Key Messages on Benchmark Regulation Proposal

Data Working Group Position Paper

February 2024

Paris Europlace is the organization in charge of promoting and developing the Paris financial center. We are a privileged intermediary of European and French authorities, with which we maintain a continuous and constructive dialogue. Our aim is to promote financial markets to international investors, issuers and financial intermediaries to better finance the real economy and the energy transition. Paris Europlace gathers more than 600 members, including investors, sustainable finance entities, banks, financial market authorities, corporates, consulting firms.

As part of its package of measures to rationalise reporting requirements, the European Commission (EC) published in October 2023 a proposal, amending the Benchmark Regulation and scoping out all non-significant Benchmarks. This revision also intends to provide a clear answer to the use of non-EU indices[1].

As stated by the EC itself, scoping out non-significant benchmarks "*corresponds to a reduction of the population subject to mandatory compliance by up to 90%*". Benchmark users confirmed these data, adding that most of their non-significant indices were provided by large non-EU providers, generally in an oligopolistic situation.

In view of the ongoing negotiations, and in the context where benchmark users are subject to increasing disclosure and transparency reporting requirements and notably regarding ESG data, Paris Europlace would like to raise the attention of European policy makers on the impact such a descoping could have on EU's independence towards "big" non-EU index providers (I) and on the creation of large discrepancies between what is required from users and the absence of requirements for administrators (II).

I- Reinforcement of the EU's dependency towards "big" non-EU index providers

Benchmark regulation offers a framework governing how users and administrators must ensure a certain level of transparency to provide a high degree of consumer and investor protection. To achieve this goal, reporting obligations are of upmost importance. However, what is not provided through this regulation needs to be bilaterally negotiated between users and their benchmark administrators. When talking about "big non-EU providers", users have

[1] Indeed, non-EU administrators were given more time to qualify their benchmarks for use in the Union during a transitional period that was extended three times and now expires at the end of 2025. Unfortunately, as of today, only a few non-EU administrators have qualified their benchmarks for use in the EU.

very limited possibility to negotiate contractual and commercial terms of the licencing agreement, reinforcing their dependency towards these providers.

Furthermore, as BMR regulates indices and not providers, the EC's proposal does not consider the systemic risk of an administrator whose indices would be below the thresholds (e.g. they provide bespoke indices), but who would produce significantly more indices than smaller players and yet be subject to the same lack of requirements. Knowing that these players are usually also data/rating providers and should on the contrary be subject to tighter rules on conflict of interest for instance.

As such, "big" index providers should remain within the scope of BMR. An adequate solution for doing so could be to aggregate the volume of benchmarks provided by one administrator to calculate the 50 billion threshold above which these benchmark would be qualified as significant. Indeed, these actors, whom users rely heavily on, have the ability to set the necessary tools and procedures to meet BMR requirements.

II- Creation of large discrepancies between requirements imposed on users and the absence of requirements for providers

While reinforcing dependencies towards non-EU providers, it also affects how users may respond to their own obligations, affecting transparency. This is true for their due diligence processes. To fill out the Financial Index Eligibility Table that some NCAs require annually for instance (see the Guidelines on ETFs and other UCITS issues – ESMA/2012/832), users must rely on a certain number of information that are only available through administrators. Without strict organisational rules, this information will be even harder to retrieve. This is all the more true when we see that users are subject to an increasing number of provisions regarding ESG (reporting, fund naming, due diligence).

Furthermore, users will be ultimately responsible even in case of an error from their provider. Today agreements usually never mention liabilities for negligence, and the process for when an error occurs lacks transparency.

For all the above, non-significant benchmarks should not be entirely scoped out from the benchmark regulation but rather subject to a lighter regime, i.e. transparency on the methodology, managing conflict of interest, a proportional framework for input data, record keeping obligations and the benchmark statement. As these disclosure requirements continue to apply to users regardless of the significance of their benchmark, it is necessary to maintain some requirements for administrators and therefore for non-significant indices.

In all cases, particular attention should be brought to ESG benchmarks (i.e. benchmark that pursues ESG objectives consistent with the EU regulation) who should be integrated in the scope of the regulation. Moreover, to ensure consistency, BMR should be aligned with the legislation on disclosures for financial products (SFDR) and with fund names requirements. This is of particular importance especially for ETFs for instance, whose names replicate those of their underlying indices.