

## 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](#)