

Index Industry Association position on the proposal to review the Benchmark Regulation

General comments

The Index Industry Association (IIA) welcomes the European Commission (Commission) initiative to reduce reporting requirements by 25%, in line with the objective to boost the EU's long-term competitiveness. The Proposal to review the Benchmark Regulation's (BMR) scope and third-country regime is a concrete and welcomed measure to achieve this objective.

The IIA supports the BMR's aims of promoting investor protection and the orderly functioning of financial markets, and shares the Commission's view of the current framework's shortcomings and unintended consequences. In particular, the prescriptive scope, capturing all benchmarks used in the European Union (EU), paired with limited access routes to the EU market for third-country administrators, risks seeing EU-based investors lose access to many of the world's indexes, posing significant financial stability and competitiveness risks.

As such, we welcome the Proposal's (I) re-calibration of the scope to target significant benchmarks as well as (II) the creation of a workable third-country regime.

(I) Focusing on 'critical' and 'significant' benchmarks

The Proposal rightly aims to regulate 'critical' and 'significant' benchmarks and exclude EU and non-EU 'non-significant' benchmarks. The new scope will focus on benchmarks which have the greatest economic relevance to the European Union. The current threshold for 'significant' benchmarks remains unchanged, and will provide the market (i.e. users and benchmark administrators) with certainty in terms of regulatory scope of the future benchmark supervisory regime.

(II) A third-country regime that works in practice

The Proposal enshrines the recognition route for third country administrators (Article 32) as a permanent option and retains endorsement (Article 33) via national competent authorities (NCAs) as part of the third country framework. Endorsement provides users of benchmarks in the EU access to the full range of benchmarks administered outside of the EU that meet EU standards and provides the necessary flexibility for benchmark administrators to make these benchmarks available in the EU. The relevant NCA has supervisory oversight of the endorsement process allowing for full visibility into the quality of third-country benchmarks used in the EU.

Equivalence, recognition, and endorsement should all remain available options for non-EU benchmark administrators to access and provide services to EU clients.

The re-calibration of the (I) scope to target significant benchmarks as well as (II) a workable third-country regime will significantly contribute to objectives and efforts to maintain the EU's competitiveness by alleviating the operational burden on benchmark administrators, users of benchmarks, and regulators.

Below, the IIA seeks to highlight and address certain elements (III, IV, V) of the Proposal which risk repeating the BMR's existing shortcomings (or exacerbating them), and might undermine the objectives of the Proposal.

We note that the transition period for third-country administrators is set to end in December 2025 – presenting a potential "cliff-edge" scenario should the BMR's third-country regime not have

been amended by then. We therefore stress the urgency of addressing these issues to ensure market certainty and to allow benchmark administrators to prepare accordingly.

(III) Ensuring a consistent scope

The IIA appreciates that there may be exceptional circumstances where a specific benchmark may be important despite not meeting the EUR 50 billion threshold.

However, we have concerns regarding the ambiguous nature of the proposed designation criteria to be applied by NCAs. The proposal would allow for considerable flexibility in the designation process, making for an unreliable regulatory framework. The lack of measurable guardrails significantly affects market certainty: an administrator, particularly if located in a non-EU country, should be able to issue a benchmark with a clear understanding of whether or not it will be subject to the BMR. There is also a distinct possibility for the scope to be considerably broadened once more, as there is no limit set on how many benchmarks an NCA may designate or ask ESMA to designate. The very issue the Proposal seeks to address, namely the unworkable scope, might thus manifest itself once more. The IIA therefore recommends grounding NCA discretion in clear, measurable, risk-based criteria in order to ensure market certainty and avoid the pitfalls mentioned above. To this end, we suggest setting a minimum, EU-wide reference value threshold of EUR 20 billion below which a benchmark may not be designated.

