

Targeted consultation on the regime applicable to the use of benchmarks administered in a third country

Fields marked with * are mandatory.

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 \(Regulation \(EU\) 2019/2089\)](#) 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 \(Regulation \(EU\) 2021/168\)](#), 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, 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.

Responding to this consultation and follow up

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 prejudice any outcome nor prevent the Commission from considering alternative options.

You can respond to this consultation via the Commission's EUSurvey web application. Additional materials such as position papers can be uploaded at the end of the process.

Please note: In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact fisma-benchmark-review@ec.europa.eu.

More information on

- [this consultation](#)
- [the consultation document](#)
- [benchmarks](#)
- [EU labels for benchmarks \(climate, ESG\) and benchmarks' ESG disclosures](#)
- [the protection of personal data regime for this consultation](#)

About you

* Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
- Dutch
- English
- Estonian
- Finnish
- French
- German
- Greek
- Hungarian
- Irish
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish

- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

* I am giving my contribution as

- Academic/research institution
- Business association
- Company/business organisation
- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

* First name

Stevi

* Surname

Iosif

* Email (this won't be published)

siosif@isda.org

* Organisation name

255 character(s) maximum

International Swaps and Derivatives Association (ISDA)

* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

Transparency register number

255 character(s) maximum

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

46643241096-93

* Country of origin

Please add your country of origin, or that of your organisation.

- | | | | |
|---|--|--|--|
| <input type="radio"/> Afghanistan | <input type="radio"/> Djibouti | <input type="radio"/> Libya | <input type="radio"/> Saint Martin |
| <input type="radio"/> Åland Islands | <input type="radio"/> Dominica | <input type="radio"/> Liechtenstein | <input type="radio"/> Saint Pierre and Miquelon |
| <input type="radio"/> Albania | <input type="radio"/> Dominican Republic | <input type="radio"/> Lithuania | <input type="radio"/> Saint Vincent and the Grenadines |
| <input type="radio"/> Algeria | <input type="radio"/> Ecuador | <input type="radio"/> Luxembourg | <input type="radio"/> Samoa |
| <input type="radio"/> American Samoa | <input type="radio"/> Egypt | <input type="radio"/> Macau | <input type="radio"/> San Marino |
| <input type="radio"/> Andorra | <input type="radio"/> El Salvador | <input type="radio"/> Madagascar | <input type="radio"/> São Tomé and Príncipe |
| <input type="radio"/> Angola | <input type="radio"/> Equatorial Guinea | <input type="radio"/> Malawi | <input type="radio"/> Saudi Arabia |
| <input type="radio"/> Anguilla | <input type="radio"/> Eritrea | <input type="radio"/> Malaysia | <input type="radio"/> Senegal |
| <input type="radio"/> Antarctica | <input type="radio"/> Estonia | <input type="radio"/> Maldives | <input type="radio"/> Serbia |
| <input type="radio"/> Antigua and Barbuda | <input type="radio"/> Eswatini | <input type="radio"/> Mali | <input type="radio"/> Seychelles |
| <input type="radio"/> Argentina | <input type="radio"/> Ethiopia | <input type="radio"/> Malta | <input type="radio"/> Sierra Leone |
| <input type="radio"/> Armenia | <input type="radio"/> Falkland Islands | <input type="radio"/> Marshall Islands | <input type="radio"/> Singapore |
| <input type="radio"/> Aruba | <input type="radio"/> Faroe Islands | <input type="radio"/> Martinique | <input type="radio"/> Sint Maarten |
| <input type="radio"/> Australia | <input type="radio"/> Fiji | <input type="radio"/> Mauritania | <input type="radio"/> Slovakia |
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| <input type="radio"/> Azerbaijan | <input type="radio"/> France | <input type="radio"/> Mayotte | <input type="radio"/> Solomon Islands |
| <input type="radio"/> Bahamas | <input type="radio"/> French Guiana | <input type="radio"/> Mexico | <input type="radio"/> Somalia |
| <input type="radio"/> Bahrain | <input type="radio"/> French Polynesia | <input type="radio"/> Micronesia | <input type="radio"/> South Africa |

