

BENCHMARK REGULATION (BMR)

Regulation (EU) 2016/1011 of the European Parliament and the Council **on indices used as benchmarks in financial instruments and financial contracts** (the “Regulation”)

1. Overview

Objectives

The Regulation aims to:

- ensure benchmarks produced or used in the EU are robust and reliable
- restore confidence in benchmarks
- protect consumers and investors through greater transparency
- improve governance and controls over the benchmark process

Scope

An Index is any figure i) published or “made available to the public” (i.e. accessible by a potentially indeterminate number of recipients) and ii) regularly determined

A benchmark is:

1. Any index by **reference** to which the amount payable under an instrument/contract, or the value of an instrument, is determined,
or
2. An index that is used to **measure the performance** of an investment fund

Benchmark categories

Benchmark are classified as:

- **Critical benchmarks** (e.g. – ibor)
Benchmarks used for financial instruments, contracts and performance of investment funds having a total value of at least EURO 500bn, and meeting qualitative criteria such as location of contributors and importance of the benchmark in the country where a majority of contributors is located
- **Significant benchmarks**
Benchmarks used for financial instruments, contracts and performance of investment funds having a total value of at least EUR 50bn over a period of six months, and meeting qualitative criteria such as the benchmark has no reliable substitute, and its absence would lead to market disorder
- **Non-significant benchmarks**
Benchmarks that do not fulfill the conditions set for critical or significant benchmarks

Entities

BMR introduces obligations for benchmark Administrator, Benchmark Contributors and Benchmark Users:

- **Benchmark Administrator:** supervised entities which:
 1. Administer the arrangements **determining** the benchmark
 2. Collect and analyse the **input data**
 3. Determine the **rate** of the benchmark
 4. Significant benchmarks
- **Benchmark Contributors:** entities providing any input data required in connection with the determination of a benchmark, and is provided for that purpose
- **Benchmark Users:** any legal or natural person which:
 1. Issue an instrument/contract referencing an index/indices

2. Be a party to a contract referencing an index/indices
3. Determine an instrument / contract payable amount by referencing an index/indices
4. Provide a borrowing rate calculated as a spread or mark-up over an index/indices used as a reference in a contract to which the creditor is a party
5. Measure fund performance through an index/indices

Main obligations for Benchmark Administrators

➤ **In terms of methodology:**

- Develop a transparent methodology for determining benchmarks
- Prefer transactional data and publish a clear code of conduct related to input data and exercises of expert judgment
- Establish measures to monitor and validate input data
- Publish a procedure on the actions to be taken in case of changes to or cessation of benchmark

➤ **In terms of governance:**

- Apply for registration to NCA and apply for benchmarks registration at ESMA
- Set up robust governance arrangements
- Publish existing/potential conflicts of interests to users and NCA and set up an adequate conflicts of interest policy
- Store records for at least 5 years (such as methodology, any changes to this methodology)
- Put in place procedures for employees to report infringements

Main obligations for Benchmark Contributors

- Adhere to administrator's code of conduct of input data (use of robust technology and sufficient and accurate information)
- Contribute input data for the determination of critical benchmarks on a mandatory basis under the NCA's request
- Meet governance and control rules, avoid conflicts of interest

Main obligations for Benchmark Users

- No use of unregulated benchmarks
- Ensure that prospectuses issued state if the benchmark is included in ESMA's register
- Prepare contingency plans to anticipate any benchmark changes, cessation or withdrawal/suspension, and reflect those plans in legacy and new contractual documentations with clients

2. Chronology of events: key dates

- ✓ 29 June 2016: Publication in EU Official Journal
- ✓ 01 January 2018: Entry into application, with a transition period ending 01 January 2022 for critical benchmarks and for third-countries benchmarks, and 01 January 2020 for other benchmarks
- ✓ 11 October 2019: the European Commission launched a consultation on the review of the Benchmark Regulation, answers were due by 6 December 2019

The consultation is related to the following topics:

- critical benchmarks
 - authorisation and registration procedure
 - scope of the BMR
 - ESMA register of administrators and benchmarks
 - benchmark statement
 - supervision of climate-related benchmarks
 - commodity benchmarks
 - non-EEA benchmarks
- ✓ 9 March 2020: ESMA launched a consultation on Draft Regulatory Standards under the Benchmark Regulation, responses due by 8 June 2020.

The consultation is related to the following topics:

- governance arrangements
 - benchmark methodology requirements
 - the reporting of infringements
 - and the mandatory administration of a critical benchmark and non-significant benchmarks
- ✓ 24 July 2020: Commission proposed to amend EU rules on financial benchmarks in order to ensure that when a widely used benchmark is phased out, it does not cause disruptions to the economy and harm financial stability in the EU.
 - ✓ 7 October 2020: Council adopted position on amendments addressing LIBOR cessation. On the basis of the negotiation mandate, negotiations will start with European Parliament as soon as Parliament has adopted its position

3. Reference text and documents

Text has been published in the Official of the EU on 29 June 2016

Link: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1011&from=EN>

[Q&A](#)

[Consultation on Benchmark review](#)

[Commission's proposal to amend EU rules on financial benchmarks on 24 July 2020](#)