



**EUROPEAN COMMISSION**

DIRECTORATE-GENERAL FOR FINANCIAL STABILITY, FINANCIAL SERVICES AND CAPITAL  
MARKETS UNION

Financial markets  
Securities markets

## **CONSULTATION DOCUMENT**

### **TARGETED CONSULTATION ON THE REGIME APPLICABLE TO THE USE OF BENCHMARKS ADMINISTERED IN A THIRD COUNTRY**

#### **Disclaimer**

This document is a working document of the Commission services for consultation and does not prejudice the final decision that the Commission may take.

The views reflected on this consultation paper provide an indication on the approach the Commission services may take but do not constitute a final policy position or a formal proposal by the European Commission.

The responses to this consultation paper will provide important guidance to the Commission when preparing, if considered appropriate, a formal Commission proposal.

You are invited to reply **by 12 August 2022** at the latest to the **online questionnaire** available on the following webpage:

[https://ec.europa.eu/info/publications/finance-consultations-2022-benchmarks-third-country\\_en](https://ec.europa.eu/info/publications/finance-consultations-2022-benchmarks-third-country_en)

In line with the [Commission's objective of "an economy that works for people"](#) this targeted consultation aims to gather views of stakeholders on a possible enhancement of the rules for the use in the Union of third country benchmarks. We are particularly interested in the views of administrators of benchmarks, both those located in the EU and outside the EU, of supervised entities in the EU using benchmarks and of businesses and investors who are end-users of benchmarks for investment, hedging or other purposes. Other stakeholders are also welcome to take part in this consultation. This consultation does not prejudge any outcome nor prevent the Commission from considering alternative options.

Please note that in order to ensure a fair and transparent consultation process **only responses received through the online questionnaire will be taken into account and included in the report summarising the responses.**

This consultation follows the normal rules of the European Commission for public consultations. Responses will be published in accordance with the privacy options respondents will have opted for in the online questionnaire.

Responses authorised for publication will be published on the following webpage: [https://ec.europa.eu/info/publications/finance-consultations-2022-benchmarks-third-country\\_en](https://ec.europa.eu/info/publications/finance-consultations-2022-benchmarks-third-country_en)

Any question on this consultation or issue encountered with the online questionnaire can be raised via email at [fisma-benchmark-review@ec.europa.eu](mailto:fisma-benchmark-review@ec.europa.eu).

## INTRODUCTION

The [EU Benchmark Regulation](#) (the ‘Regulation’, the ‘Benchmark Regulation’ or the ‘BMR’) has been in application since 1 January 2018 and has been modified twice. [This regulation was first revised](#)<sup>1</sup> to introduce [two climate-related labels for benchmarks](#) (EU Paris-aligned benchmarks (EU PABs) and EU climate transition benchmarks (EU CTBs)), as well as [ESG disclosures](#) applicable to all benchmarks. Most of those measures apply since 10 April 2020. A [second review of this regulation](#)<sup>2</sup>, in application since 13 February 2021, was carried out, among others, to extend the transitional period for third country benchmarks and introduced a statutory replacement mechanism to ensure a smooth transition in the IBOR area.

Building on a [consultation conducted in the autumn of 2019](#)<sup>3</sup>, the Commission is seeking views on further potential improvements in the functioning of the BMR, specifically as regards the rules applicable to non-EEA benchmarks (also: third-country benchmarks) and the impact on market participants of the full entry into application of the third country regime as of 1 January 2024. To that end, the Commission is carrying out a targeted consultation.

The Commission also reminds that other aspects of the BMR are subject to ongoing reflection, notably in the area of sustainability. This includes a study currently being carried out by an external contractor on the feasibility, minimum standards and transparency requirements of an EU ESG Benchmark, on which the Commission will provide a follow-up after its delivery at end-2022.

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<sup>1</sup> [Regulation \(EU\) 2019/2089](#)

<sup>2</sup> [Regulation \(EU\) 2021/168](#)

<sup>3</sup> The consultation ran from 11 October until 31 December 2019 and received 86 responses. The consultation document and the responses received can be found at [https://ec.europa.eu/info/publications/finance-consultations-2019-benchmark-review\\_en](https://ec.europa.eu/info/publications/finance-consultations-2019-benchmark-review_en)

## CONSULTATION QUESTIONS

### QUESTIONS SPECIFIC TO BENCHMARK ADMINISTRATORS

#### a) Question specific to organisations authorised or registered under Article 34(1)(a) BMR

**1. To what extent do you, in your provision of benchmarks in the EU, experience competition from benchmarks administered outside the EU?**

**If possible, please provide an estimation of your benchmark offering which overlaps with benchmarks administered outside the EU.**

- No competition
- Some competition
- Moderate competition
- Strong competition
- Very strong competition

Please explain your answer ideally including the list of benchmarks or family of benchmarks that overlap.