- Bangladesh
- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Bhutan
- Bolivia
- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- Cameroon
- Canada
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Greenland
- Grenada
- Guadeloupe
- Guam
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Hungary
- Iceland
- India
- Moldova
- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar/Burma
- Namibia
- Nauru
- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- Norfolk Island
- Northern Mariana Islands
- North Korea
- North Macedonia
- Norway
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden
- Switzerland
- Syria
- Taiwan
- Tajikistan
- Tanzania
- Thailand
- The Gambia
- Timor-Leste
- Togo
- Tokelau
- Tonga
- Trinidad and Tobago
- Tunisia
- Turkey

- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d'Ivoire
- Croatia
- Cuba
- Curaçao
- Cyprus
- Czechia
- Democratic Republic of the Congo
- Denmark
- Indonesia
- Iran
- Iraq
- Ireland
- Isle of Man
- Israel
- Italy
- Jamaica
- Japan
- Jersey
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- Kuwait
- Kyrgyzstan
- Laos
- Latvia
- Lebanon
- Lesotho
- Liberia
- Oman
- Pakistan
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Philippines
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Qatar
- Réunion
- Romania
- Russia
- Rwanda
- Saint Barthélemy
- Saint Helena
- Ascension and Tristan da Cunha
- Saint Kitts and Nevis
- Saint Lucia
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States
- United States Minor Outlying Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
- Vietnam
- Wallis and Futuna
- Western Sahara
- Yemen
- Zambia
- Zimbabwe

* Field of activity or sector (if applicable)

- Accounting

- Auditing
- Banking
- Credit rating agencies
- Insurance
- Pension provision
- Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, securities)
- Market infrastructure operation (e.g. CCPs, CSDs, Stock exchanges)
- Social entrepreneurship
- Other
- Not applicable

* Please specify your activity field(s) or sector(s)

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 990 member institutions from 78 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website: www.isda.org.

* My role in relation with benchmarks is

- Benchmark administrator
- Supervised entity using benchmarks (i.e., supervised entities using a benchmark in the sense of the BMR)
- End-user of benchmarks (e.g., investor or business using a benchmark)
- Other

* Please specify your role in relation with benchmarks

Senior Advisor on EU public policy and regulatory issues including the reform of the BMR.

The Commission will publish all contributions to this targeted consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **For the purpose of transparency, the type of respondent (for example, 'business association, 'consumer association', 'EU citizen') is always published. Your e-mail address will never be published.** Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

* Contribution publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

Anonymous

Only the organisation type is published: The type of respondent that you responded to this consultation as, your field of activity and your contribution will be published as received. The name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.

Public

Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

I agree with the [personal data protection provisions](#)

Your opinion

Title V of the BMR sets out the conditions under which an EU supervised entity may use a benchmark. As of 1 January 2024, EU supervised entities may use benchmarks administered in a third country, provided that such benchmarks and their administrators are mentioned in the ESMA registry set up under Article 36 of the BMR. This requires prior recognition or endorsement of such benchmarks, or that the third country legislation under which the benchmark administrator is supervised has been recognised as equivalent.

The use of certain non-EEA benchmarks is thought to be widespread, hardly replaceable with that of EU benchmarks, especially for currency or interest rate hedging. This highlights the arguably high economic relevance of those benchmarks. As the full entry into application of this third country regime is approaching, the Commission is assessing the impact of those restrictions on the European market, with a view to avoid unintended impacts on EU market participants, including on their competitiveness.

Questions specific to ‘other’ respondents

Question 1.1 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)?

