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Commissione europea - Risposta consultazione sul riesame del Regolamento Benchmark

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General Remarks

Assogestioni[1] welcomes the opportunity to respond to the consultation of the European Commission on the review of the EU Benchmark Regulation (BMR).

BMR, together with the revision of the market abuse Regulation (MAR/MAD), is the milestone of the European legislation used to respond to the scandal of the manipulation of some interest rate benchmark and to tackle and improve the framework under which benchmark are provide, contributed to and used.

Although Assogestioni supports the objective of fostering efficiency, transparency and integrity in the financial markets, we believe that **BMR should be substantially revised.** The deliberate choice **to include in the scope of BMR any benchmark that may pose risk in the future has not proved appropriate**.

The EU intended to be a pioneer with the BMR but, as a matter of fact, the other jurisdictions have not followed its approach: several jurisdictions have begun codifying the IOSCO principles, and regulation or supervision is usually limited to the most critical or systemic financial benchmarks. Therefore, the requirements for EU entities are more challenging than in other jurisdictions.

It is important to note that not all benchmarks are the same; **the BMR review should be based on a risk-based approach** that limits the scope to those benchmarks having significant impact on the economy or on financial stability and/or where use of discretion or risk of manipulation may exist. Therefore, critical benchmark, such as IBOR, should be included in the scope as they pose

fundamental issues and should be tackled appropriately, while non-critical benchmark, such as regulated data benchmark, should be out of scope.

Using too broad a scope of application has several side effects.

Asset managers, as users of benchmark and managers of financial instruments that fall within the scope of BMR, should maintain access to a wide range of indexes. The concern is **for administrators or third country administrators who are disincentivized to become BMR compliant,** hence asset managers do not have access to their indexes unless another BMR compliant administrator provide them. In the latter case, **issues of fair competition might arise.**

In the last five years, **some long established "benchmark administrators**" (among them BofA Merrill Lynch, Citigroup, Barclays) **sold their index businesses** to well-positioned operators committed to investing and growing their businesses. At Italian level, at the begin of December 2019, Intesa Sanpaolo announced that it will not register as a benchmark administrator with BMR and therefore, from the 1th January 2020, the publication of the Comit indices that mirror the performance of the Italian stock market (among them "Comit globale" dating back to 31 December 1972) will cease.

A key point we would like to highlight is **the significant increase of costs related to the use of indices and the access to their underlying data/methodology** that might also derive as a side effect of the BMR as well as from the increasing regulatory requirements for supervised entities using benchmarks together with the role that benchmarks have across the investment process lifecycle. A situation that is well known and could lead to further fees' increases.

The graphs below show the growth rate of benchmark costs as reported by representative samples of our members.

Over the past ten years the benchmark costs have tripled, unlike the trend in the overall data providing costs that remain stable. Benchmarks costs experienced a constant growth while asset manager revenues have stabilized since 2015.

In the last five years, where (also) the BMR came into force, costs increased by 64% (13% on an annual average), a value much higher than the increase of assets under management (34% over the period, 8% on annual average). The price increase is transversal among all administrators (between 20% and 274% in the 5y period), not only on the top of the two administrators who, in any case, represent around the 70% of the market at the end of 2019.

Costs increases does not appear to be linked to changes in the AUM but to the following trends:

- **change in pricing policies**, due to the introduction of fees by benchmarks providers previously offering the benchmark for free and to some strong price review,
- a **general increase in prices** - with most of benchmark administrators having included in their offers new fees related to ad hoc services, such as re-distribution,
- **audit procedures** conducted to review the current practices, adoption and correct application of licenses,
- new benchmarks and/or new services offered under new licensing contracts, such as blended-index (combination of indexes of the same administrator), hedge-indexes.

Several factors could explain the cost increase, however it is important to highlight:

- to **keep the right balance between the regulatory obligations for benchmark administrators to tackle potential conflicts of interest and risks for misconduct and avoiding excessive burden and costs** that will be ultimately passed over to users of benchmarks and end clients;
- **to promote competitiveness and avoid possible undesirable effects on price control**.