#### b) Questions specific to organisations recognised under Article 32 BMR, endorsed under Article 33 BMR, covered by an equivalence decision adopted by the European Commission under Article 30 BMR, or other

**1. Is your organisation planning to change its status under BMR in light of the entry into application of the rules for third country benchmarks as they currently stand?**

Yes/No  
+ please explain

**2. How significant is the provision of benchmarks in the EU, as a proportion of your revenue derived from the provision of benchmarks worldwide:**

0-20 % - 21-40 % - 41-60% - 61-80 % - 81-100 % - do not know / prefer not to say  
+ explain your answer

**3. To the extent possible, provide the aggregate notional amounts / values (unit: EUR 1 000) (or an estimate thereof) for the use of your organisation's third country benchmarks in the Union in each of the following settings. If the breakdown is not available, please provide the total value:**

	Type of benchmark
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		Foreign exchange	Interest rate	Equity	Commodity	Other – please specify	Total
Type of use	<b>issuance of a financial instrument</b> which references an index or a combination of indices;						
	<b>determination of the amount payable</b> under a financial instrument or a financial contract by referencing an index or a combination of indices;						
	<b>being a party to a financial contract</b> which references an index or a combination of indices;						
	<b>providing a borrowing rate</b> as defined in point (j) of Article 3 of <a href="#">Directive 2008/48/EC</a> calculated as a spread or mark-up over an index or a combination of indices and that is solely used as a reference in a financial contract to						

which the creditor is a party							
measuring the performance of an investment fund through an index or a combination of indices for the purpose of tracking the return of such index or combination of indices, of defining the asset allocation of a portfolio, or of computing the performance fees							
<b>Other</b> – please specify							
Total							

**4. Please provide a list of all your benchmarks or family of benchmarks for which you are aware that they are used by EU supervised entities. Alternatively, please provide the number of such benchmarks.**

**c) Question specific to organisations recognised under Article 32 BMR, endorsed under Article 33 BMR, or covered by an equivalence decision adopted by the European Commission under Article 30 BMR**

**1. Please provide an estimation of the costs incurred to seek compliance with the BMR’s third country regime, that is to say to become a third country administrator active in the EU under recognition, endorsement or equivalence.**

**d) Questions specific to others**

**1. Have overall compliance costs – including additional one-off and ongoing supervisory/registration fees incurred in the EU – acted as a deterrent for you to seek (or not to seek) compliance with the BMR, or slowed down the process towards compliance with the current third country regime?**

- No, compliance costs (including supervisory/registration fees) did not influence our decision to seek (or not to seek) compliance with the BMR third country regime.
  - Yes, compliance costs (including supervisory/registration fees) have slowed down our decision to seek compliance with the BMR third country regime.
  - Yes, compliance costs (including supervisory/registration fees) have forced us to renounce to our project to seek compliance with the BMR third country regime.
- + please explain your answer, distinguishing if relevant operational/organisational costs and financial costs such as supervisory/registration fees

**2. If you have already started taking measures to seek compliance with the current third country regime, anticipating its application as of 31 December 2023, please provide an estimation of the costs incurred by such measures.**

**QUESTIONS SPECIFIC TO SUPERVISED ENTITIES USING BENCHMARKS**

**1. To what extent does your activity rely on benchmark administered by third country entities?**

Not at all – some reliance – moderate reliance – strong reliance – exclusive reliance

**If your answer indicates some reliance on third country benchmarks, please provide, if available, notional amounts / values (unit: EUR 1 000) (or an estimate thereof) for your organisation’s use of third country benchmarks in each of the following settings. If the breakdown is not available, please provide the total value:**

	Type of benchmark						
Type of use		Foreign exchange	Interest rate	Equity	Commodity	Other – please specify	Total
	<b>issuance of a financial instrument</b> which references an index or a combination of indices;						
	<b>determination of the amount payable</b> under a financial instrument or a financial contract by referencing an index or a combination of indices;						
	<b>being a party to a financial contract</b> which references an index or a combination of indices;						
	<b>providing a borrowing rate</b> as defined in						