- No / negligible impact
- Slight impact
- Medium impact
- Severe impact
- Some / all of our activities would not be sustainable
- Don't know / no opinion / not applicable

Please explain your answer to question 1.1, complementing, if possible, with a quantitative estimation of the expected impact:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 1.2 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:

	Foreign exchange	Interest rate	Equity commodity	Other (please specify)	Total
Investment					
Hedging					
Portfolio management					
Other (please specify)					
Total					

Questions to all types of respondents

Question 2.1 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
- Don't know / no opinion / not applicable

Please explain your answer to question 2.1:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Our response to the European Commission's previous consultation sets out the reasons the 3rd country regime is unfit for purpose, requiring multiple extensions to its transition period over concerns about its impact on users of benchmarks.

These stem from 3 main issues:

- BMR's extremely wide scope (encompassing benchmarks of no significance)
- the potentially damaging effects on end users of an automatic prohibition of any non-compliant benchmark
- lack of visibility for end users as to which benchmarks qualify

Those issues have not been resolved by the passage of time or adequately addressed by subsequent amendments. We believe it should be reformed to provide investors with appropriate protection in a proportionate and practical manner by:

- (1) Making compliance mandatory for EU and 3rd Country 'Systemic' benchmarks only
- (2) Creating a voluntary regime for all other EU and 3rd Country benchmarks
- (3) Reforming the prohibition on use of a non-compliant Systemic benchmark
- (4) Improving end-user visibility of which benchmarks are compliant
- (5) Removing uncertainty regarding key provisions
- (6) Reserving high sanctions only for the most serious breaches of the most important provisions and reducing sanctions for all other breaches.

More information can be found in our responses below and our paper "The Importance of Reforming the EU Benchmarks Regulation": <https://www.isda.org/2022/08/11/reforming-the-eu-benchmarks-regulation-updated-recommendations/>.

If the transition period is not extended to 2025, it is critical that industry is given as much advance warning as possible.

Question 2.2 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.

- 1 - Totally opposed
- 2 - Somewhat opposed
- 3 - Neither opposed nor in favour
- 4 - Somewhat in favour
- 5 - Totally in favour
- Don't know / no opinion / not applicable

Please explain your answer to question 2.2:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In combination with a voluntary regime, this calibration would address some of the issues outlined above around scoping and proportionality, ensuring administrators of the most important benchmarks are mandated to comply with the highest standards without imposing undue burdens for benchmarks that pose no or lower risks to users. We prefer the label ‘Systemic’ to ‘Strategic’.

To avoid cliff-edge risks for end users and facilitate transition off the benchmark, it is also vital to reform the provisions prohibiting use of a non-compliant Systemic benchmark to align with international practices developed during LIBOR transition:

1. Use of a non-compliant Systemic benchmark should continue to be permitted (without contingency) in legacy transactions, including as a fallback rate.
2. use in new transactions should be automatically permitted for the following purposes:
 - a. reducing/hedging/novating the legacy exposure of any client.
 - b. determining a close out amount.
 - c. market-making in support of client activity related to legacy transactions
 - d. reducing/hedging/novating/managing a Supervised Entity’s exposure whensoever that exposure was incurred.
 - e. participation in a central counterparty procedure.

These provisions should cover all relevant circumstances including:

- Withdrawal/suspension of registration/authorization/equivalence/recognition/endorsement;
- Failure to comply at expiry of any transition period;
- Prohibition on use of a benchmark for any other reason.

Question 2.3 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?

	1 (totally against)	2 (somewhat against)	3 (neither against nor in favour)	4 (somewhat in favour)	5 (totally in favour)	Don't know - No opinion - Not applicable
Notional amount/values of assets referencing the benchmark globally	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Notional amount/values of assets referencing the benchmark in the EU	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Type of use (determination of the amount payable under a financial instrument, providing a borrowing rate, measuring the performance of an investment fund...)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Type of user (investment fund, credit institution, CCP, trade repository, etc.)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Core activity of the administrator (bank, trading venue, asset manager, benchmark administrator, etc.)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Regulatory status of administrator in home jurisdiction	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Type of benchmark (interest rate benchmark, commodity benchmark, equity benchmark, regulated-data benchmark, etc.)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Substitutability of the benchmark (i.e. existence of a similar benchmark administered in the EU)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
EU benchmark labels (including EU Paris Aligned Benchmarks and EU Climate Transition Benchmarks)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain your answer to question 2.3:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