(IV) Limiting compliance and administrative costs

Article 51 (4) (c) seems to imply that authorised, registered, endorsed, or recognised administrators would have to re-apply for authorisation, registration, endorsement, or recognition upon application of the revised BMR. We understand the intention was to provide a 'simplified procedure' for re-application for instances in which a benchmark administrator has fallen out of the regulatory scope of the BMR due to the re-scoping, but later re-enters the regulatory scope due to reaching the €50 billion threshold or being designated.

The IIA therefore recommends clarifying the language such that only unauthorised, unregistered, unendorsed, or unrecognised administrators be required to re-submit an application, in case they re-enter the regulatory scope of a revised BMR.

(V) Preserving access to Paris-Aligned and Climate Transition benchmarks

Article 19 (a) requires for Paris-Aligned Benchmarks (PABs) and Climate Transition Benchmarks (CTBs) to be provided by EU-based benchmark administrators that are authorised or registered within the EU. This EU-localization requirement stands in opposition to the BMR review's aim to limit burden and level the playing field between EU- and non-EU based administrators.

Removing the ability for EU access via equivalence, endorsement, or recognition is unlikely to prompt third-country administrators to establish a presence in the EU solely for the provision of PABs/CTBs. Rather, a more likely outcome is that EU investors will see their access to specific PABs/CTBs and ultimately their underlying securities be curtailed or inhibited. The implications of this requirement on the sustainable investment market could be substantial by the Commission's own account: according to the Commission June 2023 Q&A on the Sustainable Finance package, assets under management of financial products referencing a PAB or CTB benchmark have already reached an estimated EUR 116 billion in 2023.¹ We support the notion

¹ https://ec.europa.eu/commission/presscorner/detail/en/qanda_23_3194

that the integrity of EU labels needs to be safeguarded, and the IIA fundamentally thinks that can be achieved via the existing third-country framework i.e. via equivalence, endorsement or recognition, as for all other third-country 'significant' benchmarks.

Moreover, another impact of this requirement is that it risks undermining the effectiveness of the overall supervisory regime. It may be that, in order to comply with the new requirement, third country administrators would have to separate their operations such that they would be regulated by both ESMA for the provision of non-EU benchmarks via recognition, and the NCAs for the provision of PABs/CTBs in the Union. This would significantly complicate both the supervision of benchmark administrators by competent authorities and the compliance procedures of an administrator, increasing costs, as well as putting the coherence and consistency of the Regulation at risk.

The IIA therefore urges for the location policy regarding PABs/CTBs to be deleted, and permit PABs/CTBs be provided by a third-country administrator to EU clients via equivalence, endorsement, or recognition.

The IIA and its members stand ready to provide further input and clarity, and will continue contributing to discussions on the BMR review to ensure the final text guarantees the best outcomes for benchmark users, regulators, and administrators alike.

About the IIA

Many of the leading independent index providers in the world are members of the IIA, including Bloomberg Indices, CBOE Global Indices, the Chicago Booth Center for Research in Security Prices (CRSP), China Bond Pricing Co. Ltd., China Securities Index Co. Ltd., FTSE Russell, Hang Seng Indexes, Morningstar, MSCI Inc., ICE, NASDAQ OMX, ParametaSolutions, Shenzhen Securities Information Co.Ltd., S&P Dow Jones Indices LLC, ISS STOXX, and JPX Market Innovation and Research (Tokyo Stock Exchange). IIA members calculate over three million indices for their clients, covering a number of different asset classes, including equities, fixed income, and commodities. Part of the IIA's mission is to consider ways to promote best practices for index providers, which makes it a natural supporter of appropriate and proportionate industry standards. Our members are dedicated to promoting transparency, competition, sound operational practices, intellectual property rights, education, and effective index management practices. IIA members are independent index administrators who neither trade the underlying component securities of their indices nor directly create products for investors. Moreover, our members publicly make available methodologies, explain how their indices are created, calculated, or maintained. For more information: <http://www.indexindustry.org/>