

## **Ensuring a risk free access for EU companies to non-EU benchmarks**

Improving the Third-Country-Regime in the EU  
Benchmark Regulation

Deutsches Aktieninstitut<sup>1</sup> welcomes the opportunity to comment on the European Commission's Inception Impact Assessment on the review of the Benchmarks Regulation (BMR). This position paper summarizes the view of German non-financial companies on the issues raised. Our view is based on discussions in the corporate finance/corporate treasury working group of Deutsches Aktieninstitut which is the central forum of opinion building for the treasury departments of the largest German non-financial companies (NFC).

We welcome the initiative to improve the BMR, to "ensure the continued availability to EU users of third country benchmarks for which no suitable alternative exists in the Union" and to "improve the user-friendliness of the regime for benchmark users". As the Commission states, the current third-country regime has proven inefficient in many different ways. The result being that EU non-financial companies risk losing access to a number of third-country benchmarks on which they depend, e.g. to hedge exposure to interest rate or FX risk in their daily business. From the perspective of a non-financial end-user of financial products, this situation is likely to lead to uncertainties in operative business and interfering with existing treasury activities. This will be exacerbated by Brexit, following which all UK administered benchmarks will become third country benchmarks with no guarantee of an equivalence decision.

We believe that the BMR should take a proportionate approach, as certain benchmarks pose a far greater risk to the financial system than others do. With its unrestricted scope and the automatic ban on the use of non-qualified benchmarks, the BMR loses sight of non-financial end-users from the real economy.

**Against this background, Deutsches Aktieninstitut proposes following changes to the BMR:**

1. The BMR should focus its efforts to critical benchmarks only.
2. EU non-significant benchmarks and their equivalent third country benchmarks should be exempt of the BMR and allowed to be used in the Union unless specifically prohibited (i.e. a reversal of the current general prohibition of benchmarks unless specifically authorised).

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<sup>1</sup> Deutsches Aktieninstitut (EU transparency register: 38064081304-25) represents the entire German economy interested in the capital markets. The about 200 members of Deutsches Aktieninstitut are listed companies, banks, stock exchanges, investors and other important market participants.

3. Public policy benchmarks (e.g., FX rates used in NDFs and certain interest rate swaps) should be exempt in general because they are pseudo-governmental and their prohibition would be disproportionately disadvantageous to end users. Non-significant EU and equivalent third country benchmarks as well as public policy benchmarks used in NDFs pose little risk of systemic disruption.
4. ESMA could be empowered to analyse significant EU and third country benchmarks based on their use or potential impact on EU financial markets. On this basis, ESMA could decide whether individual benchmark providers need to fulfil additional obligations.

Such a regime would ensure the continued availability to EU users of benchmarks from third countries for which there is no suitable alternative in the Union and improve the user-friendliness of the system for benchmark users. In addition, it would relieve EU and non-EU administrators of regulatory hurdles alike and level the playing field.

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