- 1: Irrelevant unless Systemic to EU
- 2: This should be one of a number of factors to take into account, only relevant to the EC's determination following its own assessment that the notional amount/ in the EU exceeds €500 billion - See answer to 4a for more detail
- 3: Could be considered as one of a number of factors – see answer to 4a
- 4: Most benchmarks are used by a variety of user types -see answer to 4(a)
- 5: Not relevant as a factor in protecting end users (assuming that our proposal to extend the regulated data definition per our response to 4d is accepted)
- 6: Where an administrator is well regulated already, it is not in the public interest to subject it to dual regulation. Consideration should also be given to whether it is IOSCO compliant. That is not to say that lack of domestic regulation/IOSCO compliance should be determinative to designate a benchmark. See answer to 4a.
- 7: Could be considered as one of a number of factors. Contributory benchmarks may be higher risk while utility benchmarks (e.g. third country fx rates) should be exempted to ensure ongoing use. See answer to 4a
- 8: Where there are no suitable alternative rates, it may not be in the public interest to designate a benchmark as Systemic given the potential for its prohibition. Suitability should include consideration of whether an alternative has comparable liquidity and pricing relevance. Lack of available substitutes should not be sufficient to designate a benchmark systemic and substitutability should always be considered amongst other factors. See answer to 4a
- 9: ESG labelled benchmarks should not be treated differently from other categories and should not be the basis for designation as Systemic. Many ESG benchmarks use data drawn from regulated exchanges with methodologies mandated by the ESG BMR, making those benchmarks at low risk of manipulation or methodology changes.
- 10: None of the above should be exclusive or individually determinative. See answer to 4a.

Question 2.4 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.

- 1 - Do not agree at all
- 2 - Do not agree
- 3 - Neither agree nor disagree
- 4 - Somewhat agree
- 5 - Fully agree
- Don't know / no opinion / not applicable

Please explain your answer to question 2.4 a):

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The power to designate EU and 3rd country benchmarks as 'Systemic' should require the EC to make an evidence-based determination after public consultation and discussion with the administrator of the benchmark that both of the following criteria have been satisfied:

a. Cessation/non-representativeness of the benchmark would result in significant/adverse impacts on market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in one or more Member States; and

b. Designating the benchmark as a 'Systemic Benchmark' is proportionate and in the public interest. The EC should consider the following non-exclusive/non-individually-determinative factors in determining whether these criteria have been satisfied:

(i) Notional amount/values of assets referencing the benchmark in the EU exceeds €500 billion.

(ii) Whether designation is proportionate and in the public interest where:

a. the administrator/benchmark is already subject to regulatory supervision in its domestic jurisdiction and/or complies with the IOSCO principles.

b. designation of the benchmark might directly result in use of the benchmark by Supervised Entities becoming prohibited, particularly in circumstances in which there are no or very few appropriate market-led substitutes.

Transparency in the regulatory text regarding the process for designating a benchmark as "systemic" will be key for market participants.

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

- 1 - Do not agree at all
- 2 - Do not agree
- 3 - Neither agree nor disagree
- 4 - Somewhat agree
- 5 - Fully agree
- Don't know / no opinion / not applicable

Please explain your answer to question 2.4 b):

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

This would be consistent with our answer to 4c) below.

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

- 1 - Do not agree at all
- 2 - Do not agree
- 3 - Neither agree nor disagree
- 4 - Somewhat agree
- 5 - Fully agree
- Don't know / no opinion / not applicable

Please explain your answer to question 2.4 c):

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

This would be consistent with the position for EU Critical Benchmarks today.

