

Brussels,

EFAMA HIGH-LEVEL VIEWS ON THE EUROPEAN COMMISSION REVISION OF THE REGIME APPLICABLE TO THE USE OF BENCHMARKS ADMINISTERED IN A THIRD COUNTRY

Introduction

Following EFAMA's partial response to the [European Commission's targeted consultation on the regime applicable to the use of benchmarks administered in a third country](#), we would like to make additional comments on the ongoing review of the regime.

EFAMA supports, in principle, the idea of reviewing the third country regime with the aim of reducing the scope of the current EU Benchmark Regulation (BMR), provided that the category of so-called "strategic" benchmarks does not become an additional category. Rather, it should replace the current categories of "significant" and "non-significant" benchmarks, with its scope fine-tuned to reflect the original intent of the Benchmark Regulation, i.e. the robustness of benchmarks most prone to manipulation to the detriment of EU consumers

General views

As our members are significant benchmark users, EFAMA would like to make the following comments:

- Asset managers represent a significant group of benchmark users, in the case of index funds and/or exchange-traded funds (ETFs), as well as in the case of active funds. For the former, benchmarks are used as a target for index tracking funds/ETFs, whereas for the latter, an active fund's performance is typically measured against a selected index or a set of indices.
- The EU Benchmark Regulation has been based on the underlying assumption that non-EU benchmark administrators would be willing to comply with the BMR in order to operate in the European Union. Such assumption has proven to be incorrect as the equivalence, endorsement and/or individual recognition regimes introduced by the BMR have at this stage not resulted in widespread use by third country benchmarks administrators of one of these regimes. In particular, only two jurisdictions (Australia and Singapore) have been recognised as equivalent to date, and it is unforeseeable how quickly some key jurisdictions (e.g. UK, US and HK) can be granted the "equivalent" status. Should the transitional period expire at the end of 2023, European fund managers would face significant disadvantages due to the inability to use non-EU benchmarks.

- On the basis of these reasons, we believe that the current provisions of the BMR third country regime would not be fit for purpose and should be revised to ensure that EU asset managers have access to non-EU benchmarks that are essential for their daily operations.
- EFAMA is of the opinion that the scope of the present BMR should be narrowed in order to capture only those benchmarks that have a significant influence on EU consumers. For this reason, we support a BMR framework in which only selected "strategic" third country benchmarks would be subject to the BMR standards, and the usage of other third country benchmarks would be, in principle, free, with no additional requirements tied to the administrator's standing. It is essential to note, however, that the "strategic" benchmark should not be an additional BMR category, but rather replace the current categories of "significant" and "non-significant" benchmark categories.
- As explained under Annex I, the definition of a "strategic" benchmark should, in principle, be based on the following criteria:
 - *Type of use & user:* Providing a borrowing rate¹ has a bigger impact on consumers than other types of uses; therefore, we are in favour of focusing the determination of the strategic benchmark on this criterion;
 - *Type of benchmark:* Interest rates and commodity benchmarks would be particularly relevant when determining "strategic" benchmarks, as they have an impact on the consumer audience by influencing borrowing costs, or energy and food prices for EU households, and thus, indirectly, impacting the retail housing market and headline inflation;
 - *Other – Revenue:* The revenue income of benchmark administrators should be an important criterion to take into consideration. Benchmark administrators earn revenue from licensing benchmarks to professional users (e.g. Asset Managers), either through annual fees based on usage, or from using their benchmarks to create financial products. The revenue income of benchmark administrators would be an important indicator of how widespread the use of a benchmark is in the EU, as there is a direct correlation between the volume of fee income and the volume of use by Asset Managers. Such data would be easily obtainable directly from benchmark administrators.
- Although the European Commission's consultation on the regime is applicable to the use of benchmarks administered in a third country, it is of paramount importance that the new rules apply to both EU and non-EU benchmark administrators, thereby guaranteeing a level-playing field.
- In order for the European Commission to propose the necessary changes to the third country regime, it is critical for it to first extend the transitional period for the third country regime until the end of 2025.

