



- THE VICE-CHAIRMAN -

20 March 2020

Mr. Tilman Lueder,  
Head of Securities Markets  
Directorate-General for Financial Stability  
Financial Services and Capital Market Union  
European Commission  
1049 Bruxelles  
Belgium

**RE: EFMLG LETTER ON THE EUROPEAN BENCHMARK REGULATION (BMR) REVIEW.  
FOLLOW-UP.**

Dear Mr. Lueder,

As you know well, the European Financial Market Lawyers Group (EFMLG) intends to foster the harmonization of laws and market practices in the EU and to facilitate the progress in the Capital Markets Union. From this perspective of our work, we have prepared the attached EFMLG presentation on the basis of our recent exchanges with you. We are thankful both for this possibility to exchange with the European Commission and for the fact that the Commission is investigating a statutory instrument. The EFMLG is very pleased with the possibility to contribute to this process.

Let me recapitulate. In its letter of 23 December 2019, the EFMLG expressed its concerns on certain key legal issues raised by the transition of critical benchmarks. In your kind e-mail of 22 January 2020, you pointed to the US example, where the Alternative Reference Rates Committee (ARRC) proposed potential New York State legislation to introduce statutory fallback provisions, as a possible model for the potential cessation of critical benchmarks in the EU.

The EFMLG totally agrees on the need to strengthen the competent authorities' powers in different circumstances such as the potential cessation of critical benchmarks in the EU, as you suggest. The European Securities and Markets Authority has also publicly communicated in the direction of broader powers for competent authorities. Having legislation that facilitates replacement of a benchmark when there is no contractual provision or the applicable term is not appropriate or in other equivalent situations, is an objective that should be assessed within the BMR review.

As indicated in the EFMLG e-mail to you of 7 February 2020, the EFMLG has discussed in depth this issue on 6 March 2020.

The attached presentation summarizes, in addition to the ARRC proposal, three potential EU legislative avenues that the EFMLG considers in respect of the issue at hand, including their respective pros and cons (again, while reiterating our satisfaction with a statutory instrument). In this case, we find the presentation format more telling and easier to use than an EFMLG letter.

Basically, the first scenario for legislative action would provide a national solution for contracts not including a fallback rate ('silent contracts'). The second one, a single European solution for silent contracts, with the aim of avoiding the fragmentation risk linked to inconsistent implementation by Member States. The third one, the tracker solution, with the purpose of reducing the adverse economic outcomes in legacy contracts linked to a critical benchmark.

Both the second and the third scenarios find strong support across the EFMLG. In addition, the EFMLG believes that both scenarios (and also an eventual combination of them) are compatible and consistent with the aim of ensuring the availability of sufficient legal tools to address the various potential situations that might arise. Therefore, in our opinion, both scenarios should be considered in the discussions of a future BMR amendment.

Finally, the COVID-19 crisis might be showing that legislative measures may, also in given difficult circumstances, facilitate the work of the financial markets when cooperation, contacts and therefore *private solutions* between financial actors are relatively impaired for an uncertain period of time.

We appreciate your consideration for the EFMLG views in this issue of utmost importance. The EFMLG stays at your disposal for further discussion including by means of a teleconference with you to explain our proposals.

Yours faithfully,



Fernando Conlledo Lantero

Vice-Chairman