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**EUROPEAN COMMISSION'S HAVE YOUR SAY
ON ITS PROPOSAL AMENDING THE
BENCHMARK REGULATION**

AFG's response



AFG



The AFG federates the asset management industry for 60 years, serving investors and the economy. It is the collective voice of its members, the asset management companies, whether they are entrepreneurs or subsidiaries of banking or insurance groups, French or foreigners. In France, the asset management industry comprises 700 management companies, with €4600 billion under management and 102,000 jobs, including 27,000 jobs in management companies.

The AFG commits to the growth of the asset management industry, brings out solutions that benefit all players in its ecosystem and makes the industry shine and develop in France, Europe and beyond, in the interests of all. The AFG is fully invested to the future.

AFG'S RESPONSE

AFG welcomes the opportunity given by the European Commission to give its views on the latest proposal amending the Benchmark Regulation regarding the use in the Union of benchmarks provided by an administrator located in a third country.

We regret that the legislator wants to move fast on this file considering the drastic changes that are proposed i.e. removing non-significant benchmarks from the scope of the regulation.

From what we understand, the issue that required a revision of the Benchmark regulation was the fact that European market relies heavily on third country benchmark (notably since Brexit). Therefore, rules requiring non-EU benchmark providers to obtain recognition or endorsement or to comply with organisational rules, could deprive EU market participants of their current use of benchmarks and hinder product innovation and diversification. If we share these potential consequences, however, it **seems mainly true when talking about non-EU small and mid-sized index providers** who, unlike the large ones, do not have a legal representative in the EU and for whom complying with the BMR regulation could be costly.

Today, the benchmark proposal goes extremely far by removing all non-significant benchmark (EU and non-EU BMR) from the scope of the text. From data we've gathered from our members, **non-significant benchmarks represent around 80 to 100% of their indexes** and are **provided mainly by the major non-EU index providers**.

In a context where the EU significantly strengthens its regulatory framework imposed on asset managers regarding transparency, reporting and disclosure requirements towards investors, we are surprised to see that similar requirements applying to index providers keep decreasing.

We believe **this proposal to be extremely detrimental**, notably to passive management and ETFs who rely heavily on benchmarks, and, among others, could have the following undesired non-exhaustive effects:

I – Reinforcement of the EU's dependency towards “big” non-EU index providers

- It **affects the** already very limited **possibility for users to negotiate** contractual & commercial terms of the licencing agreement and **reinforces dependency towards providers**. In fact, what is not provided through the benchmark regulation in terms of requirements, needs to be contractually set. However, users/asset managers have no negotiating power against index providers who are in a position of strength when it comes to setting contractual provisions;
- The changes to the text are intended to make it easier to access indexes from third countries. However, **the absence of clear and protective rules for users could**, paradoxically, **lead these same users to be more discerning** and demanding with regard to index providers, **encouraging them to choose to work with** the best organised and best equipped index providers... In a word: **the biggest entities**. The result could therefore be totally counter-productive, **encouraging an already oligopolistic competitive situation in which the smaller players will be squeezed out**.
- It **doesn't take into account the systemic risk of providers** whose indexes are below the thresholds but who produce significantly more indexes than smaller players and yet are subject to the same lack of requirements;

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

AFG'S RESPONSE

- It affects users' due diligence processes for which they need to require data from their providers. For instance, for the *Financial Index Eligibility Table* that some NCAs require annually (see. *Guidelines on ETFs and other UCITS issues* – [ESMA/2012/832](#)).
- Similarly, ESG data are increasingly important for investors notably to address climate change challenges. However, **methodologies are today insufficiently transparent on ESG factors**. Large discrepancies and gaps remain between the various legislations applicable to the various categories of actors. Providers for instance are not required to provide SFDR metrics where users are. With more than 80% of our members' indexes being non-significant and therefore out of scope of BMR, it's going to be even harder for asset managers to get the right level of data to comply with their requirements, and for investors to get high-quality data ;
- **Users are ultimately responsible** even in case of an error from their provider. Please note that agreements usually never mention liabilities for negligence and that the process for when an error occurs lacks transparency. With the difficulty to negotiate clauses, users/asset managers are always on the forefront;
- The proposal goes against the tide notably on organisational measures as we see today that **most index providers are also data providers** (ESG data providers notably) which would, on the contrary, call for tighter conflict of interest rules.

These above points, which are not exhaustive, are all the more important as users face today **ever-increasing costs from their providers**.

Therefore, **we would recommend i) setting a lighter regime** instead of descoping all non-significant benchmark. At least we would maintain some obligations notably, the obligations to provide, a methodology and disclosures on conflict of interest. We believe these elements should be published on the index provider's website, so that the information is available to all users and customers **in a transparent way**. Furthermore, the benchmark statement should still be provided for users and should be aligned with information that are required in respect of SFDR ([Sustainable Finance Disclosure Regulation](#)). **ii)** It would have been fair to add proportionality as to capture big/systemic providers although we understand the text regulates products and not users. As such, we would suggest adding a provision by which indexes that would reach a certain threshold on a consolidated basis would be subject to the same requirements that apply to significant benchmarks. i.e. **Aggregate the indexes provided by a single provider to calculate the threshold**. Below that threshold would apply the lighter regime.

There is a need for an overall chain of process that ensures liability, accountability, quality of data, independent valorisation, and reliable methodologies. In that respect, requires applied to index providers should be aligned with requirements applied to users, ensuring accessible data for all and so that users do not have to bear alone the full burden of these measures.



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