

## **ESMA updates Benchmarks Regulation Q&As (May 2018)**

The overall BMR Q&A provides a new answer regarding the following topic:

- How prospectuses should include reference to the register of administrators and benchmarks.

The purpose of this Q&A is to promote common supervisory approaches and practices in the application of BMR. It aims at providing investors and other market participants with clarifications on the applicable requirements.

ESMA will periodically review these Q&A and update them where required.

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## **Statement by Commissioner Vestager on Commission decision imposing binding obligations on Gazprom to enable free flow of gas at competitive prices**

**\*Check against delivery\***

Today, the Commission has adopted a decision imposing on Gazprom a set of obligations. These obligations will significantly change the way Gazprom operates in Central and Eastern European gas markets. To the benefit of millions of European consumers who rely on gas to heat their homes and cook their food. And to the benefit of European businesses that rely on gas for production.

To recall: the Commission sent Gazprom a Statement of Objections in 2015. We set out our competition concerns that Gazprom pursued an overall strategy in its long-term contracts with customers to partition gas markets. This happened in eight Member States – Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland and Slovakia. This strategy may have enabled Gazprom to charge higher gas prices in five of these Member States.

Today's decision puts an end to this behaviour by Gazprom. It removes obstacles created by Gazprom, which stand in the way of the free flow of gas in Central and Eastern Europe.

Because all companies doing business in Europe have to respect our rules on competition. No matter where they are from.

But more than that – our decision provides a tailor-made rulebook for Gazprom's future conduct. It obliges Gazprom to take positive steps to further integrate gas markets in the region and to help realise a true internal market for energy in Europe.

And it gives Gazprom customers in Central and Eastern Europe an effective tool to make sure the price they pay is competitive. In other words, customers can ensure that their gas price will now be driven by the competitive gas prices that already exist in Western Europe.

As always, this case is not about the flag of the company – it is about achieving the outcome that best serves European consumers and businesses.

#### *Details of Gazprom's obligations*

So, how exactly will Gazprom's behaviour in the region change after the decision?

There are three parts to Gazprom's obligations: That Gazprom's customers are free to decide what happens with the gas they have bought, that they have more flexibility on where they want Gazprom to deliver it, and that they pay a competitive price for the gas.

So, the **first two parts** are about enabling gas to flow freely in Central and Eastern Europe.

First, Gazprom has to remove any contract provisions that prevent customers from re-selling gas across national borders. As well as any other provision that reduces a customer's incentives to re-sell gas across borders, such as clauses that give Gazprom a share of the re-sale profit.

In future it will be for the customer – and not Gazprom – to decide what

happens to the gas they have bought. That is an important condition for gas to be traded effectively by Gazprom's customers.

But for gas to actually flow freely across Central and Eastern Europe, it is also necessary to have the infrastructure for its transport, namely interconnectors that link national gas markets with each other. Unfortunately, the availability of such interconnectors is still insufficient in parts of the region, namely in the Baltic States and in Bulgaria.

That is why we made sure Gazprom's obligations don't stop at just removing contractual barriers: the **second part** requires Gazprom to take positive steps to further integrate these gas markets.

For example, Gazprom must give customers an option to change where they want their gas delivered to. Customers that bought gas, originally for delivery to Hungary, Poland or Slovakia, can have all or part of it delivered to Bulgaria or the Baltic States instead. Gazprom must offer these swaps in both directions for a fixed transparent fee.

This means that gas can flow to and from the isolated markets as if the gas interconnectors existed already. It will allow Gazprom's customers to seek new business opportunities even before interconnectors become available, to the benefit of consumers and businesses in Bulgaria and the Baltic States.

These obligations on Gazprom will increase cross-border competition and lead to better integrated markets, which should help keep down gas prices.

But we wanted to enable customers directly to ensure that prices in the region will be competitive. That's because one of our competition concerns was that Gazprom was charging higher prices in five countries, namely Bulgaria, Estonia, Latvia, Lithuania and Poland.

