

# CONSULTATION PAPER OF ESMA on Benchmarks Regulation

## AMAFI's observations

### 1. Introduction

---

Association française des marchés financiers (AMAFI) is the trade organisation working at national, European and international levels to represent financial market participants in France. It mainly acts on behalf of credit institutions, investment firms and trading and post-trade infrastructures, regardless of where they operate or where their clients or counterparties are located. AMAFI has more than 135 members operating for their own account or for clients in different segments, particularly organised and over-the-counter markets for equities, fixed-income products and derivatives. Nearly one-third of its members are subsidiaries or branches of non-French institutions.

AMAFI has been following closely the Benchmarks Regulation particularly concerning the non-significant benchmarks and welcomes the opportunity to answer ESMA's consultation paper on Benchmarks Regulation (BMR).

AMAFI considers that it is essential to ensure that constraints on non-significant benchmarks are proportionate and not unnecessarily too cumbersome. AMAFI would welcome an explicit confirmation for some provisions of the draft RTS that it does not apply to such non-significant benchmarks. Notably, ESMA should make clearer that RTS 4 (transparency of methodology) does not apply to non significant benchmarks.

Although the consultation paper covers many topics, some questions about the Regulation remain:

- What should be done with benchmarks created between January 2018 and January 2020? Are such benchmarks subjected to BMR prior to January 2020? For example, do administrators should complete a "Benchmark Statement" at the benchmark's creation date?
- Are benchmarks with administrator inside the European Union but only sold outside it subject to BMR?

### 2. Characteristics and procedures of the oversight function (Article 5 BMR)

---

**Q1: Do you consider the non-exhaustive list of governance arrangements to be sufficiently flexible? Are there any other structures which you would like to see included?**

AMAFI considers that the non-exhaustive list of governance arrangements is sufficiently flexible.

**Q2: Do you support the option for the oversight function to be a natural person who is not otherwise employed by the administrator?**

AMAFI supports this option.

**Q3: Do you support the concept of observers and their inclusion in the oversight function?**

AMAFI supports this concept. Including observers in the oversight function permits to keep informed persons who could not have voting rights. Especially it permits to include the Competent Authority to the oversight function.

Regarding this subject, for AMAFI, the European Central Bank should be included in the EURIBOR's oversight function and be informed of all the events linked to this critical benchmark (as the Bank of England and the FCA participate in the LIBOR's oversight function).

**Q4: Do you think that the draft RTS allows for sufficient proportionality in the application of the requirements? If no, please explain why and provide proposals for introducing greater proportionality.**

AMAFI does not think that sufficient proportionality is allowed since most of provisions apply to all critical and significant benchmarks (articles 2, 3 and 4).

**Q5: Do you have any other comments on the oversight function (composition, positioning and procedures) as set out in the draft RTS?**

The principle of proportionality should be reinforced in the way the administrators can implement all appropriate arrangements. In particular where control organization – under the supervision of compliance or independent risk management - is strong enough for the concerned risk, it should be able to replace formal dedicated committees and to use existing governance bodies.

### **3. Input data (Article 11 BMR)**

---

**Q6: Do you agree with the appropriateness and verifiability of input data that the administrator must ensure are in place? Please elaborate.**

AMAFI agrees with the appropriateness and verifiability of input data.

AMAFI also agrees with the derogation for regulated benchmarks.

**Q7: Do you agree with the internal oversight and verification procedures that the administrator must ensure are in place where contributions are made from a front-office function in a contributor organization? Please elaborate.**

AMAFI agrees with this proposition. Administrator should have robust procedures to verify all the contributions. Those procedures could respect the proportionality principle.

## 4. Transparency of methodology (Article 13 BMR)

---

**Q8: Do you agree with the list of key elements proposed? Do you consider that there are any other means that could be taken into consideration to ensure that the benchmark's methodology is traceable and verifiable?**

AMAFI agrees with the list of key elements proposed.

**Q9: Do you agree with the elements of the internal review of methodology to be disclosed? Do you consider that there are other elements of information regarding the procedure for internal review of methodology that should be included?**

AMAFI agrees with this list.

**Q10: Do you agree with the procedure for consultation on material changes to the methodology?**

AMAFI agrees with this proposal but highlight that the RTS does not apply to non-significant benchmarks (*Paragraph 100 and BMR, art. 13.3.*).

