



European Association of Co-operative Banks comments on

EBA and ESMA Consultation Paper on

Principles for Benchmarks-Setting Processes in the EU

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The **European Association of Co-operative Banks** (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 28 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 4.000 locally operating banks and 72.000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 217 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 56 million members and 860.000 employees and have a total average market share of about 20%.

The voice of 4.000 local and retail banks, 56 million members, 217 million customers

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General remarks

The Members of the European Association of Co-operative Banks (EACB) are pleased to receive the opportunity to comment on EBA's and ESMA's Consultation on Benchmarks.

In general EACB welcomes EBA's and ESMA's intentions to establish principles focused on reference rates and other benchmark-setting-processes in the EU. Benchmarks demonstrate traits and characteristics of a public good for the capital market and are therefore of fundamental importance as a financial market infrastructure to allow our banks to finance and support the real economy. These processes are dependent on the confidence invested of all market participants and therefore integer processes are needed to provide trustworthy benchmarks.

Given Commissioner Michel Barnier's recent comments on an upcoming EU regulation on benchmark setting in the coming months, we would clearly favour to put more importance on the swift implementation of such regulation (guided by the upcoming IOSCO recommendations) instead of an interim solution of non-binding principles as currently proposed by EBA and ESMA. In our view this approach will ensure a more balanced and coherent impact assessment that is inevitable to any regulation which will most certainly have complex economic repercussions.

Given the extremely tight deadlines for the consultation, EACB would like to highlight that its comments will only reflect our views on certain parts of the discussion. *EACB's partial response shall not be construed as consent on the other areas of consultation on benchmarks and reserves the right to comment on these at a later stage of the public debate.*

Specific remarks

Question 1: Definition of the activities of benchmark setting: Do you agree with the definitions provided in this section? Is this list of activities complete and accurate?

Firstly, we would like to point out that according to our understanding the proposed definition of a benchmark is following the terminology set out in the current review of the Market Abuse Directive. We understand that the proposal currently represents the sole definition of benchmarks in the current in the EU regulation framework. We, however, also have to raise some doubts whether the present definition is not casting too wide a net and should therefore be narrowed down to benchmarks that are used by a wide percentage of the market and therefore represent the raised public good principle.

Secondly, we argue against a one-size-fits-all approach. We believe it important that the importance and wide use of a benchmarks has to be also taken into consideration when considering the principles and its ensuing obligations. The current definition is cast too



wide and makes any figure published¹ into a benchmark, once it is published in some form by one party and used as a reference in a third party's product. This can happen without the knowledge of the first party and would subsequently trigger all resulting governance requirements. Although these individual benchmarks most certainly merit proper governance in the interest of markets and clients, due their size and importance and with regards to proportionality, we feel that these contracts merit their individual approach of standard setting with taking account of organisational set-up, compliance efforts, internal rules etc.

Question 2: Principles for benchmarks: Would you consider a set of principles a useful framework for guiding benchmark setting activities until a possible formal regulatory and supervisory framework has been established in the EU?

We would prefer a formal regulatory and supervisory framework established in the EU instead of a set of principles due to the possible huge consequences of the regulation for the financial market and the sheer impossibility to regulate questions like legal continuity on the grounds of principles alone.

Question 8: Principles for users of benchmarks: Do you agree with the principles cited in this section? Would you add or change any of the principles?

Firstly, coming back to our earlier comments on proportionality we also see problems in the definition of "benchmark users" which covers nearly all credit institutions due to the wide spread use of financial benchmarks in the community.

General principles

F.1 Benchmark users should regularly assess the benchmarks they use in financial products or transactions, and verify that the benchmark used is appropriate, suitable and relevant for the targeted market. Any potential irregularities observed in a benchmark should be notified to the benchmark administrator or the relevant competent authorities if appropriate.

Because of this extensive scope Principle F1 would require regular and extensive benchmark assessments in each credit institution in the EU because they would fall under the scope of "benchmark user". We clearly believe that this principle goes too far, as it completely ignores the public goods characteristic of financial benchmarks meaning that these benchmarks are trusted in because of the institutional arrangement – comparable to the trust in a currency – but only controllable to a certain degree by the individual market participants.

We can agree that there should exist some limited user checks for market benchmarks, but to demand a regular assessment represents bureaucratic overload for smaller players. We believe that such a principle would hurt in particular smaller co-operative banks, as one needs to be an active participant of the money market to be well enough informed of the current market conditions to assess a money market reference rate. But our small and medium-sized credit institutions are not part of the money market, so they are not able to assess rates as required.

¹ p. 4, para. 11: "Benchmark: Any commercial index or published figure, including those on the internet whether for free of charge or not, [...]"



Supporting principles

F.2 A benchmark user should ensure that the relevant benchmark administrator and benchmark calculation agent comply with the principles applying to benchmark administrators and benchmark calculation agents. In order to comply with this requirement the benchmark user may consult, among other sources, the confirmation of compliance publicly disclosed by the benchmark administrator and the benchmark calculation agent, and should apply reasonable judgement.

With regard to the Principle F2, it is impossible for most benchmark users to judge the compliance of the benchmark administrator and the benchmark calculation agents for the reasons as mentioned above. We would therefore suggest the deletion of Principle F2 in total.

Question 9: Practical application of the principles: Are there any areas of benchmarks for which the above principles would be inadequate? If so, please provide details on the relevant benchmarks and the reasons of inadequacy.

For reasons mentioned already above, there are areas of benchmarks for which the above principles are inadequate. Please refer to our answers above.

Question 10: Continuity of benchmarks: Which principles/criteria would you consider necessary to be established for the continuity of benchmarks in case of a change to the framework?

We believe that it is up to the legal framework of regulation in the EU to solve problems like the continuity of benchmark related contracts.

Contact

The EACB trusts that its comments will be taken into consideration. Should there be any need for further information or any questions on this paper, please contact:

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