We were concerned that customers in those countries faced higher prices than could be justified, compared to competitive gas prices in Western Europe.

That's why the **third part of Gazprom's obligations** is about giving customers in these countries an effective tool to make sure the price they pay is competitive.

In future, these customers will have the right to get their gas price adjusted, if it diverges from competitive benchmarks. These explicitly refer to prices quoted on Western European liquid gas trading hubs in Germany and in the Netherlands. If Gazprom does not agree to the customer's demand within 120 days, an arbitrator is appointed that will impose a competitive gas price that takes full account of these benchmarks.

This will make sure that customers in these countries will never again face gas prices that are not competitive compared to the prices in Western Europe.

**Finally**, the obligations also address the concern that Gazprom may have used its market position in gas supply in Bulgaria to obtain favourable treatment concerning gas infrastructure. In particular, Gazprom cannot seek any damages from its Bulgarian partners following the termination of the South Stream

project.

So, our decision today imposes on Gazprom a strict set of rules on how to do business in Central and Eastern Europe. It imposes clear obligations on Gazprom and gives effective rights to Gazprom's customers. Combined, this will enable the free flow of gas at competitive prices.

#### *Feedback from market test*

We reached this decision also thanks to extensive input from a wide range of stakeholders – governments, national competition authorities, gas wholesalers, industry associations and academics. We had asked for their views on an earlier version of the proposal in March last year, and I would like to thank each and every one of them for their contribution.

It helped us in our intensive discussions with Gazprom since the market test, leading to this final set of obligations we imposed today. A lot of different big and small pieces needed to come together, like cogs in a machine, for these obligations to be effective.

To name just a few of the improvements we made: More customers will be able to benefit from the option to have Gazprom deliver part of or all their gas to Bulgaria or the Baltic States, instead of the destination they had initially agreed. Or the other way round. And these customers are given much more flexibility and safeguards. They can swap smaller quantities of gas at shorter notice. Plus, the fees that Gazprom may charge for this service are fixed at a low level to make the swap financially attractive. They are about 30% lower than in the initial proposal. Finally, Gazprom can only refuse to perform the swap if there is no transmission capacity.

Another example for an improvement concerns the right of customers with long-term contracts to adjust their gas price. Now, Gazprom has to give this right not only to its existing but also to future customers in the countries concerned.

#### *Imposing obligations versus a fine*

So, we have come a long way to get to this solution. In line with our standard rules, we can implement such a solution because it fully addresses our competition concerns. But I know that some would have liked to see us fine Gazprom instead, no matter the solution on the table.

However, a fine would not have achieved all of our competition objectives in this case. We can only make sure that Gazprom takes positive steps to integrate isolated gas markets, if Gazprom commits to do so. And we can only offer Gazprom's customers an effective right to adjust their gas price, if we bind Gazprom to a structured process.

With today's decision Gazprom has accepted that it has to play by our common European rules, if it wants to sell its gas in Europe. In fact, it has accepted to play by a rulebook that is tailor-made to ensure that European consumers can benefit from the free flow of gas at competitive prices.

If Gazprom fails to comply with any of its obligations, the consequences would be serious. The Commission can then impose a fine of up to 10% of the company's worldwide turnover. We can do so without having to prove an infringement of EU antitrust rules. In 2013, for example, we fined Microsoft over half a billion euros when the company broke its obligations on choice of web browsers. In other words, the case doesn't stop with today's decision – rather it is the enforcement of the Gazprom obligations that starts today.

So this decision reaches the outcome that best serves European consumers and businesses.

### *Energy Union*

And it also matters to our climate. If we want to achieve our ambitions from the Paris Agreement we need to increase the share in our energy mix of renewable energy, such as wind and solar. That also means we need gas as a flexible back-up capacity for the days when the sun is not shining and the wind is not blowing.

