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| Response Form to the 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’.

**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\_GMEC\_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\_ GMEC \_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_ GMEC\_ABCD\_RESPONSEFORM.
5. 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” 🡪 “Guidelines on methodology to be used in exceptional circumstances and amendment to the guidelines on non-significant benchmarks”).

**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](http://www.esma.europa.eu) under the heading [Legal Notice](http://www.esma.europa.eu/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**

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

**Introduction**

***Please make your introductory comments below, if any***

<ESMA\_COMMENT\_CP\_GMEC\_1>

Deutsche Börse Group (DBG) welcomes the opportunity to provide a response to the ESMA consultation on methodology to be used in exceptional circumstances and amendment to the guidelines on non-significant benchmarks. We are responding to this consultation, both from a benchmark administrator’s as well as a user of benchmarks perspective.

First of all, as a general remark we would like to mention that the existing requirements for DBG benchmark administrators have proven to be adequate to deal with exceptional circumstances like COVID-19. The difficulty is rather in understanding prevailing market conditions in such cases and to find adequate answers in terms of adjusted benchmark methodologies. There are obviously limits in terms of being able to anticipate such developments.

Concretely, in order to be authorised, registered, recognized or endorsed, benchmark administrators have to clearly describe their benchmark calculation methodologies, including the hierarchy of input data. The latter acts as a contingency plan for when certain data is unavailable and, if established properly, covers all types of exceptional circumstances. If a change in the economic reality requires a material change to the methodology, benchmark administrators need to follow governance rules, such as running a public consultation with the users of the respective benchmark and letting their decision making bodies decide on the change. Having too prescriptive rules could jeopardise the flexibility that is needed from these decision-making bodies to be able to deal with unforeseeable developments. For example, in cases of market turmoil, it is key that administrators are able to adjust their methodologies quickly to changing circumstances.

In sum, from our perspective the requirements laid out in the guidelines are already inherent to the BMR today and the proposed guidelines therefore seems unnecessary.

<ESMA\_COMMENT\_CP\_GMEC\_1>

**Questions**

1. : 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.

<ESMA\_QUESTION\_CP\_GMEC\_1>

Article 1(i) of the Draft Guideline V.1 requires administrators to detail 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.

Exceptional circumstances are by nature rare and, most often, unforeseen. Administrators will need a certain amount of flexibility to respond to unexpected circumstances. While providing users of benchmarks with a framework would create increased transparency in cases that are unforeseen, it should not be overly prescriptive as this may inhibit the flexibility needed to cater to unforeseen matters. Being overly detailed in the methodology could lead to discussions between users and the administrator as to whether the given circumstances qualify as extraordinary or not.

In addition, it should be made clear that detailing unexpected circumstances and potential remedies by the administrator should not constitute an expectation to act accordingly in any case which materializes at a later point in time. The decision to act is ultimately a decision to be taken by the administrator’s governance, based on the particular circumstances prevailing at the relevant moment in time and potential outcomes.

To provide you with a concrete example; STOXX’ current approach already covers events with a market impact that by their nature could reasonably not be foreseen, or events whose impact on an index or the economic reality the index intends to represent, cannot be determined in advance - including, but not limited to, events of natural, social, political, economic nature that may negatively impact regional or global societies or economies. Examples may be, but are not limited to, the following: (i) change to currency convertibility or restriction on capital flows announced by a country; (ii) market disruption, e.g. an event that materially negatively influences the aggregated liquidity, capitalization or tradability of an entire market; (iii) exchange closure, (iv) government intervention, (v) pandemic, (vi) natural catastrophe. We think that the clause should be general, and not a closed list of circumstances so any future event can be covered. We do not believe that more granularity is possible or beneficial ex ante.

<ESMA\_QUESTION\_CP\_GMEC\_1>

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

<ESMA\_QUESTION\_CP\_GMEC\_2>

In general, we refer to our remarks under Question 1. Regarding V1. iii) and iv), the limitation "to the extent possible" should also apply in both cases.

<ESMA\_QUESTION\_CP\_GMEC\_2>

1. : 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.

<ESMA\_QUESTION\_CP\_GMEC\_3>

We believe the administrator should have the option to shorten or extend the consultation period in extreme or exceptional market conditions or analogous extraordinary situations in order to reconcile the effective date of a proposed change with index maintenance requirements; e.g. an equity/bond index rebalancing, index review, and corporate action adjustment, or - any other similar cases applying the principle of proportionality. The administrators should be able to consider the feedback received and decide whether the relevant changes shall become effective. Moreover, if the received feedback is ambiguous, or if no stakeholders participated, the administrator should be able to conduct another consultation.

<ESMA\_QUESTION\_CP\_GMEC\_3>

1. : 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.

<ESMA\_QUESTION\_CP\_GMEC\_4>

It is necessary that the appropriate set of skills and expertise comes from the members together collectively; it should not be required that each member fulfils this requirement individually. Conversely the knowledge of the users should not compromise the independence of the members and therefore we deem it important that certain members should have compliance focus.

<ESMA\_QUESTION\_CP\_GMEC\_4>

1. : 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.

<ESMA\_QUESTION\_CP\_GMEC\_5>

We refer to our remarks under Question 1. Generally, we are of the opinion that the existing requirements have proven to be adequate to deal with exceptional circumstances. All relevant governance decisions are documented, and such minutes are being stored. We should be allowed to continue with such practice. A detailed prescription on record keeping is therefore not necessary.

<ESMA\_QUESTION\_CP\_GMEC\_5>

1. : 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.

<ESMA\_QUESTION\_CP\_GMEC\_6>

In general, we refer to our remarks under Question 1.

<ESMA\_QUESTION\_CP\_GMEC\_6>

1. : 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.

<ESMA\_QUESTION\_CP\_GMEC\_7>

We refer to our introductory statement and response under Q1. From our perspective the requirements laid out in the guidelines are already inherent to the BMR today. It is unclear what the proposed guidelines add to the requirements and one should be cautious not to create an administrative burden, particularly for administrators of smaller benchmarks. Regarding the non-significant benchmarks specifically, the comments above shall apply as well. For practicality reasons, the requirements for benchmarks should be fulfillable by more generic measures that apply to multiple benchmarks or families of benchmarks that are impacted in the same way, irrespective whether such benchmarks are significant or not.

<ESMA\_QUESTION\_CP\_GMEC\_7>