

Response to the European Commission's consultation on the Benchmark Regulation

General comments:

The European Association of Corporate Treasurers (EACT) welcomes the European Commission's intentions to review the EU Benchmark Regulation, in particular the the third country regime.

The European Association of Corporate Treasurers (EACT) EACT represents the entire European economy, and bringings together 14 000 corporate treasury professionals active in 22 countries and working for around 6 500 individual non-financial companies.

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As European end-users of benchmarks, the EACT's members have expressed concerns are about concerned about the long-term feasibility of the third country regime. The while recent amendments to the BMR, such as the multiple extensions of the transition period to the third country regime which are required to address concerns by users of benchmarks and the recently introduced exemption for designated spot foreign exchange benchmarks have been steps in the right direction. However, a thoughtful revision of the third country regime remains necessary to address the root causes of end-users' uncertainties with regards to potential restrictions and disproportional burdens demonstrate the uncertainties and need for reform.

EACT fears that the application of the third country regime on 1 Jan 2024 could lead to a concentration of the market which could result in higher hedging costs for corporates — during a time when European non-financial companies are already facing a wide range of challenges and additional costs.

An additional two-year extension to the current application date of the mandatory compliance with the third country regime would be strongly recommended by European corporates as a transitional option to ensure continuity and stability.

European corporate treasurers see a need for reform of the current third country regime to ensure European companies continue to have access to a wide range of non-EU benchmarks. For this aim, we see potential in creating a framework with mandatory compliance for third country strategic benchmarks while non-strategic benchmarks should maintain the possibility to comply with the EU BMR on a voluntary basis.

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However, EACT is strongly opposed to the proposal of making users responsible for gathering the necessary information to verify that the benchmark's methodology is consistent. EACT does not consider European end-users qualified to judge the compliance of benchmark's methodology and is concerned about the additional regulatory and administrative costs this might bring.

Question 1.2 – For what purpose do you use (as an end-user) third country benchmarks?

Members of EACT mainly use third country benchmarks for hedging purposes as well as for credit facilities referenced to benchmarks for fixing.

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

[input welcome if possible]

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 (e.g. credit facilities referenced to benchmarks for fixing)

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[input welcome if possible]

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:

[input on data welcome if possible]

Question 1.3 – What is / are the reasons for using non-EU benchmarks?

Members of EACT use non-EU benchmarks both out of habit and established business relationships with benchmark administrators as well as out of a lack of equivalent EU benchmarks available to our members.

habit / established business relationship with benchmark administrator

no equivalent EU benchmark available

Members of EACT use non-EU benchmarks both out of habit and established business relationships with benchmark administrators as well as out of a lack of equivalent EU benchmarks available to our members. equivalent EU benchmark available, but not cost free or more expensive

[input welcome if possible]

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

[input on data welcome if possible]

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

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~~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?~~

~~o we would stand ready to reach out to non-EU service providers that still have access to these benchmarks, in order to continue to use the same third country benchmarks, even if that implies higher costs~~

~~o 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~~

~~o we would seek alternative, EU-based benchmarks that can be referenced by EU service providers~~

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~~o 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

[input welcome if possible]

~~7. Taking into account Considering 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

[input welcome if possible]

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?

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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 not fit-for-purpose, and should be reviewed
- 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

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As European end-users of benchmarks, the European Association of Corporate Treasurers’ (EACT) members have expressed concerns about the long-term feasibility of the third country regime. The multiple extensions to the third country regime which are required to address concerns by users of benchmarks demonstrate the uncertainties and need for reform.

EACT fears that the application of the third country regime on 1 Jan 2024 could lead to a concentration of the market which could result in higher hedging costs for corporates – during a time when European non-financial companies are already facing a wide range of challenges and additional costs.

An additional two-year extension to the current application date of the mandatory compliance with the third country regime would be strongly recommended by European corporates as a transitional option to ensure continuity and stability.

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 like 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 in favour
- Somewhat opposed
- Neither opposed nor in favour
- Somewhat in favour
- Totally in favour
- + please explain

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~~The European Association of Corporate Treasurers (EACT) sees potential in implementing a third country regime with mandatory compliance for strategic third country benchmarks while non-strategic benchmarks should have the possibility to comply with the EU BMR on a voluntary basis.~~

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Reforming the current third country regime to ensure European companies continue to have access to a wide range of non-EU benchmarks would be an important step to ensure non-financial companies can continue to hedge their commercial risks efficiently at a reasonable cost.

For this aim, we see potential in creating a framework with mandatory compliance for third country strategic benchmarks while non-strategic benchmarks should maintain the possibility to comply with the EU-BMR on a voluntary basis.

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The Commission's proposal - to create a framework with mandatory compliance for benchmarks designated as "strategic" benchmarks while non-strategic benchmarks could decide to comply with the EU BMR on a voluntary basis - appears to offer a good solution to balance the need to guarantee the integrity of key benchmarks while not being disproportionately restrictive in its scope.

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:

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

Restricting the ability of EU benchmark users to only use benchmarks complying with the EU standards would drastically cut the number of indices available overnight. The logistics alone of amending existing contracts and instruments to comply with this change would be a serious challenge to overcome. This would also place European corporates at a disadvantage with their non-EU competitors who will retain access to these benchmarks.

Neither agree nor disagree

Agree somewhat

Agree completely

explain your answers

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Finally, the idea of requiring users of benchmarks to assess whether benchmark's methodology is consistent with EU standards (assuming this would apply to end users, and not only regulated financial entities as is the case currently) would place an undue burden on non-financial entities which lack the technical know-hows and capacities to perform this type of verifications.



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