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	BSBV 61/Dr. Priester/Ha	3132	17/1/2014

Benchmarks; ECON Draft Report

The Division Bank and Insurance of the Austrian Federal Economic Chamber, as representative of the entire Austrian banking industry, appreciates the possibility to comment on the ECON's draft report regarding the Commission Proposal for a Regulation on indices used as benchmarks in financial instruments and financial contracts and would like to submit the following position:

General remarks:
In general we appreciate the efforts of the ECON to limit the scope of the regulation by identifying several benchmark categories ("qualifying benchmark"). We agree that the principle of proportionality should be incorporated more strongly into the regulation.

We would like to suggest making references to the ESMA/EBA principles on benchmark setting processes wherever appropriate, which have already been implemented by supervised entities in the EU, instead of globally referring to the IOSCO principles.

Specific remarks:
Art 2/ Scope:

Amendment 19: We prefer the Commission's proposal. The ECON's addendum would incorporate the IOSCO principles into the regulation, which are not precise enough for the purpose of an EU regulation. If deemed necessary nonetheless, we would prefer a reference to the ESMA/EBA principles on benchmark setting processes.

Regarding the scope in Art 2 (2), we would like to propose to exclude benchmarks that are derived from publically available transaction data sourced from regulated markets, as we think that the regulation should be applied proportionally to the size and risks posed by each benchmark and/or administrator as well as the benchmark-setting process.

Moreover, we plead for the exclusion of all benchmarks below a de-minimis threshold of 1 billion EUR from the application of the regulation. The regulation should be applied proportionally to the size and risks posed by each benchmark and the benchmark setting process. We think that such a threshold would contribute to making the regulation more proportionate.

Art 3/Definitions:
Amendment 25: We suggest to align the definition "benchmark" with the one used in the MAR. This is essential for the enhancement of legal certainty and to avoid manipulation of benchmarks.

Amendment 34: We agree with the ECON's proposal, however, we would like to suggest to make the definition of a critical benchmark even more clear by additionally requiring a "wide use as a reference in more than one EU jurisdiction". We think that criticality should also be evaluated against the potential consequences beyond the area of national authorities' legislative power.

Amendment 37: In (2a)(b), please refer to „bedeutende"/instead of „wichtige" Benchmarks in line with the English text where reference is always made to "major" benchmarks. Furthermore, we would welcome a definition for "Unterbenchmarks"/"sub-benchmarks", as referred to in (2a)(b)(i) and (ii).

Art 5/Governance requirements for administrators:
Amendment 40: In (-1)(c) please refer to "bedeutende" instead of "wichtige" benchmarks, in line with the English text where reference is always made to "major" benchmarks.

Amendments 35 and 40:
We very much appreciate the ECON's efforts towards more proportionality and support the narrowing of the scope by introducing a de-minimis threshold. We welcome the introduction of "qualifying benchmarks" and in particular the definition of "major benchmark" in Am 35. We support the application of the principle of proportionality to Article 5 (Am 40), as well as to Article 11 (Am 58).

Art 7/ Input data and methodology:
In order to prevent input errors or inaccurate input data, for critical benchmarks, we propose to require administrators to provide a technical infrastructure for the submission of quotes in form of an advanced interface that provides for controls, a 4-eyes-principle, warnings, plausibility checks, etc. In case of absence of such a central infrastructure we see the danger that a plethora of solutions in contributing institutions will additionally create criticism from regulators or auditors.

Art 14/Mandatory contribution:
Amendment 62: In general we oppose the concept of mandatory contributions. However, if the introduction of such contributions should be deemed necessary, it is important to have clear and transparent criteria and rules regarding the critical benchmarks concerned by the mandatory contributions and the conditions under which such a mandatory contribution is deemed necessary as well as regarding the actual contributors. We therefore suggest that ESMA should be requested to establish criteria for the mandatory

participation by contributors to critical benchmarks administered in the European Union. This would ensure a clear and cohesive framework for the enforcement of decisions by the competent authority or the college of competent authorities as to when market circumstances require such action.

Amendment 69: It is unclear during which time period and based on which calculation basis the 20 % of contributors that have ceased to make contribution to a benchmark should be calculated. A specification is inevitable to ensure a consistent application of this provision.

Art. 17/Cessation:
Amendment 78: We would prefer a reference to the ESMA/EBA principles instead of a reference to IOSCO.

Art 18/Suitability:
In a nutshell, Art 18 requires supervised entities to assess if a benchmark is suitable for a specific consumer, who wishes to enter into a contract with the bank. In this regard aspects like the consumer's knowledge and experience, his objectives in respect of the contract as well as his financial situation shall be assessed. This means that a responsibility, which should in fact be borne by the consumer, is passed on to the bank. It is always only possible for a bank to provide information on a contract or a specific product but ultimately it is the consumer who knows best if a credit agreement is suitable for his personal situation or not.

Moreover, we also see inconsistencies with the Consumer Credit Directive (CCD) and the Directive on Credit Agreements Relating to Residential Property (CARRP), as these two acts provide for an obligation to explain the characteristics of a product to the consumer rather than an assessment of suitability against the background of his personal situation.

We therefore propose to delete Art 8. In case this should not be deemed acceptable, we propose to replace the mandatory suitability assessment with an obligation to bring the statements provided for in Art 15, which contain inter alia information on the purpose of a benchmark, to the attention of the consumer and if necessary to explain its content.

Art 25/ Notification of ESMA of use of an index in a financial instrument:
Art 25 provides for a rather complex notification process to ESMA regarding the use of a benchmark as a reference to a financial instrument. The main problem is the processes' chronology, as a subsequent notification of ESMA to the relevant competent authority regarding the withdrawal of a financial instrument by a trading venue (Art 25 (3)) could be issued after a financial instrument is already on the market. Moreover, it should be noted that the competent authorities do not even have the competence to request the withdrawal of a financial instrument in all member states.

In line with Amendment 101, we therefore propose to delete Art 25.

Annex 1:
Amendment 124: We prefer the Commission's proposal, as the ECON's amendment is deemed to be too far-reaching.

Moreover, we object to the provision for contributors as proposed in Section E (1)(c) of Annex 1, which requires physical separation of employees. This is a requirement that is very difficult to be fulfilled by contributors, especially by smaller contributors or

contributors that have a limited number of people with necessary knowledge of the relevant market. The regulation will still make it clear enough that contributors shall ensure that their submissions are not biased as a consequence of conflict of interest.

Kindly give our remarks due consideration.

Yours sincerely,

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