It is also critical that ESMA's register provide users with a golden source of compliant benchmarks:

- o Standardized information should include the following:
 - Full name/unique benchmark level identifier (including ISIN) of every EU and 3rd country compliant benchmark.
 - Name/jurisdiction of the administrating entity (not group)
 - Whether designated 'Systemic'
 - Status of applications (pending/approved/rejected) for authorisation/registration/ recognition /endorsement with relevant dates or whether a benchmark qualifies under an equivalence determination;
 - Suspension/withdrawal/reinstatement of authorisation/registration/equivalence/recognition/endorsement and the date such notice was issued.
 - Other status flags to the extent that additional powers are exercised in relation to administrators or their benchmarks.
 - Additional fields to help users keep track of changes to each administrator (e.g authorisation date/last update).
 - Link to the website pages of the administrator that deal with EU BMR-specific information, including links to the benchmarks statements pursuant to Article 27.
- o The register should allow for filtering of benchmarks by category (e.g Systemic/voluntary benchmarks).
- o It should be machine searchable.
- o There should be a notification e-mail service which alerts subscribers to updates and new information added to the register.
- o It is important that the register remains capable of being updated in real time in order to avoid any delay between a benchmark becoming compliant and its being able to be used by investors. This could be achieved by making administrators of non-designated benchmarks responsible for uploading and maintaining the information relating to voluntarily compliant benchmarks on a continuous basis while ESMA retains responsibility for uploading and maintaining the information relating to Systemic Benchmarks continuously.

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.

- 1 - Do not agree at all
- 2 - Do not agree

- 3 - Neither agree nor disagree
- 4 - Somewhat agree
- 5 - Fully agree
- Don't know / no opinion / not applicable

Please explain your answer to question 2.4 d):

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We believe that the EU and Third Country regimes should be calibrated to ensure EU users of benchmarks continue to be able to access non-Systemic benchmarks they use rather than be subject to the risk of them becoming prohibited.

We also believe that extending the amendments to cover EU benchmarks would help EU administrators retain the benefit of their investment in complying with BMR (by means of the voluntary regime) and be pro-competitive.

In order to align the scope more comprehensively, the following clarifications should also be made:

- The definition of trading venue should be broadened to include the major global exchanges, so that indices which purely rely on inputs from these trading venues could benefit from the more proportionate regime set out in Article 17 (Regulated Data Benchmarks). One responding member also proposed that benchmarks produced by Trading Venues should be exempt from BMR even if they fell outside the Regulated Data Benchmarks regime given that Trading Venues are subject to high degrees of regulation.

The definition of 'Financial Instrument' should remove reference to 'via an SI'

The test to determine whether a benchmark is used in a financial instrument/contract should expressly only apply at the time of entry into the financial instrument/contract to avoid instruments/contracts which are out of scope when traded coming into scope because of some subsequent event outside the control of the parties.

- 'made available to the public' should be defined as the public having widespread financial or economic exposure to the index and not simply the index being published. This would exclude, for example, indices solely referenced in narrowly distributed or relatively high denomination financial instruments as well as in bilateral derivatives agreements.
- The determination of a contractual fallback level by or on behalf of a party to a financial instrument /contract should not make the determining party an administrator.

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.

- 1 - Do not agree at all
- 2 - Do not agree
- 3 - Neither agree nor disagree
- 4 - Somewhat agree

- 5 - Fully agree
- Don't know / no opinion / not applicable

Please explain your answer to question 2.4 e):

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In combination with the designatory regime for Systemic Benchmarks. Third Country and EU Administrators should be able to voluntarily apply to qualify non-Systemic benchmarks under the BMR and be allowed to label their benchmarks accordingly. This would:

- encourage improvements in the standards of EU and third country non-Systemic benchmarks.
- provide a marketing tool for administrators who meet the high standards of governance, transparency and robustness demanded by the BMR.
- provide users with confidence that non-Systemic benchmarks they use meet those high standards.
- provide recognition of the efforts and investment that EU and third country administrators have made to comply with BMR already in relation to benchmarks which are taken out of the mandatory scope in order to achieve a more balanced and proportionate approach.

The Australian and New Zealand benchmark regulations both contain an elective regime of this nature.

Failure to comply with BMR would result in withdrawal of the right to use the label but not subject users of the benchmarks or administrators to enforcement.

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.