Moreover, administrator should have the possibility to choose the communication channel used to inform stakeholders (*Draft RTS, art 3.1.b*).

## 5. Code of conduct for contributors (Article 15 BMR)

---

**Q11: Do you agree with this approach? Please explain your response.**

AMAFI agrees with this approach as Code of Conduct for contributors should contain behaviour aspects such as reporting suspicious activities, conflicts of interest and training. This goes further than input data requirements.

**Q12: Do you agree with this approach? What are the different characteristics of contributors that should be taken into consideration in this RTS? How should those characteristics be taken into account in the provisions suggested in this draft RTS? Please give examples.**

AMAFI agrees with the approach described in § 111. However, AMAFI feels that the draft RTS should make a distinction between the nature of the data given by each contributor and especially between input data (transactional data) and expert judgment data (qualitative expert data). The latter should require more diligences than the former.

**Q13: Should the substantial exposures of individual traders or trading desk to benchmark related instruments apply to all types of benchmarks for all contributors?**

AMAFI did not answer Q13.

**Q14: Do you agree with the proposals for the reporting of suspicious transaction in this draft RTS? Please explain your answer.**

AMAFI agrees with this proposal.

**Q15: Are there any provisions that should be added to or amended in the draft RTS to take into consideration the different characteristics of benchmarks? Please give examples.**

Yes, for AMAFI, a differentiation should be made between input data (transactions, quotes) and expert judgment. Indeed, the last category is more risky than the first one.

**Q16: Do you have any further comments or suggestions relating to the draft RTS on the code of conduct?**

AMAFI does not have further comment or suggestion.

## **6. Governance and control requirements for supervised contributors (Article 16 BMR)**

---

**Q17: Do you agree with the draft technical standards in relation to the governance and control arrangements for supervised contributors to benchmarks? Please provide reasons.**

AMAFI globally agrees with those propositions.

Control arrangements should be proportionate to the benchmark characteristics. For example, controls must be strengthened as soon as data include expert judgment.

**Q18: In particular, can you identify specific aspects of the draft Regulation that should be applied differentially to different supervised contributors in particular in terms of differences in input data provided and methodologies used, the risks of manipulation of the input data and the nature of the activities carried out by the supervised contributors?**

AMAFI identifies the below proposition as specific aspects of the draft Regulation that should be applied differentially to different supervised contributors:

- The data nature: input data (transactions data) are less risky than expert judgment ones. More precisely, more the period of observation is long and the underlying market liquid, less risky is the contribution as manipulations are more difficult;
- The frequency and the level of training requested on article 2.1. should be adequate regarding the importance of the benchmark and the importance of the data given inside the benchmark (the risk of conflict of interest is greater when we are facing a critical or a significant benchmark and/or a contributor which give a large number of data for one benchmark (critical, significant or non-significant));
- AMAFI approves that sign-off should occur prior to the submission for critical or significant benchmark and/or significant contribution. It should occur later for other contribution or if we are facing specific event (such as, for example, the unexpected absence of the signatory). One more time, the seniority of the signatory should depend of the importance of the benchmark and of the contribution inside the benchmark (for example, if a contributor give only 1% of the data computed for a significant benchmark, it does not seem necessary to have the sign-off by a senior prior to the submission, a four-eyes check may be sufficient).

The requirements should not differ between contributors but a proportionality principle should prevail. For example, higher standards should be required for LIBOR than EONIA or POLONIA.

## **7. Criteria for significant benchmarks (Article 25 BMR)**

---

**Q19: Do you agree with ESMA's specifications of the criteria?**

AMAFI agrees with those specifications.

However, AMAFI would know when the list of criteria to define a benchmark as significant one would be available?

## **8. Compliance statement for administrators of significant and non-significant benchmarks (Articles 25 and 26 BMR)**

---

**Q20: Do you agree with the content and structure of the two compliance statement templates? If not, please explain.**

AMAFI globally agrees with the content and structure of the compliance statement template for non significant benchmark, since it enables an administrator of non significant benchmarks to group families of benchmarks into one statement as long as the same provisions aren't complied with and the same explanations for non compliance apply.

AMAFI would like to ensure that administrator could make a unique statement for all their owner benchmarks (even if they do not belong to the same family but have similar characteristics).