¹ "Borrowing rate" means the interest rate expressed as a fixed or variable percentage applied on an annual basis to the amount of credit drawn down.

Annex I

Criterion	Totally against	Somewhat against	Neither against nor in favour	Somewhat in favour	Totally in favour	Explanation / justification
Notional amount/values of assets referencing the benchmark globally		X				As suggested by ESMA in response to the consultation, the risk-based approach could, in principle work. However, such a criterion would require data coming from reporting, which globally is rather difficult to collect and aggregate as reporting is not uniformly done globally. Moreover, there may be benchmarks which are widely used globally but only marginally used in the EU and such benchmarks should not be seen as significant in the EU.
Notional amount/values of assets referencing the benchmark in the EU		X				In EFAMA's view, the key focus of the EU Benchmarks Regulation should be to capture benchmarks, which have a significant impact on consumers and are most prone to manipulation. In this context, the notional amount is not strictly related to the risk for consumers, as there may be benchmarks, which are widely used in professional dealings, but which have little to no impact on consumer transactions.
Type of use (determination of the amount payable under a financial instrument, providing a borrowing rate, measuring the performance of an investment fund...)				X		Providing a borrowing rate has a bigger impact on consumers than other types of uses; therefore, we are in favour of focusing the determination of the strategic benchmark on this category.
Type of user (investment fund, credit institution, CCP, trade repository, etc.)				X		Same as above.
Core activity of the administrator (bank, trading venue, asset manager, benchmark administrator, etc.)	X					We do not necessarily see the correlation between the core activity of the administrator and the fact that a benchmark administered by them should be significant.

Regulatory status of administrator in home jurisdiction	X					We do not necessarily see a correlation between this criterion and the fact that a benchmark is strategic or not.
Type of benchmark (interest rate benchmark, commodity benchmark, equity benchmark, regulated-data benchmark, etc.)				X		Interest rates and commodity benchmarks would be particularly relevant when determining “strategic” benchmarks, as they have an impact on the consumer audience by influencing borrowing costs, or energy and food prices for EU households, and thus, indirectly, impacting the retail housing market and headline inflation.
Substitutability of the benchmark (i.e. existence of a similar benchmark administered in the EU)	X					We do not necessarily see a correlation between this criterion and the fact that a benchmark is strategic or not.
EU benchmark labels (including EU Paris Aligned Benchmarks and EU Climate Transition Benchmarks)	X					The fact that a particular benchmark also falls within one of the “labels” does not translate, in our opinion, directly into the importance of this benchmark for the consumer market, which should be the main criterion, in our view.
Other: please specify				X		<i>Revenue:</i> The revenue income of benchmark administrators should be an important criterion to take into consideration. Benchmark administrators earn revenue from licensing benchmarks to professional users (e.g. Asset Managers), either through annual fees based on usage, or from using their benchmarks to create financial products. The revenue income of benchmark administrators would be an important indicator of how widespread the use of a benchmark is in the EU, as there is a direct correlation between the volume of fee income and the volume of use by Asset Managers. Such data would be easily obtainable directly from benchmark administrators.



ABOUT EFAMA

EFAMA, the voice of the European investment management industry, represents 27 member associations, 58 corporate members and 26 associate members. At end Q4 2021, total net assets of European investment funds reached EUR 21.9 trillion. These assets were managed by more than 35,000 UCITS (Undertakings for Collective Investments in Transferable Securities) and more than 30,000 AIFs (Alternative Investment Funds). At the end of Q3 2021, assets managed by European asset managers as investment funds and discretionary mandates amounted to an estimated EUR 31.3 trillion.

More information is available at www.efama.org

Contact

Elona Morina

Regulatory Policy Advisor

Elona.morina@efama.org | +32 2 548 26 53