



# **PensionsEurope response to European Commission's consultation on the review of the EU benchmark regulation**

**31 December 2019**

[www.pensionsEurope.eu](http://www.pensionsEurope.eu)

## Introductory remarks

We fully support the main objective of mitigating the risk of index manipulation since this would improve market integrity and thus stakeholders and clients' confidence.

The benchmark regulation (BMR) should ensure a minimum level of transparency, covering the information that would be needed to demonstrate the adequacy of the benchmark such as the underlying data, methodologies and composition of the indices. Notwithstanding this, policymakers should take into consideration that the costs of increased transparency will finally be passed on to benchmark users, including pension funds and their members and beneficiaries.

Benchmark administrators should be impeded from creating oligopolies which enable them to overcharge unduly their clients or make them systematically pay for any reference to an index. In this sense, we call for an extension of the FRAND (fair, reasonable and non-discriminatory) principle for critical benchmarks, laid down in Article 22 of the current Benchmark Regulation to all benchmarks used in the EU.

We believe the scope of the BMR and the cases of "use of a benchmark" under this Regulation should remain unchanged. The inclusion of new cases of "use of a benchmark" would entail a strengthening of the existing oligopolistic situations of administrators and in particular an increase of their pricing powers.

## 2. Critical benchmarks

**Question 1. To what extent do you think it could be useful for a competent authority to have broader powers to require the administrator to change the methodology of a critical benchmark? Very useful – not useful at all (5 categories). Please explain.**

In past years, it has become clear that critical benchmarks had been abused (EURIBOR for example). This threatens financial stability and dampens confidence in the financial system. Therefore, we believe benchmark administrators, like EMMI, should be closely monitored and competent authorities should be able to require changing the methodology of a critical benchmark.

**Question 2: Do you consider that such corrective powers should apply to critical benchmarks at all stages in their existence or should these powers be confined to (1) situations when a contributor notifies its intention to cease contributions or (2) situations in which mandatory administration and/or contributions of a critical benchmark are triggered? Yes / no? Please explain.**

We do not believe that corrective powers should apply to critical benchmarks at all stages in their existence. They should only apply in situations when a contributor notifies its intention to cease contributions. This is an event that could lead to the cessation of the entire critical benchmark.

Regarding Euribor, it is important to note that it employs a banking panel for defining the benchmark. This banking panel should be sufficiently broad to establish a credible benchmark. If a contributor notifies its intention to stop being on the panel, the competent authority should have corrective powers in order to safeguard the continuation of the benchmark.

The reasoning for not applying corrective powers in cases where mandatory administration and/or contributions of critical benchmarks are triggered is that we believe the administrative organization should have room to manage this. In case of the EURIBOR, since the framework is still currently being discussed, we believe that this issue should be raised in the consultations opened by EMMI.

**Question 3: Are there any other changes to Article 23(6)(d) BMR relative to the change of methodology for critical benchmarks that might be desirable to improve the robustness, reliability or representativeness of the benchmark? Yes / no? Please explain.**

Article 23(6)(d) of the Benchmark Regulation is already strict enough. Indeed, as our understanding ESMA has the power to use corrective powers based on its own judgment on representativeness. However, article 23(6)(d) BMR (or any other relevant provision of the Benchmark Regulation) may be adjusted to ensure that any changes of methodology for critical benchmarks is adequately and with no delay communicated to all end-users of this benchmark.

### 3. Authorisation and registration

**Question 8: Do you consider that the current powers of NCAs to allow the continued provision and use in existing contracts for a benchmark for which the authorisation has been suspended are sufficient? Totally sufficient – totally insufficient (5 categories). Please explain.**

Insufficient. The possibility of an immediate cessation of use of a benchmark in existing contracts is not appropriate. It is important to establish some mechanisms that ensure that the legacy use of individual benchmarks continues when an administrator's authorisation has been suspended.

The process according to which the competent authorities determine if there is a need to allow the continued provision and use in existing contracts of a benchmark for which the authorisation has been suspended, should allow supervised entities to request such authorisation.

**Question 9 : Do you consider that the powers of competent authorities to permit continued use of a benchmark when cessation of that benchmark would result in contract frustration are appropriate? Very appropriate – not appropriate at all (5 categories). Please explain.**

Very appropriate. We agree that "it might be useful for a competent authority [...] to have the possibility of allowing continued provision and use of a non-compliant benchmarks for legacy contracts where the authorisation is withdrawn (and not only suspended)". Indeed, as the authorisation under BMR covers all the benchmarks provided by an administrator, it may take some time for supervised entities to cease using these benchmarks while avoiding litigation issues with counterparties as far as possible.

