Brussels, 27 March 2023
TC/MvB

**EACB answer to
European Commission's Call for Evidence on
Review of the scope and third-country regime
of the Benchmark Regulation (BMR)**

The EACB very much welcomes this call for evidence being undertaken by the European Commission, because discussion with our members indicates that European co-operative banks regularly use third country benchmark rates in their contracts, and thus regulatory action is important to safeguard financial stability, market integrity and the real economy in the EU when it comes to use of third-country benchmarks.

Benchmarks such as the Tokyo Term Risk Free Rate (TORF) which are significant in terms of exposure for co-operative banks, for example, are neither included in the ESMA benchmarks administrators register, nor has ESMA taken any equivalence decision in this regard. In addition, we note that due to the BMR regulatory regime being far-reaching in terms of registration, recognition and endorsement of administrators, we do not see an abundance of third country benchmark administrators attempting to have their benchmarks registered or endorsed as BMR-compliant.

Our members also use third-country benchmarks for structured products and as a reference index for their funds, of which the latter financial products are invested globally, and not just in the EU. These include indexes from MSCI (global, such as MSCI America), JP Morgan, Credit Suisse, Markit Group Limited, ICE Benchmark Administration Limited, SGX and Bloomberg Index Services Limited. Therefore, if there lies uncertainty of BMR-compliance for some of these third-country benchmarks, then any short notice replacement would create issues. For example, a fund tracking a third-country benchmark for years would have to cancel this tracking abruptly which would go against the interests of the end-clients as investors.

In the above context, co-operative banks find it highly important that any BMR review ensures their continued access to third country benchmarks, but also creates a level playing field between EU and non-EU benchmarks. We agree that this is what the initiative of a BMR review being carried out by the European Commission is trying to achieve, but we call for the below recommendations in order to uphold the above-mentioned objectives:-

- In the short term:
  - an extension of the temporary suspension of the BMR third-country regime under Article 51 (5) BMR until 1 January 2026;
  - the need for a positive designation regime of only systemically important EU and Third Country benchmarks to be in the scope of BMR for mandatory compliance (in particular we support the inclusion of TORF on this list); and
- In the longer term, the European Commission should work to align the BMR on a more global level, so as not to drive benchmark administrators from third countries out of the EU market.

EACB AISBL – Secretariat • Rue de l'Industrie 26-38 • B-1040 Brussels
Tel: (+32 2) 230 11 24 • Enterprise 0896.081.149 • lobbying register 4172526951-19
www.eacb.coop • e-mail : secretariat@eacb.coop

Finally regarding benchmark labels, the EACB needs to take a deeper look into any research made here, but from a general perspective we would endorse ESG benchmark labels if they can provide legal certainty and could prevent green- and blue-washing. That said, we advise the European Commission to exercise caution if extending the positive designation regime also in the case of label related BMR provisions.

Our fear is that such alignment would hamper access to non-EU ESG benchmarks and innovation in the market of green products with respect to the EU Climate Transition Benchmarks or EU Paris-Aligned Benchmarks, and eventually for an EU ESG Benchmark if adopted. At the very least, we would strongly advise that the creation of an EU ESG benchmark label is not made part of this current BMR review proposal, especially because clarity is still necessary in terms of some outstanding issues to be resolved under the SFDR and work on the EFRAG European Sustainability Reporting Standards is still being carried out (both workstreams on which the proposal for an EU ESG benchmark is being based).

Contact:

The EACB trusts that its comments will be taken into account.

For further information or questions on this paper, please contact:

- Ms Marieke van Berkel, Head of Department (Marieke.vanBerkel@eacb.coop)
- Ms Tamara Chetcuti, Senior Adviser, Financial markets (Tamara.Chetcuti@eacb.coop)