- 1 - Do not agree at all
- 2 - Do not agree
- 3 - Neither agree nor disagree
- 4 - Somewhat agree
- 5 - Fully agree
- Don't know / no opinion / not applicable

Please explain your answer to question 2.4 f):

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We are unsure what this question means.

If it is suggesting that Third Country Benchmark Administrators should not be allowed to label their benchmarks as BMR Compliant or as ESG Benchmarks even if they comply with BMR on a mandatory or voluntary basis, then we strongly disagree. For the reasons set out in relation to question 4e) above, allowing Third Country administrators the ability to label their benchmarks as compliant would promote improvements and be pro-competitive from an EU user point of view. Moreover, allowing Third Country administrators the ability to use EU benchmark labels would further promote the benefits of the EU's benchmarks regime at a global level and minimise potential inconsistencies with supervisory benchmark regimes in other jurisdictions.

If EU investors were unable to make use of third country ESG benchmarks, they would be required to make use of potentially less suitable or innovative benchmarks for their investment purposes or may decide not to invest at all. The latter consequence of the proposed restrictions would potentially limit capital flows towards ESG investments and thereby be counterproductive in the EU's effort to reach its sustainable finance goals.

If, on the other hand, it is suggesting that only EU and Third Country Benchmark Administrators who comply with BMR by means of authorisation, registration, equivalence, recognition or endorsement should be able to use the labels, then we agree completely for the same reasons.

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).

- 1 - Do not agree at all
- 2 - Do not agree
- 3 - Neither agree nor disagree
- 4 - Somewhat agree
- 5 - Fully agree
- Don't know / no opinion / not applicable

Please explain your answer to question 2.4 g):

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We agree that, in limited circumstances, endorsement by an EU administrator could remain a valuable option for 3rd benchmarks but it should not be the only option because:

- For benchmarks on smaller markets and less-widely traded currencies, it may prove uneconomical for both the 3rd country administrator and the endorser.
- The EU administrator must also 'monitor effectively the activity of provision of the benchmark in the third country and manage the associated risks'.
- In the absence of a supervised affiliate to perform this role, endorsement effectively requires third country administrators to cede governance and control of their benchmark activities to a third party in the EU which we understand few non-intragroup administrators are likely to be willing to do.

All of the other options for qualification should be maintained and reformed.

- Equivalence: Given the reduced scope proposed in response to Question 1, Equivalence should be prioritized to ensure Systemic Benchmarks from 3rd countries are covered wherever possible, reducing the potential for dual regulation of benchmarks already subject to high quality domestic regimes.
- Endorsement: EU Administrators should also be able to qualify by means of Endorsement by another EU Administrator. The process should be streamlined so it is clearer what administrators must do to gain endorsement status and show sufficient control of the benchmark activities has been given to the endorser. The responsibilities of the endorsing administrator should be significantly narrowed and clarified to facilitate their appointment and reduce their potential cost.
- Recognition: the precise responsibilities and liabilities of the legal representative should be significantly narrowed and clarified in order to facilitate their appointment and reduce their potential cost. Third Country Benchmark Administrators should also be permitted to apply for authorisation and registration in the same way as EU Administrators.

h) They should be directly supervised by ESMA (under a mechanism similar to the current recognition framework).

- 1 - Do not agree at all
- 2 - Do not agree
- 3 - Neither agree nor disagree
- 4 - Somewhat agree
- 5 - Fully agree
- Don't know / no opinion / not applicable

Please explain your answer to question 2.4 h):

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

This should be one option per response to question g).

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.

- 1 - Do not agree at all
- 2 - Do not agree
- 3 - Neither agree nor disagree
- 4 - Somewhat agree
- 5 - Fully agree
- Don't know / no opinion / not applicable

Please explain your answer to question 2.4 i):

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

This puts a very high burden on EU end users, who are not qualified to judge whether a benchmark's methodology complies with BMR. It puts them at a competitive disadvantage compared to their non-EU peers, subjects them to high regulatory and administrative costs and would act as an impediment to normal business and investment activity in the EU. 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".