Therefore, we call for the following changes to address the cost issue:

1. **Price lists** – Similar to MiFID, benchmark administrators should be required to publish annual price lists of all products/services allowing also for multiyear comparisons and easy identification of product /service changes.
2. **Cost disclosure** – Similar to MiFID, BMR should provide for basic pricing rules for products and services stating that prices/revenues under BMR need to have a reasonable relationship with the cost of production. Therefore, benchmark administrators need to publish in-depth cost disclosures allowing to compare the cost of (all) data products with their revenues / price development.
3. **Extension of FRANDT to non-critical benchmarks** - Currently, the BMR (Article 22, Recital 38) requires only the administrators of critical benchmarks, such as the major IBORs, to take adequate steps to ensure that licenses of, and information on, benchmarks are provided on a fair, reasonable, transparent and non-discriminatory basis to all users. We propose to extend this rule to all administrators of benchmarks/indices.
4. **Data continuity** - Situation that might impact users because of cut-off should be avoided. The (early) termination of data licenses by benchmark administrators in case of pricing policy or data policy changes should be prohibited until an arbitration tribunal or a regular court has adjudicated on the legality of the changes.

In addition to the scope of BMR, we have some comments also on the following issues. Obviously, several of them would no longer be relevant if a substantially revision on the BMR scope took place:

- As regard the **supervision of climate-related benchmark**, we believe that NCA **should not have power to prevent supervised entities from referencing climate-related benchmarks.** Asset managers should ensure that they are using administrators/ benchmarks which are on the ESMA Register and are suitable for their investment strategy. It should be left to investors to assess if they are happy with a particular investment strategy and the way a Climate Benchmark is used as part of such a strategy. **BMR, in any case, should not overlap/conflict with the UCITS and AIFMD related regulatory framework and the compliance onerous for the respect of the rules applicable to climate-relate benchmark should not be on supervised entity.**
- As regard **non-EEA Benchmark, it might be a serious disruption if FX rate** (not only for Non Deliverable Forward) **were not out of scope of BMR.** Asset managers are indirectly affected by BMR as they manage financial instruments (that refer to an index or whose amount's payable refers to an index) to implement their investment objective and strategies. Exchange traded derivatives and derivatives traded via systematic internalisers (which includes most of the major banks) for which the FX rate is not provided by a central bank may be no longer tradable if such data provider did not have the right authorisation under BMR. If most European banks would not be able to provide financial instruments exposed to a particular non-EEA "currency", this would be a problem for the market because asset managers would have

less counterparties to trade OTC with, for example for, but not only, hedging purpose.

- **Legal certainly is absolutely important from a user perspective who should know which administrators are compliant with BMR (art. 29).** If the power to withdraw or suspend the authorisation or registration of an administrator applies in respect of one or more benchmark and not for all its benchmarks issues arise. In order to grant legal certainty and improve the identification of benchmarks by a user, the ESMA Register should be updated with benchmarks produced also by EU benchmarks administrators authorised or registered. So far, more than 80.000 non-EU indices are listed, and the list could be much longer in the future, therefore a unique identifier would also be welcomed (for example, ISIN). A centralised hub where a user might find all reliable information in an easy and digital way would better fit the scope.
- **Under BMR and UCITS framework, asset managers have a double burden of information to obtain in order to comply and this should be avoided**. The current regulation does not consider in the benchmark disclosure all the additional set of requirements for the use of benchmark requested by UCITS framework, among them the availability of a full transparency on constituents and their respective weightings.

- Finally, **the regime applicable to AIFs should be clarified**. Art. 29 states “only supervised entity may use a benchmark […] “ but AIFs are not included in the definition of “supervised entity”, even if they are included in the definition of funds relevant to the delimitation of the concept of “use of benchmark”. It is our understanding that the BMR applies (only) to retail AIFs and not to institutional ones, considering that art. 29 (2) refers (only) to the directive 2003/71/CE (Prospectus Directive).

Scarica la versione integrale della risposta alla consultazione [2].

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1 Assogestioni is the trade body for Italian asset management industry and represents the interests of members who manage funds and discretionary mandates around € 2,283 billion (as of September 2019).

Risposta al documento per la consultazione recante "Review of the EU Benchmark Regulation"
