BMR Review – Anmerkungen für das morgige CWP Treffen

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An [redacted]
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Do 28.11.2024 15:35

Lieber [redacted]

wie wir erfahren haben, findet morgen ein Treffen der **Ratsarbeitsgruppe (CWP)** zum **Review der Benchmark-Verordnung (BMR)** statt, in der insbesondere die Themen ESG-Sorgfaltspflichten, Währungs- und Rohstoff-Benchmarks diskutiert werden sollen. Gerade zu diesen Themen haben wir im Zuge des aktuellen Reviews kritische Aspekte identifiziert, die wir auch innerhalb unserer Verbandsarbeit mit der FESE zusammengetragen und über die FESE (und diese über die Ständigen Vertretungen) artikuliert haben. In Anbetracht dessen und des morgigen Termins möchten wir die Gelegenheit nutzen, um auch Ihnen unsere Überlegungen anhand des Originaltextes in Englisch zu übermitteln. Bitte finden Sie diese nachstehend.

Wir wären Ihnen sehr dankbar, wenn Sie unsere Anmerkungen in den anstehenden Diskussionen berücksichtigen könnten und hoffen, dass diese zielführend für die Triloge sind.

Gerne stehen wir Ihnen für Fragen zur Verfügung.

Vielen Dank und beste Grüße
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ESG diligence requirement (Question 1)

We cannot support the proposed approach. While we agree on the importance of reassessing the initially proposed ESG diligence requirement—which would have increased the burden on EU users and place them at a disadvantage by having no way to compel administrators to make such disclosures — we also appreciate the goal of reducing the administrative burden on administrators that this measure sought to achieve. However, we believe the Presidency's solution falls short of this objective and would shift liability to administrators. Moreover, we are concerned that the Presidency's proposal would add to an uneven playing field and create opportunities for free-riding.

On a related note, we wish to emphasise the importance of ensuring that the final solution does not incorporate Parliament's suggestion to align all methodology disclosure requirements with Article 10 of the SFDR (line 122a). Any cross-references to SFDR would be legally unfeasible and may mistakenly subject benchmark administrators to the SFDR. In addition, this risk is compounded by the fact that Art. 10 SFDR on transparency on websites, mandates the publication of information referenced in several SFDR articles, including 8, 9 and 11.

The existing regulation already mandates that administrators provide sufficient info on the ESG aspects. There is value in waiting for the expected Commission reviews (either through BMR or SFDR) before introducing additional ESG aspects to the proposal. Caution should also be exercised against proposals that could potentially impinge on the administrators' freedom to design their own methodologies. The proposed amendments by Parliament could significantly disrupt the industry, leading to increased regulatory burdens and costly adaptations for benchmark administrators without a clear understanding of the ultimate regulatory goal.

Foreign exchange benchmarks (Question 2)

We fully support the Presidency's proposal to reinstate the exemption for specific foreign exchange (FX) benchmarks within the BMR. The removal of this exemption, based on incomplete data, risks significant market disruptions and places EU supervised entities at a competitive disadvantage. Key benchmarks such as KRW, TWD, INR, PHP, and ARS exceed the €50 billion threshold, and prohibiting their use in derivative transactions has a risk of severely impacting the ability of EU businesses and investment funds to hedge currency exposures effectively. To ensure market stability and competitiveness, it is essential to reinstate the exemption.

Non-contributor-based commodity benchmarks (Question 3)

We support the Presidency's proposal to remove non-contributor-based commodity benchmarks from the scope of Annex II commodity benchmarks. The exemption for small commodity benchmarks under Article 2(2)(g) not applying to such benchmarks is indeed problematic. It should also be noted that these benchmarks are based on publicly available data and are therefore less susceptible to manipulation.