## 5. ESMA REGISTER OF ADMINISTRATORS AND BENCHMARKS

**Question 14: To what extent are you satisfied with your overall experience with the ESMA register for benchmarks and administrators? If not, how could the register be improved? Completely satisfied – not satisfied at all (5 categories). Please explain.**

Only partly satisfied - The ESMA registers for benchmarks and administrators are useful tools. For this reason, both registers (for EU administrators and for non-EEA benchmarks) should be maintained.

The current ESMA interface only provides the link of the webpage to the main benchmark administrator. When visiting the webpage, the benchmarks are shown.

We would suggest, as an improvement to the ESMA register for EU administrators at constant cost, that the field “contact info” systematically includes the link to the web page where the administrator (legal entity) (i) publishes or will publish the benchmark statements and (ii) makes available a CSV file listing the benchmarks benefiting from its BMR authorisation or registration and third-country benchmarks endorsed by this administrator. This CSV file should follow a standard format defined by the Commission or ESMA. It should be updated at least each semester.

In case that the current set-up is maintained, it would be much more useful that the benchmark administrator also includes a clear statement on its page that the shown benchmarks are approved.

Administrators should also be required to set up a hotline or a contact point dedicated to the Benchmark Regulation available for supervised entities.

Another suggestion could be to add a field on the ESMA register for the benchmark's administrator internal ID. As we indicated, some benchmarks do not have an ISIN code which could lead to errors of identification for end-users. Alternatively, administrators could be required to include ESMA's ID for the benchmark in all the documentation and communication related to this benchmark.

**Question 15: Do you consider that, for administrators authorised or registered in the EU, the register should list benchmarks instead of/in addition to administrators?**

We recommend that, for administrators authorised or registered in the EU, the register should list benchmarks instead of/in addition to administrators. However, we would recommend implementing this measure keeping in mind the necessity to avoid a cost increase for end-users.

## 7. Supervision of climate-related benchmarks

**Question 19: Do you consider that competent authorities should have explicit powers to verify (1) whether the chosen climate-related benchmark complies with the requirement of the Regulation and (2) whether the investment strategy referencing this index aligns with the chosen benchmark? Agree completely – do not agree at all (5 categories). Please explain.**

PensionsEurope believes competent authorities should have explicit powers to verify whether the chosen climate-related benchmark complies with the requirement of the Regulation, based on the high-level principle for supervision which aims at avoiding climate-related greenwashing. Notwithstanding this, the associated administrative burdens should be minimized since they could disincentivize the development and adoption of climate-related benchmarks.

## 9. NON-EEA BENCHMARKS

**Question 23: To what extent would the potential issues in relation to FX forwards affect you?**

The potential issues related to FX forward would significantly affect pension funds since we trade significant numbers of non-deliverable forwards (NDF).

**If so, how would you propose to address these potential issues?**

NDF-fixing rates (spot exchange rates) are determined by the central bank of the corresponding country, on a daily basis. The Emerging Markets Traders Association (EMTA) monitors the fixing rates of NDF. Transactions in NDF are governed by forms of contract published by the EMTA. We would advise to investigate whether a cooperation with the EMTA is possible or delegate the benchmark regulation to EMTA entirely.

## About PensionsEurope

**PensionsEurope** represents national associations of pension funds and similar institutions for workplace and other funded pensions. Some members operate purely individual pension schemes. PensionsEurope has **23 member associations** in 18 EU Member States and 3 other European countries<sup>1</sup>.

PensionsEurope member organisations cover different types of workplace pensions for over **110 million people**. Through its Member Associations PensionsEurope represents more than **€ 4 trillion of assets** managed for future pension payments. In addition, many members of PensionsEurope also cover personal pensions, which are connected with an employment relation.

PensionsEurope also has **30 Corporate and Supporter Members** which are various service providers and stakeholders that work with IORPs.

PensionsEurope has established a **Central & Eastern European Countries Forum (CEEC Forum)** to discuss issues common to pension systems in that region.

PensionsEurope has established a **Multinational Advisory Group (MAG)** which delivers advice on pension issues to PensionsEurope. It provides a collective voice and information sharing for the expertise and opinions of multinationals.

### **What PensionsEurope stands for**

- A regulatory environment encouraging workplace pension membership;
- Ensure that more and more Europeans can benefit from an adequate income in retirement;
- Policies which will enable sufficient contributions and good returns;

### **Our members offer**

- Economies of scale in governance, administration and asset management;
- Risk pooling and often intergenerational risk-sharing;
- Often “not-for-profit” and some/all of the costs are borne by the employer;
- Members of workplace pension schemes often benefit from a contribution paid by the employer;
- Wide-scale coverage due to mandatory participation, sector-wide participation based on collective agreements and soft-compulsion elements such as auto-enrolment;
- Good governance and alignment of interest due to participation of the main stakeholders.

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<sup>1</sup> EU Member States: Austria, Belgium, Bulgaria, Croatia, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Luxembourg, Netherlands, Portugal, Romania, Spain, Sweden, UK. Non-EU Member States: Iceland, Norway, Switzerland.