At the same time, effective competition in European gas markets of course cannot be achieved by the enforcement of competition rules alone. It also depends on how much you invest into gas supply diversification. As well as on legislation to complete our Energy Union. My colleagues Maroš Šefčovič and Miguel Arias Cañete have made a lot of progress on this already.

That also shows why we have both regulation and competition enforcement. Because it is when competition enforcement and regulation each fulfil their role that we get gas markets that really serve European consumers and businesses.

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## **Factsheet: European Commission and African Union Commission step up their cooperation to support young people, jobs and peace**

These initiatives follow up on the commitments made at the [5<sup>th</sup> AU-EU Summit](#), which was held in November 2017 in Abidjan, notably deepening and expanding cooperation in science and technology; agribusiness and renewable energy, blue and green economy; skills and education; governance and election observation and peace and security.

### **€400 million to support continental and interregional development in Africa**

In support of the Africa-EU Partnership, the EU has launched the second phase

of the [Pan-African Programme](#) for an amount of €400 million (2018-2020). Projects at continental or interregional level in Africa will focus on three main strategic areas:

1. It will boost the **AU-EU political dialogue** in areas of joint interest, including migration, and advocate for an **effective system of good governance at pan-African level**. For instance, initiatives will support the work of the AU institutions in the fields of human rights, election observation and on combatting corruption.
2. Special focus will be given to enhancing young people's **employability and mobility**, and promoting **technological innovation**. The funding will for example reinforce exchange programmes among African universities based on the [Erasmus](#) experience and support the recognition of qualifications and the harmonisation of **higher education** in Africa, inspired by the EU's Bologna Process.
3. Supporting African **continental economic integration**, the programme will facilitate **trade and investments** and the development of **inter-regional infrastructure**. For instance, it will support the establishment of the African Continental Free Trade Area through programmes focusing on lowering technical barriers to trade and harmonising African policies, standards and regulations, including in the digital and air transport markets.

The [Pan-African Programme](#) is the first ever EU programme in development and cooperation that covers Africa as a whole. It was adopted in 2014 for a total budget of €845 million, as a dedicated financial instrument to support the Africa-EU Partnership. The first phase of the programme 2014-2017 helped to progress on the operationalisation of the AU Human Rights system. Moreover, it played a significant role in promoting migration dialogue and in supporting the AU Programme for Infrastructure Development in Africa. Through its second phase, the Pan-African Programme will continue its support to these and new projects with an added value for both the African and European continent.

### **The Memorandum of Understanding on peace and security**

In light of today's increasingly complex threats and the need to address their root causes, Africa and the EU have a joint interest to strengthen their partnership on peace and security, and to enhance strategic cooperation on global challenges. The European Union and the African Union Commission agree on a Memorandum of Understanding (MoU), which will become the main tool dealing with peace and security challenges and their response strategies. This will bring the EU-AU dialogue to a more structured level.

The MoU covers a wide number of areas in peace, security and governance, including tackling root causes, crisis management, mediation, cross border security, conflict resolution and support in electoral matters. The MoU establishes a specific Counterterrorism Dialogue and provides for twice yearly consultations at Senior Official level to ensure planning and implementation of the provisions in the MoU.

The EU continues to be the first supporter of the African Union and regional

economic communities to pursue the objective of 'African solutions to African problems', especially in the peace and security area. More than €2.7 billion has been committed to the African Peace Facility since 2003, thereby allowing for the development of the African Peace and Security Architecture and its further contribution towards the prevention, management and resolution of conflicts.

### **The Taskforce Rural Africa**

The European Commission will set up a Task Force of experts on rural Africa to provide expertise, advice and possible recommendations to the African Union Commission partners in relation to agriculture, agri-business and agro-industries. Food and farming have a prominent role to play in strengthening the partnership with the African Union. Unleashing the potential of the sector can contribute to economic growth and generate decent employment opportunities for Africa's increasing young population. The institutions of the EU and AU indeed have been engaging in regular policy dialogue in this sector. The EU-AU Agriculture Ministerial Conference "[Making Sustainable Agriculture a future for youth in Africa](#)" of 2017 being a good example of stronger cooperation.

