

Paris, August 5th, 2022

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

The AFTE (French Association of Corporate Treasurers) welcomes the opportunity to comment on the regime applicable to the use of benchmarks administered in third country.

Created in 1976, AFTE represents around 1 500 members, including 1 000 corporate treasurers or financial managers of approximately 900 industrial and commercial companies or groups. Our members represent the community of French non-financial end-users. The AFTE plays an active role within the European Association of Corporate Treasurers (EACT) of which it has been a founding member.

We seek to encourage the profession of treasury, corporate finance and risk management, promoting the value of treasury skills through best practice and education.

General comments

The AFTE supports the aim of the EU Benchmark Regulation (BMR) to rebuild robust and reliable indexes for financial operations. Aware that processes to get alternatives benchmarks and an equivalence decision from the EU for the third country benchmarks can be extremely long, AFTE already asked for an extension of the exemption in 2019.

A few years later, the end of the transitional period on 31/12/2023 for current benchmarks to be replaced by compliant ones seems extremely short to ensure that all design and testing stages can be finalized in time, and that a new set of renovated benchmarks may be enforced. Therefore, AFTE is voicing a strong request for an additional two years extension period for BMR transition, to allow sufficient time for 3rd country benchmarks. This would allow a smooth transition to the benefit of all market participants and specifically to all companies with international exposures.

Non-financial companies are already facing a wide range of challenges. Any additional costs or complexification of hedging activities would be detrimental for their activities. 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.

The AFTE is strongly against the proposal to ask users responsible for gathering 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. The AFTE does not consider end-users qualified to judge the compliance of benchmark's methodology and is concerned about the additional regulatory and administrative costs this might bring. ESMA should enhance transparency by providing information on its website : list of benchmark in the different countries, name of the administrator with a link to the methodology and equivalence to the BMR regime if it is the case.

Detailed answers to questions specific to end-users of benchmarks

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

A survey conducted by AFTE a couple of years ago shown that more than 65 % of large French companies are exposed to 3rd country currencies

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

Hedging activities are crucial to secure all types of financing and commercial operations with 3rd countries, such as investments, purchases and sales.

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:

Not available

3. What is / are the reasons for using non-EU benchmarks?

☐ no particular reason

☐ habit / established business relationship with benchmark administrator

☒ **no equivalent EU benchmark available**

☐ equivalent EU benchmark available, but not cost free or more expensive

☐ other – please specify

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

Companies can enter into hedging transactions referencing third country benchmark related to currencies of countries such as Russia, India, South Korea, Argentina, Taiwan...

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

Not applicable to AFTE

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?

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

☐ 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

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

☐ 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

Companies conducting international business need to hedge their financing and commercial activities such as investments, purchases and sales in order to mitigate their currency exposure. Not being able to enter into hedging transactions will expose companies at fx risks.

7. Taking into account 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.

Reliable and compliant 3rd country benchmarks are vital for most companies conducting international business

Detailed answers to others questions

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**

☐ No opinion

+ please explain

In 2019, the AFTE has already express its concern about the third country regime and advocated for the extension of the exemption regime.

Non-financial companies are already facing a wide range of challenges. Any additional costs or complexification of hedging activities would be detrimental for their activities. For those reasons, the AFTEE welcomes an extension to the current application date of the mandatory compliance with the third country regime in order 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.

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.

☐ Totally opposed

☐ Somewhat opposed

☐ Neither opposed nor in favour

☐ Somewhat in favour

☒ **Totally in favour**

+ please explain

The AFTE 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.

As the application of the current third country regime could lead to market concentration resulting in increased hedging costs for corporates, AFTE sees a need for reform 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.

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

☐ Do not agree

☐ Neither agree nor disagree

☐ Agree somewhat

☐ Agree completely

+ explain your answers

The AFTE members see a high risk of burdening EU end-users which could lead to considerable competitive disadvantages for European corporates. The AFTE does not consider end-users qualified to judge the compliance of benchmark's methodology and is concerned about the additional regulatory and administrative costs this might bring. We believe that ESMA should enhance transparency by providing information on its website : list of benchmark in the different countries, name of the administrator with a link to the methodology and equivalence to the BMR regime if it is the case.