeed, leveraging existing frameworks as suggested would be recommendable. It should be considered and acknowledged that Benchmarks Administrators can be part of a larger group and policies at group level should be allowed.

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Q2 : Do you agree that administrators should have in place a remuneration framework?

<ESMA_QUESTION_CP_BRTS_2>

We do not support a separate remuneration framework. As currently drafted we believe article 1(5) may be problematic for Benchmark Administrators which are part of a wider corporate group which sets remuneration policies centrally.

<ESMA_QUESTION_CP_BRTS_2>

Q3 : Do you agree that the same requirements should apply to an administrator that is a natural person? Please elaborate.

<ESMA_QUESTION_CP_BRTS_3>

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Q4 : Do you think that other conditions should be taken into account to ensure that the methodology complies with the requirements of the BMR? Please specify.

<ESMA_QUESTION_CP_BRTS_4>

In terms of conditions to be considered: we do not believe other conditions need to be considered. We do have some questions on some of the statements in the ESMA report and the draft RTS.

A robust methodology – flexibility to adapt to new circumstances

in paragraph (30) of the Consultation Paper, ESMA uses an example of dividend reinvestments and the assumption on the time spent on reinvesting to explain the representativeness of a methodology. While we understand this to be an example, ESMA points out that any assumption should in any case be consistent in order for the methodology to remain robust. While we support that statement, it must also be acknowledged that in some circumstances (changes in) market or economic behaviour should lead to a reassessment of these assumptions and a consequent possible change to the methodology in order to have the methodology better reflect the underlying market.

Input data

In relation to the type of data to be used, we agree that transaction data should preferably be used where available (paragraph 31 of the Consultation Paper). However, for some benchmarks, such as certain types of bond benchmarks, it might not be possible to use transaction data in all cases. It should therefore still be possible to use other types of input data, including quotes.

Historical value assessment

in paragraph (36) of the Consultation Paper and article 3 of the draft RTS, ESMA suggests that in order to comply with BMR article 12(1)(c), the methodology should at least include:

- a. an assessment of the adequacy and appropriateness of the historical values of the benchmark produced by means of that methodology;
- b. reliable inputs, including appropriate size of the data samples, if any.

We are unsure what this entails. How does ESMA envisage historical values to be assessed? Especially in the case of regulated-data we believe this should not apply. In these cases, regulated transaction data is used, which is verifiable.

Hypothetical data

Article 4(1) of the draft RTS requires an impact assessment using hypothetical data for unrealised stressed market conditions. It is unclear what type of data would be required for this, especially in the case of Regulated-Data Benchmarks.

Resilience

In paragraph (44) of the Consultation Paper, ESMA states that the administrator should ensure the methodology is resilient to market circumstances so that it does not cease in the event of adverse circumstances. While in general we understand this statement, it must be noted that certain types of benchmarks actually do cease to exist in those types of circumstances, notably short and/or leveraged indices which is the prudent approach in our view. A clarification to acknowledge this exception would be helpful.

<ESMA_QUESTION_CP_BRTS_4>

Q5 : Do you consider that additional requirements are needed to ensure that the methodology is traceable and verifiable? Please specify.

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<ESMA_QUESTION_CP_BRTS_5>

Q6 : Do you think that the back-testing requirements are appropriate? Please specify.

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Proportionality

While ESMA explains (paragraph 31 of the Consultation Paper) that benchmarks based on transaction data are less prone to manipulation, it is still suggested that Regulated-Data Benchmarks be subject to the same requirements as benchmarks based on contributed input data. Only Non-Significant Benchmarks would benefit from some alleviations in terms of not having to apply all provisions.

Black Swan events - resilience

Regarding the provisions on benchmarks' resilience, it should be recognised that circumstances may arise that could require adaptation of the benchmark's methodology. While we agree that the methodology should in principle be consistent over time, there may be events which require swift action from the Benchmark Administrator regarding methodology adaption. This type of event may make a deviation from usual processes necessary. We fully agree that this would be in extraordinary circumstances only, nevertheless, these should be considered by ESMA. Not allowing for emergency adaptations would not only negatively impact EU investors but also non-EU investors and EU benchmark providers as their benchmarks would potentially be less resilient compared to non-EU benchmarks. In a global competitive market, this would negatively impact EU benchmarks' competitiveness.

Back-testing requirements

Euronext believes that the proposed requirements for back-testing as proposed in article (3) of the draft RTS are far-reaching and that a more proportional approach should be considered for Regulated-Data Benchmarks.