### **The joint EU-AU task force on digital economy**

To deepen the AU-EU cooperation in the field of digital economy, the two Commissions will set up a joint task force. It will be comprised by African and European decision-makers, entrepreneurs and civil society representatives that will steer the future work on this subject.

### **Strategic orientations and priorities for the continental dialogue on migration**

The European Commission and African Union Commission agree on strategic orientations and priorities for a continental dialogue on migration and mobility, complementary to other existing frameworks such as the [Rabat](#) and [Khartoum](#) Processes and the [Joint Valetta Action Plan](#). The dialogue will provide a platform which will address and respond to continental issues pertaining to migration and mobility between the EU and Africa, including their root causes.

### **For More Information**

[Press release 'EU and African Union Commissions step up their cooperation to support young people, jobs and peace'](#)

[Pan-African Multiannual Indicative Programme](#)

[Factsheet 'EU's key partnership with Africa'](#)

[Joint Africa-EU Strategy](#)

[Africa-EU Partnership](#)

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## EU and African Union Commissions step up their cooperation to support young people, jobs and peace



This 9th Commission to Commission meeting of the two organisations was co-chaired by the President of the European Commission, Jean-Claude **Juncker** and the Chairperson of the African Union Commission, Moussa **Faki Mahamat**, with the participation of all African Union Commissioners and 16 European Union Commissioners.

The two sides had agreed on a set of priorities at the [November 2017 AU-EU Summit in Abidjan](#) and today the two Commissions took stock of progress made to chart the way forward.

At this occasion, European Commission President Jean-Claude **Juncker** said: *“We met today to translate words into concrete action. We launched programmes worth €400 million to support, amongst others, African youth – which is all the more important, as 60% of Africa’s population is under 25 years old. The future of the world depends on the good cooperation between Europe and Africa.”*

African Union Chairperson Moussa **Faki Mahamat** added: *“Multilateralism is the only response to today’s global challenges in an increasingly polarised world. The AU-EU partnership is based on shared values and shared responsibilities and offers a unique platform to address common challenges linked to peace, security and sustainable development on both our continents.”*

### **Key outcomes of the meeting:**

The two commissions discussed their cooperation to enhance resilience, peace, security and governance, including support to African peace initiatives such as the G5 Sahel joint force. In this regard, the two sides signed a **Memorandum of Understanding** reinforcing the existing cooperation in the area of peace and security. In addition, they agreed to continue and consolidate the important work made by the **AU-EU-UN task force on migration**.



The parties committed to **invest in economies and people** by stepping up existing cooperation on agriculture and agribusinesses and the digital economy, and dedicated themselves to continue the active engagement with youth in the Africa-EU partnership in innovative and meaningful ways.

In the context of the AU-EU partnership, the EU made available an additional **€400 million** towards **continental and regional projects**. These include support to institutional capacity building of the African Union Commission and regional integration on the continent, as well as **support to young people**. The assistance will facilitate the continental mobility of young people, for example through reinforcing exchange programmes among African universities, and enhancing the recognition of qualifications and the harmonisation of higher education in Africa.

## **Background**

The EU and Africa have progressively built a solid strategic and political partnership, whereby they go beyond donor-recipient relations towards reciprocal commitments. The two Commissions of the European Union and African Union are committed to be active players and real engines of this Partnership, which is today more relevant than ever in a fast evolving global environment.

This partnership is based on shared values and interests, enshrined in the Joint Africa-EU Strategy (JAES, 2007). At the 5th AU-EU Summit last November African and European leaders have demonstrated their mutual commitment in a stronger relationship adapted to a rapidly changing global landscape, and have identified strategic priorities for 2018-2020.

## **For More Information**

[Factsheet 'European Commission and African Union Commission step up their cooperation to support young people, jobs and peace'](#)

[Pan-African Multiannual Indicative Programme](#)

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