

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
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- ✓ 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

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](#)