Some requirements may need further explanation:

- It is not clear to us how the "assessment of the adequacy and appropriateness of the historical values of the benchmark" is to be performed (article 3(1)(a)). Which criteria would be applied for this assessment? Specifically, where regulated-data is used, the adequacy should be pre-established as it is based on transaction data conducted on Regulated Markets.
- Article 3(2) stipulates that the back-testing against available transaction data should be an ex-post back-testing which compares the observed outcome of the level of the benchmark based on transaction data to the expected outcome derived from the use of the methodology. In the case of Regulated-Data Benchmarks, usually, the back-test is by definition executed by applying the methodology to past transaction data (or the input data stated in the methodology) and is performed before the benchmark goes live. Once the index is live, there cannot be any difference between the live index data and a back-test performed on the same live period, since the algorithm and data are the same. We believe this requirement does not fit with the nature of a Regulated-Data Benchmark. Moreover, it is not clear to us what is meant by "the expected outcome derived from the use of the methodology".
- Article 3(2) also requires the administrator to consider clear statistical tests to assess the back-testing results. The administrator should have a documented process regarding the action it would take depending on the results of the back-testing on a case by case basis. It is unclear what type of statistical tests are expected to be performed in order to validate the back-test with regards to the application of the methodology to input data.

- Article 3(2)(e) requires a back testing frequency identical to the frequency of the calculation. For Regulated-Data Benchmarks we believe this is too onerous a requirement. From a Regulated-Data Benchmarks point of view, we believe daily back testing should be sufficient.
- With respect to article 4 and the representativeness: benchmarks that are built as portfolios of tradeable securities make use of input data typically provided by exchanges in the form of traded prices, quotes or settlement data and thus should intrinsically reflect the evolving underlying economic reality also in adverse market conditions.

In conclusion, in respect of Regulated-Data Benchmarks we believe Back-tests should be executed by applying, to the largest extent possible, the same methodology that will be applied by the index when live. A daily back test should suffice in these cases.

<ESMA_QUESTION_CP_BRTS_6>

Q7 : Do you agree with the requirements set out above? Do you have any additional suggestions? Please specify.

<ESMA_QUESTION_CP_BRTS_7>

We welcome the proportional approach proposed by ESMA whereby Regulated-Data Benchmarks would not be subject to this RTS due to the character of the input data used for these types of benchmarks.

<ESMA_QUESTION_CP_BRTS_7>

Q8 : Do you agree with the systems suggested for the surveillance of market manipulation? In particular, do you think that an automated system should be required only when it appears to be adequate according to the nature, scale and complexity of the benchmark? Please specify.

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Q9 : Do you think that other criteria should be considered in relation to the transition of the provision of the critical benchmark to a new administrator? Please specify.

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Q10 : Do you think that other criteria should be considered in relation to the cessation of the provision of a critical benchmark? Please specify.

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Q11 : Do you agree with the criteria under which competent authorities may require changes to the compliance statement? Please specify

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Euronext considers that Non-Significant Benchmarks should be subject to a proportional approach. We share ESMA's understanding in paragraph 113 of the Consultation Paper that 'changes (to the compliance statement)' does not mean that NCAs could require administrators of Non-Significant Benchmarks to apply the requirements which they have chosen not to comply with.

However, the proposed requirements for administrators of Non-Significant Benchmarks to **supply additional information** regarding how they address requirements they have chosen to opt out of could potentially become a significant administrative burden for benchmarks administrators of benchmarks that have been deemed non-significant. Depending on how the provisions would be implemented, there is a risk that providing further details in the compliance statement may in fact be as burdensome as applying the actual requirements, in which case the proportional regime set out in the BMR would be of limited value.

<ESMA_QUESTION_CP_BRTS_11>

Q12 : Do you agree with the criteria under which competent authorities may require changes to the control framework requirements? Please specify

<ESMA_QUESTION_CP_BRTS_12>

Euronext considers that Non-Significant Benchmarks should be subject to a proportional approach. Regarding the proposed criteria, it is worth reminding that Non-Significant Benchmarks are deemed such following an assessment concluding that there would not be a significant or adverse impact were the benchmark no longer provided.

Moreover, recital 42 of BMR states: "While non-significant benchmarks could still be vulnerable to manipulation, they are more easily substitutable, therefore transparency to users should be the main tool used for market participants to make informed choices about the benchmarks they consider appropriate for use." Based on this it is worth considering whether Non-Significant Benchmarks should be subject to requirements to outline their "exposure to the risk of business discontinuity".

<ESMA_QUESTION_CP_BRTS_12>