

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 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 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 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_GMEC_1>

Euronext is a registered Benchmark Administrator. To date Euronext offers more than 700 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 welcomes the opportunity to respond to ESMA's consultation on changes to the methodology. From our experience as a Benchmark Administrator, we strongly believe that flexibility is needed to cater to unexceptional circumstances such as those pointed to in the Consultation Paper. Recognising the boundaries of this flexibility already being set by BMR we question the need for further detailed rules. It is our experience that the benchmarks continued in a strong and resilient manner during the first turmoil as a result of the COVID-19 crisis. In short – the framework BMR offers to date is sufficiently drafted. Should ESMA nonetheless decide additional rules are needed, we have made some suggestions overleaf.

<ESMA_COMMENT_CP_GMEC_1>

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.

<ESMA_QUESTION_CP_GMEC_1>

Euronext offers indices that are primarily based on regulated data. Exceptional circumstances as referred to in this question are mainly found in the **availability or volatility of underlying data**. In those cases, the publication of the index could be delayed, suspended or declared indicative if the Administrator believes that circumstances prevent the proper calculation of the index. In addition, the periodic review of the index could be delayed.

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 by nature are 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, creating a certain level of comfort and clarity in cases that are unforeseen, this framework 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 on whether or not any circumstance qualifies as such and may create a false sense of expectation with users.

Also, It should be made clear that detailing unexpected circumstances and potential remedies by the Administrator **should not constitute an expectation to act in all cases involved**. The decision to act, is ultimately subject to the Administrator and based on the particular circumstances and potential outcomes.

<ESMA_QUESTION_CP_GMEC_1>

Q2 : 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>

No, we refer to our remarks under Question 1.

<ESMA_QUESTION_CP_GMEC_2>

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.

<ESMA_QUESTION_CP_GMEC_3>

Material changes in the methodology should not be undertaken with a rush consultation. If it is needed to act swiftly in response to an unexpected development, then the procedures for such events should apply, enabling an exceptional deviating treatment or methodology. For material changes allowing a proper time to reflect and respond is appropriate.

<ESMA_QUESTION_CP_GMEC_3>

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.

<ESMA_QUESTION_CP_GMEC_4>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_GMEC_4>

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.

<ESMA_QUESTION_CP_GMEC_5>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_GMEC_5>

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.

<ESMA_QUESTION_CP_GMEC_6>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_GMEC_6>

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.

<ESMA_QUESTION_CP_GMEC_7>

No, we refer to our remarks under Question 1.

<ESMA_QUESTION_CP_GMEC_7>