

**Mr Stasys Jakeliunas**  
**Member of the European Parliament**  
**European Parliament**  
**Rue Wiertz 60**  
**1047 Brussels**  
**Belgium**

**Ref: Your request to launch an inquiry into possible market manipulation by market participants**

Dear Mr Jakeliunas,

Thank you for your letter dated 30 September 2020, in which you request the European Securities and Markets Authority (“ESMA”) to launch an inquiry into possible market manipulation by market participants in Lithuania, since, as stated in your letter, national competent authorities would have failed to act. In your letter you refer to numerous issues related to an alleged manipulation of the VILIBOR interest rate benchmark and the alleged inaction of, in particular, the Bank of Lithuania in respect of that alleged manipulation.

Firstly, based on the documentation you provided me with in your letter, the alleged manipulation of the VILIBOR benchmark and the alleged related non-application of Union law by the relevant national competent authorities took place between Q4 2008 and Q1 2010. The alleged infringement would thus have ended almost one year before the establishment of ESMA on 1 January 2011, which makes ESMA unfortunately not competent to launch the requested inquiry.

Secondly, and more generally, Regulation (EU) 2016/1011 (the Benchmarks Regulation) became applicable only on 1 January 2018, which means that, during the time that the infringement would have allegedly been committed, the provisions currently governing the establishment and operation of benchmarks did not apply to VILIBOR.

Thirdly, Regulation (EU) No 596/2014 (the Market Abuse Regulation) is also not applicable to the events described in the documentation provided, as that Regulation started to apply only from 3 July 2016. Furthermore, the previously applicable Directive 2003/6/EC (the Market Abuse Directive) did not include benchmarks and their manipulation in its scope. In this context you suggest that the alleged manipulation of VILIBOR in 2008-2010 would have affected the prices of certain financial instruments, including money-market instruments, falling within the scope of the Market Abuse Directive.

However, based on the documentation provided, we cannot find clear grounds to consider that the alleged behaviour would be covered by Article 1(2) of the Market Abuse Directive: The

description of the events does not seem to correspond to any of the cases described in that Directive or in the Commission Implementing Directive 2003/124/EC as regards the definition and public disclosure of inside information and the definition of market manipulation. Having said that, I would like to underline that our assessment does not cover any possible specifications in the Lithuanian transposition of the Market Abuse Directive that we would not be aware of, in particular in light of the documentation provided.

Given the above circumstances, I regret to conclude that ESMA will not be in a position to open the requested inquiry. In this context, I would like to recall that in the past, where possible, sanctions were imposed at Union level on banks manipulating interest rate benchmarks on the ground of anti-competitive behaviour. If you consider that the alleged manipulation of VILIBOR may have led to the infringement of competition rules, you may want to report this to the European Commission.

I hope that my clarifications will prove to be helpful nevertheless and I remain at your disposal in case you would like to discuss this important matter further.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'S/M', is written over a light blue horizontal line.

Steven Maijor