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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 | European Energy Exchange AG |
| 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>

European Energy Exchange (EEX) 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 user of benchmarks’ perspective as well as that of a benchmark administrator of benchmarks that are neither critical nor significant.

First of all, as a general remark we would like to mention that for the existing requirements for EEX 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 seem 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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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 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. This practice should continue to be allowed. 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>

We refer to our introductory statement and response under Question 5.

<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.

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 practical 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>