	<p>point (j) of Article 3 of Directive 2008/48/EC calculated as a spread or mark-up over an index or a combination of indices and that is solely used as a reference in a financial contract to which the creditor is a party</p>					
	<p><b>measuring the performance of an investment fund</b> through an index or a combination of indices for the purpose of tracking the return of such index or combination of indices, of defining the asset allocation of a portfolio, or of computing the performance fees</p>					
	<p><b>Other</b> – please specify</p>					
	<p>Total</p>					

**2. What is / are your organisation’s reasons for using non-EU benchmarks?  
[more than one answer possible]**

- no particular reason
- established practice / established business relationship with benchmark administrator

- no equivalent EU benchmark available
- equivalent EU benchmark available, but not cost free or more expensive
- other – please specify

**3. Please provide a full list of all third country benchmarks your organisation uses as well as their administrators.**

**4. Do you anticipate that all third country benchmarks that you might wish to use in offering financial services and products in the future (i.e., post 31 December 2023) will be either deemed equivalent, recognised or endorsed for use in the Union under the current BMR third country framework?**

**If so, please explain. If not, please indicate the benchmarks that you might wish to reference but that will not be recognised or endorsed for use by supervised entities in the Union.**

Yes/No

+ explain your answer

**5. Do you believe that the current grandfathering provisions in the BMR, Article 51 paragraph 5, suffice to ensure that you have access to all indices that you need for managing your portfolio of financial products and services?**

- Yes, they will suffice.
- No, our activities will be affected by the entry into application of the BMR third country regime despite the grandfathering provisions.

+ please explain

**6. To what degree have the benchmark administrators whose third country benchmarks you use already communicated on the conditions for the availability of these benchmarks beyond 31 December 2023, that is to say after the third country provisions start applying? Among benchmark administrators that have communicated on such availability, how many indicated that their benchmarks will not be available, or are likely to be unavailable, beyond 31 December 2023?**

None / some / most / all

+ explain your answer

**7. In light of the answers above, please provide your estimation of the impact of the entry into application of the rules on third country benchmarks in the BMR on your activities (e.g. on revenues or costs)? Please complement, if possible, with a quantitative estimation of the expected impact.**

No/negligible impact – slight impact – medium impact – severe impact – some / all of our activities would not be sustainable.

+ explain your answer

**8. Do you anticipate competitive disadvantages vis-à-vis competitors that are not supervised entities within the scope of the BMR if the third country “market**

**access” rules for benchmarks enter into application without changes in 2024 at the latest?**

Yes/No

+ please explain your answer

**9. Do you / does your organisation use benchmarks advertising ESG features that are administered in a third country? If yes, what is your estimation of the share of those ESG benchmarks you use that are administered in a third country?**

Yes/No

+please explain your answer

## QUESTIONS SPECIFIC TO END-USERS OF BENCHMARKS

### 1. To what extent does your activity rely on benchmark administered by third country entities?

Not at all – some reliance – moderate reliance – strong reliance – exclusive reliance

### 2. If your answer indicates some reliance on third country benchmarks, for what purpose do you use (as an end-user) third country benchmarks?

- Investment
- Hedging
- Portfolio management
- Other: please specify

### 2.1 If available, please provide notional amounts / values (unit: EUR 1 000) for your organisation's end-use of third country benchmarks in each of the following settings:

Type of use	Type of benchmark						
		Foreign exchange	Interest rate	Equity	Commodity	Other – please specify	Total
<b>Investment</b>							
<b>Hedging</b>							
<b>Portfolio management</b>							
<b>Other – please specify</b>							
<b>Total</b>							

### 3. What is / are the reasons for using non-EU benchmarks?

- no particular reason
- habit / established business relationship with benchmark administrator
- no equivalent EU benchmark available
- equivalent EU benchmark available, but not cost free or more expensive
- other – please specify

**4. Please provide a full list of all third country benchmarks your organisation uses as well as their administrators.**

**5. In your organisation's end-use of third country benchmarks, on which counterparties / service providers (benchmark users) do you rely?**

- exclusively on EU entities
- mainly on EU entities
- more or less equally on EU and non-EU entities
- mainly on non-EU entities
- exclusively on non-EU entities

**6. When the rules for third country benchmarks enter into application, your service provider might lose the right to offer new contracts referencing some third country benchmarks you currently use as an end-user. How would you react?**

- we would stand ready to reach out to non-EU service providers that still have access to those benchmarks, in order to continue to use the same third country benchmarks, even if that implies higher costs
- we already resort to non-EU service providers, so we would not be affected and would continue to use the same benchmarks via the same non-EU service providers
- we would seek alternative, EU-based benchmarks that can be referenced by EU service providers
- we would stop using benchmarks for this purpose: if those third country benchmarks did not meet the requirements for equivalence, recognition or endorsement, it means that they are not safe and we prefer not to use them.

