

FINANCIAL REGULATORY QUICK START GUIDE

EU BENCHMARKS REGULATION

The EU Benchmarks Regulation (BMR) has brought significant changes in relation to the administration and use of benchmarks in the EEA.

OVERVIEW

The BMR implements and builds upon the IOSCO Principles for Financial Benchmarks. Most provisions came into effect on 1 January 2018. Subject to transitional arrangements, from 1 January 2018 providers of in scope benchmarks need to be authorised or registered, and users of benchmarks are restricted as to the benchmarks they may use in the EEA.

WHICH BENCHMARKS?

The definition of “benchmark” for the purposes of the BMR is extremely broad. It includes any index by reference to which the amount payable under a financial instrument,

“The BMR implements and builds upon the IOSCO Principles for Financial Benchmarks.”

a consumer credit agreement or residential mortgage agreement is determined, or by reference to which the value of a financial instrument is determined. The definition of

benchmark also includes an index that is used to measure the performance of certain funds.

An index is any figure that is regularly determined on the basis of a calculation or assessment on the basis of the value of one or more underlying assets or prices, and that is published or made available to the public.

WHO IS AFFECTED?

The BMR has implications for those who provide, contribute input data to, and reference (use), benchmarks within scope, as summarised in the table below.

	Administrator	Contributor	User
Description	<p>Person who has control over the administration of the benchmark. Includes:</p> <ul style="list-style-type: none"> Administrating arrangements for determining a benchmark Collecting, analysing or processing input data for the purposes of determining a benchmark Determining a benchmark through the application of a formula or other method of calculation, or by an assessment of input data 	<p>Person contributing input data:</p> <ul style="list-style-type: none"> That is not readily available to the administrator That is required in connection with the determination of a benchmark and is provided for that purpose 	<p>Person who:</p> <ul style="list-style-type: none"> Issues financial instruments which reference a benchmark Determines the amount payable under a financial instrument or financial contract by referencing the benchmark Is party to a contract which references a benchmark Measures the performance of an investment fund through the use of an index
Requirements	<ul style="list-style-type: none"> Authorisation or registration Proportionate controls in light of classification of benchmark Governance and control Outsourcing / licensing arrangements Methodology and transparency 	<ul style="list-style-type: none"> Follow administrator's code of conduct Prevent conflicts of interest Co-operate in auditing and supervision of benchmarks Maintain records and make these available 	<p>Supervised users must:</p> <ul style="list-style-type: none"> Only use authorised benchmarks Produce robust action plans if a benchmark materially changes or ceases to be produced (to be reflected in contractual documents)

CLASSIFICATION

The regime distinguishes between different types of benchmarks, classifying them as critical, significant or non-significant. Administrators of critical benchmarks are subject to the most stringent requirements, while those providing significant and non-significant benchmarks can benefit from more proportionate requirements in relation to areas such as governance and oversight of input data.

PRACTICAL ISSUES

The very wide definition of “benchmark” means that the regime can capture, for example, proprietary indices, private custom indices and indicators.

One particular issue is identifying which indices are (i) administered by;

(ii) contributed to; and/or (iii) used by any particular institution. It is quite possible for an institution to be performing all three roles in relation to different benchmarks. Also, the overlap between contribution and administration needs to be considered carefully as different governance and control frameworks are required for each role.

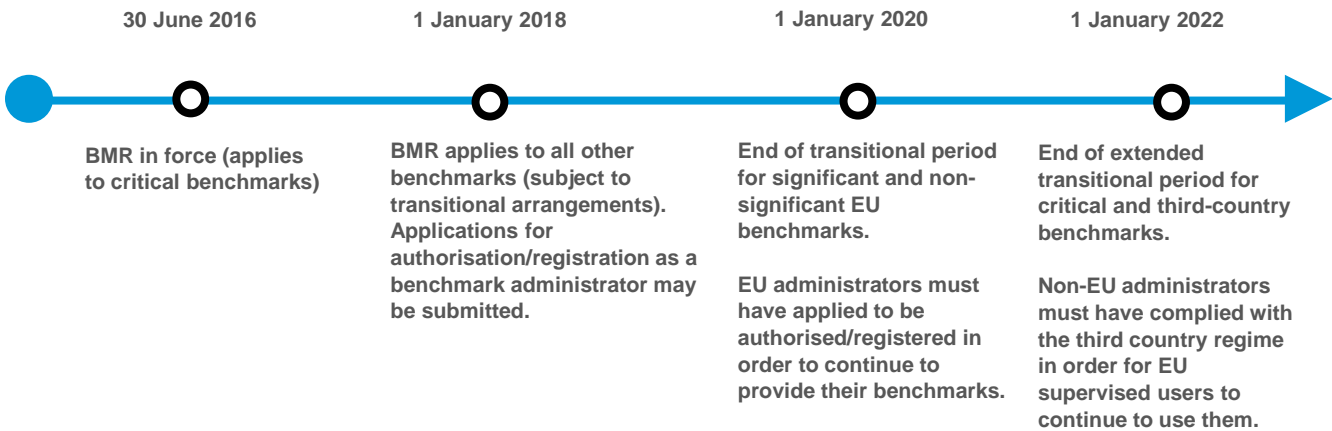
THIRD COUNTRY REGIME

Subject to transitional arrangements, third country benchmarks (that is, benchmarks provided by administrators located outside of the EEA) can only be used by supervised users in the EEA from 1 January 2022 if they qualify under the BMR third country regime. There are three ways in which a third country benchmark may qualify for use in the EEA: equivalence, recognition or endorsement.

All of these require compliance with standards equivalent to the BMR. Given that the BMR goes much further than the IOSCO Principles, it is likely that not all third country benchmarks will be able to qualify for use in the EEA and that not all third country administrators will want to make the changes necessary to qualify under the third country regime.

There remains uncertainty around which third country benchmarks will be permitted to be used in the EEA.

TIMING



CONTACTS



Nicola Higgs

Partner, London
T +44.20.7710.1154
E nicola.higgs@lw.com



Becky Critchley

Associate, London
T +44.20.7710.4519
E becky.critchley@lw.com



Rob Moulton

Partner, London
T +44.20.7710.4523
E rob.moulton@lw.com