Moreover, AMAFI would like some minor precisions:

- For all annexes: In the section "A. General Information", AMAFI would add the version number (this permits to show if data provided in this statement can be consider as realistic in the long term or if they are regularly changed);
- Annex II: in the section "A. General Information", AMAFI would add, as in Annex I, the name of the Relevant National Competent Authority.

## **9. Benchmark statement (Article 27 BMR)**

---

**Q21: Do you agree with the proposed specifications of the contents of a benchmark statement?**

AMAFI strongly disagrees with the impossibility to include the statement into the methodology. This is going to be a major source of duplicate information, all the more as cross-references between documents are forbidden. Even if the BMR requires publishing both documents, we believe a "substance over form" approach should prevail: it will enable all stakeholders to read each relevant information, and it will avoid a risk of discrepancies in the updating of the two documents.

Also, we would like to confirm that item 2(a) is not applicable for non significant benchmarks, in line with the BMR's light touch ("comply or explain") approach regarding input data for such benchmarks (as confirmed by Article 1.7, which states that paragraph 1(c) or Article 1 doesn't apply to non significant benchmarks).

If ESMA confirms its position to duplicate information, ESMA should give to administrators the possibility to make a reference inside one of those documents to the other one.

**Q22: Do you agree with the proposed specifications of the cases in which an update of such statement is required? Do you have any further proposals? Please explain.**

AMAFI agrees that an update of the statement be required if there is a change in the type of benchmark or a significant change in the benchmark or its methodology. However, we would like ESMA to confirm that items 8.2. (a) is not applicable for non significant benchmarks, in line with the BMR's light touch ("comply or explain") approach for such benchmarks.

## **10. Authorisation and registration of an administrator (Article 34 BMR)**

---

**Q23: Do you agree with the general approach to distinguish the contents of the application with reference to the cases of authorization or registration?**

AMAFI feels clarification is needed in the Article 1 and 2 of the Draft RTS to specify which requirement apply for each kind of benchmarks (as Annex II permits not to fulfill some of them, for example for non-significant benchmarks).

In addition, Article 1(3) asking an applicant to explain requirements of the BMR that doesn't apply to such applicant should be removed, as it is a duplicate with the compliance statement.

AMAFI feels that the benchmark's status (significant or non significant) and the number of benchmark(s) administrated by this administrator should also be taken into account.

**Q24: Are the general and financial information requirements described appropriate for authorization applications? Are the narrower requirements appropriate for registration applications?**

AMAFI feels that financial information requirements are appropriate.

**Q25: Are the requirements covering the information on the applicant's internal structure and functions appropriate?**

AMAFI feels those requirements are appropriate.

**Q26: Are the requirements described dealing with the benchmarks provided appropriate? In particular, is the way in which the commodity benchmarks requirements are handled acceptable?**

Clarification is needed regarding the Input Data and Methodology section of Annex II, as to which information is not mandatory for supervised entities, which provide only non-significant benchmarks. More specifically, for supervised entities, which provide only non-significant benchmarks: 7(a)(ii), 7(a)(iii), 7(a)(v) should be opted out, in line with the BMR's light touch approach regarding input data for non significant benchmarks; 7(b)(i) and 7(b)(ii) shall be substituted by a synthetic description of the methodologies and validation/review procedures of the same.

**Q27: Is the specific treatment for a natural person as applicant appropriate?**

AMAFI feels the specific treatment for a natural person as applicant appropriate.

**Q28: Do you agree with the proposals outlined for requirements for other information?**

AMAFI agrees with those proposals but need some precisions about:

- The type of information that could be requested by the Competent Authority;
- The delay of response granted to the administrator.

## **11. Recognition of an administrator located in a third country (Article 32 BMR)**

---

**Q29: Do you agree with the approach followed in the draft RTS as regards the general information that a third-country applicant should provide to the competent authority of the Member State of reference?**

AMAFI did not answer Q29.

**Q30: Do you agree with the approach followed in the draft RTS as regards the information that a third-country applicant should provide in order to explain how it has chosen a specific Member State of reference and which are the identity and role of the appointed legal representative in such State?**

AMAFI did not answer Q30.

**Q31: Do you agree with the approach followed in the draft RTS as regards the information that a third-country applicant should give around the benchmarks it provides and that are already used or intended for use in the Union? In particular, do you agree with the proposals regarding the information to be provided on the types and the categories to which the benchmarks belong to?**

AMAFI did not answer Q31.