+ please explain

**7. Taking into account the answers above, how significant do you estimate the impact on your activities would be of the entry into application of the rules on third country benchmarks in the BMR?**

No/negligible impact – slight impact – medium impact – severe impact – some / all of our activities would not be sustainable.

+ please explain

**8. Are you / is your organisation an end-user of benchmarks advertising ESG features that are administered in a third country? If yes, what is your estimation of the share of those ESG benchmarks you use that are administered in a third country?**

Yes/No

+please explain your answer

## QUESTIONS SPECIFIC TO ‘OTHER’ RESPONDENTS

**1. Please provide your estimation of the impact of the entry into application of the rules on third country benchmarks in the BMR on your activities (e.g. on revenues or costs)? Please complement, if possible, with a quantitative estimation of the expected impact.**

No/negligible impact – slight impact – medium impact – severe impact – some / all of our activities would not be sustainable.

+ please explain

**2. If available and relevant, please provide notional amounts / values (unit: EUR 1 000) for your organisation’s exposure to or use of third country benchmarks in each of the following settings:**

	Type of benchmark						
Type of use		Foreign exchange	Interest rate	Equity	Commodity	Other – please specify	Total
	<b>Investment</b>						
	<b>Hedging</b>						
	<b>Portfolio management</b>						
	<b>Other</b> – please specify						
	<b>Total</b>						

**QUESTIONS TO ALL TYPES OF RESPONDENTS**

**1. Do you believe that the rules applicable to the use of benchmarks administered in a third country, which will fully enter into application as of January 2024, are fit-for-purpose? If not, how would you propose to amend the BMR’s third country regime?**

- Those rules are appropriate
- Those rules are overall appropriate, but minor adjustments are needed
- Those rules are not fit-for-purpose, and should be reviewed
- No opinion

+ please explain

**2. More specifically, would you be in favour of a framework under which only certain third country benchmarks, deemed ‘strategic’, would remain subject to restrictions of use similar to the current rules? Under this hypothesis, the use by EU supervised entities of all other third country benchmarks than those ‘strategic’ benchmarks would be in principle free, without any additional requirement attached to the status of the administrator.**

- Totally opposed
- Somewhat opposed
- Neither opposed nor in favour
- Somewhat in favour
- Totally in favour

+ please explain

**3. Under the hypothesis set out in the question above, there would need to be criteria to determine whether a third country benchmark should be designated as ‘strategic’. Which of the following criteria should be used, in your view, to identify ‘strategic’ third country benchmarks?**

<b>Criterion</b>	<b>Totally against</b>	<b>Somewhat against</b>	<b>Neither against nor in favour</b>	<b>Somewhat in favour</b>	<b>Totally in favour</b>	<b>Explanation / justification</b>
<b>Notional amount/values of assets referencing the benchmark globally</b>						
<b>Notional amount/values of assets referencing the benchmark in</b>						

<b>the EU</b>						
<b>Type of use (determination of the amount payable under a financial instrument, providing a borrowing rate, measuring the performance of an investment fund...)</b>						
<b>Type of user (investment fund, credit institution, CCP, trade repository, etc.)</b>						
<b>Core activity of the administrator (bank, trading venue, asset manager, benchmark administrator, etc.)</b>						
<b>Regulatory status of administrator in home jurisdiction</b>						
<b>Type of benchmark (interest rate benchmark, commodity benchmark, equity benchmark, regulated-data benchmark, etc.)</b>						

<b>Substitutability of the benchmark (i.e. existence of a similar benchmark administered in the EU)</b>						
<b>EU benchmark labels (including EU Paris Aligned Benchmarks and EU Climate Transition Benchmarks)</b>						
<b>Other: please specify</b>						

**4. Under the hypothesis where the current third country regime would be reformed or repealed, please indicate the degree to which you agree with each of the following statements:**