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".

Question 2.5 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?

- 1 - Do not agree at all
- 2 - Do not agree
- 3 - Neither agree nor disagree
- 4 - Somewhat agree
- 5 - Fully agree
- Don't know / no opinion / not applicable

Please explain your answer to question 2.5:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The creation of a mandatory ESG benchmark label through legislation could stifle development of this nascent market, undermine innovation, impede an administrator's methodological freedom to create a variety of ESG benchmarks based on clients' demand and create additional administrative requirements and costs for benchmark administrators likely to be passed on to investors. It is unclear what the policy objective of an EU ESG benchmark label would be as opposed to CTBs and PABs.

We believe it should be left to the discretion of market participants to decide whether to opt-in to a voluntary EU ESG benchmark label and that it should not be very granular as capital could be channeled to very niche activities/markets. It should rather be based on broad principles of sustainability to allow maximum flexibility and consider best-in-class and exclusion strategies.

Regulation 2019/2089 allows benchmark administrators to have a certain degree of flexibility when designing benchmark methodologies. This is because certain elements of ESG may be objectively measured (greenhouse gases) whereas other matters are highly subjective (social convictions). These are key provisions aimed at ensuring continued innovation and supporting the uptake of the wider ESG index market. ESG benchmarks can include a broad variety of ESG factors or just one single factor. ESG benchmarks may reference a wide variety of underlying asset classes, such as equities, bonds, real estate investments, sovereign bonds, even municipal bonds. Some indices will also specifically be constructed per the request of a client and as per its own ESG objectives or criteria. This diversity and innovation is of a great value to the sustainable finance ecosystem to ensure all clients can be served and the various ESG objectives of each stakeholder are met. Lastly, we do not think that the location of the administrator would be a relevant factor to consider for reasons highlighted in our response to question e).

Question 2.6 Should such an EU ESG benchmark label be created, should this label be accessible to third country administrators?

- 1 - Do not agree at all
- 2 - Do not agree
- 3 - Neither agree nor disagree
- 4 - Somewhat agree
- 5 - Fully agree
- Don't know / no opinion / not applicable

Please explain your answer to question 2.6:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not believe that the EU ESG benchmark label should be restricted to EU benchmark administrators only for reasons highlighted in our response to question 4 e).

Additional information

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) below. **Please make sure you do not include any personal data in the file you upload if you want to remain anonymous.**

The maximum file size is 1 MB.

You can upload several files.

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

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**/Important_information_relating_to_ISDA_s_response_to_the_EC_Targeted_Consultation_on_BMR.pdf
b0c03b29-918b-4540-9aa0-fa956d1f76a9/The-Importance-of-Reforming-the-EU-Benchmarks-
Regulation__1_.pdf**

Useful links

[More on this consultation \(https://ec.europa.eu/info/publications/finance-consultations-2022-benchmarks-third-country_en\)](https://ec.europa.eu/info/publications/finance-consultations-2022-benchmarks-third-country_en)

[Consultation document \(https://ec.europa.eu/info/files/2022-benchmarks-third-country-consultation-document_en\)](https://ec.europa.eu/info/files/2022-benchmarks-third-country-consultation-document_en)

[More on benchmarks \(https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-markets/securities-markets/ensuring-integrity-securities-markets_en#benchmarks\)](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-markets/securities-markets/ensuring-integrity-securities-markets_en#benchmarks)

[More on EU labels for benchmarks \(climate, ESG\) and benchmarks ESG disclosures \(https://ec.europa.eu/info/business-economy-euro/banking-and-finance/sustainable-finance/eu-climate-benchmarks-and-benchmarks-esg-disclosures_en\)](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/sustainable-finance/eu-climate-benchmarks-and-benchmarks-esg-disclosures_en)

[Specific privacy statement \(https://ec.europa.eu/info/files/2022-benchmarks-third-country-specific-privacy-statement_en\)](https://ec.europa.eu/info/files/2022-benchmarks-third-country-specific-privacy-statement_en)

Contact