**a) The European Commission should be granted powers to designate certain administrators or benchmarks as ‘strategic’ on a case-by-case basis.**

- Do not agree at all
- Do not agree
- Neither agree nor disagree
- Agree somewhat
- Agree completely
- + explain your answer

**b) ESMA should be given the task to supervise those third country ‘strategic’ benchmarks.**

- Do not agree at all
- Do not agree
- Neither agree nor disagree
- Agree somewhat
- Agree completely
- + explain your answer

**c) ESMA should also be tasked with the supervision of EU-based benchmarks that qualify as ‘strategic’.**

- Do not agree at all
- Do not agree

- Neither agree nor disagree
- Agree somewhat
- Agree completely
- + explain your answer

**d) The EU internal scope of regulation of EU benchmarks should also be amended along similar lines, to only comprise certain types of strategic benchmarks, notably with a view to avoid circumvention or unlevel playing field.**

- Do not agree at all
- Do not agree
- Neither agree nor disagree
- Agree somewhat
- Agree completely
- + explain your answer

**e) The EU BMR could function as an opt-in regime, whereby both EU administrators and third-country administrators would benefit from a form of quality label attached to the BMR as they voluntarily decide to comply with the EU BMR and being subject to supervision. Under this hypothesis, the opt-in regime would be applicable to most benchmarks, while only certain benchmarks (e.g. above-mentioned ‘strategic’ benchmarks) would be subject to mandatory compliance with the EU BMR and supervision.**

- Do not agree at all
- Do not agree
- Neither agree nor disagree
- Agree somewhat
- Agree completely
- + explain your answer

**f) EU benchmark labels (including EU Paris Aligned Benchmarks and EU Climate Transition Benchmarks) should not be accessible to third country administrators, and only be accessible to administrators supervised in the EU and subject to the BMR.**

- Do not agree at all
- Do not agree
- Neither agree nor disagree
- Agree somewhat
- Agree completely
- + explain your answer

**If EU benchmark labels were to remain accessible to third country administrators (which are not subject to EU supervision), and if the labelled benchmarks have not been designated as “strategic”, some safeguards should be put in place to maintain the reliability of those labels. Those safeguards should ensure that benchmarks administered in a third country and using an EU label effectively comply, on a continuous basis, with the relevant minimum standards attached to those labels. Regarding such benchmarks administered in a third country and using an EU label:**

- g) An EU administrator subject to EU supervision should be responsible for compliance of the third country labelled benchmark with the relevant standards (under a mechanism similar to the current endorsement framework).**
- Do not agree at all
  - Do not agree
  - Neither agree nor disagree
  - Agree somewhat
  - Agree completely
- + explain your answers
- h) They should be directly supervised by ESMA (under a mechanism similar to the current recognition framework).**
- Do not agree at all
  - Do not agree
  - Neither agree nor disagree
  - Agree somewhat
  - Agree completely
- + explain your answers
- i) EU benchmark users should be required to only use benchmarks that comply with the EU standards on a continuous basis. As a consequence, those users should be required to gather the necessary information to verify that the benchmark’s methodology is consistent (on a continuous basis) with the EU standards, and for ceasing use of those benchmarks in case the labels are misused.**
- Do not agree at all
  - Do not agree
  - Neither agree nor disagree
  - Agree somewhat
  - Agree completely
- + explain your answers

With [Regulation 2019/2089](#), the EU recently introduced a number of sustainability-related disclosures to benchmark administrators, especially for those benchmarks advertising ESG features. As mentioned in its [renewed sustainable finance strategy](#), the Commission is exploring the possibility to create an [EU ESG benchmark label](#), whose scope would simultaneously encompass environmental, social and governance pillars. This label would be an addition to the already existing climate-focused PAB and CTB labels, and would aim at bringing more clarity in the market for ESG benchmarks and further tackling “ESG-washing”.

**5. Do you believe that creating an EU ESG benchmark label would help enhance the quality of ESG benchmarks? Would a context where a significant share of those benchmarks are administered in a third country influence your appraisal?**

- Do not agree at all
- Do not agree
- Neither agree nor disagree

- Agree somewhat
- Agree completely

+ please explain your answer

**6. Should such an EU ESG benchmark label be created, should this label be accessible to third country administrators?**

- Do not agree at all
- Do not agree
- Neither agree nor disagree
- Agree somewhat
- Agree completely

+ please explain your answer