

18 February 2020

Users of Benchmarks in terms of the European Benchmarks Regulation

[i] Background

The Benchmarks [Regulation \(EU\) 2016/1101](#) ("the BMR") came into effect on 1 January 2018, with the objective of introducing a common framework to ensure the accuracy and integrity of indices used as benchmarks in financial instruments and financial contracts, or to measure the performance of investment funds in the European Union. This Regulation contributes to the proper functioning of the internal market while achieving a high level of consumer and investor protection.

Subsequently, in March 2018, the European Commission published its [Action Plan on 'Financing Sustainable Growth'](#), launching a strategy on sustainable finance. This resulted in the creation of Climate Benchmarks. In this respect, [Regulation \(EU\) 2019/2089](#) relating to EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks and amending the BMR, became applicable on 10 December 2019. This amending Regulation is intended to maintain and improve the proper functioning of the internal market for the benefit of the end investor, to ensure a high level of consumer and investor protection and prevent greenwashing¹.

[ii] Scope

Reference is made to Regulation (EU) 2016/1101 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, as amended by Regulation (EU) 2019/2089 in relation to EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks.

For ease of reference, we set out below certain definitions reproduced from the BMR:

'Index' means any figure:

- (a) that is published or made available to the public;
- (b) that is regularly determined:
 - i. entirely or partially by the application of a formula or any other method of calculation, or by an assessment; and

¹ Greenwashing in the context of benchmarks is defined as a misalignment with the stated investment objectives of pursuing ambitious climate goals

- ii. on the basis of the value of one or more underlying assets or prices, including estimated prices, actual or estimated interest rates, quotes and committed quotes, or other values or surveys.²

'Benchmark' means any index by reference to which the amount payable under a financial instrument or a financial contract, or the value of a financial instrument, is determined, or an index that is used to measure the performance of an investment fund with the purpose of tracking the return of such index or of defining the asset allocation of a portfolio or of computing the performance fees.³

It is essential that entities which use any form of Benchmarks are conversant with the BMR and Regulation (EU) 2019/2089 in order to ensure that they are in full compliance with these regulations.

The Malta Financial Services Authority ("MFSA") is undertaking an exercise to determine and assess the practical use of benchmarks by Maltese entities. In terms of Article 3 1. (7) of the BMR, 'use of a benchmark' means:

- (a) issuance of a financial instrument which references an index or a combination of indices;
- (b) determination of the amount payable under a financial instrument or a financial contract by referencing an index or a combination of indices;
- (c) being a party to a financial contract which references an index or a combination of indices;
- (d) providing a borrowing rate as defined in point (j) of Article 3 of Directive 2008/48/EC calculated as a spread or mark-up over an index or a combination of indices and that is solely used as a reference in a financial contract to which the creditor is a party;
- (e) measuring the performance of an investment fund through an index or a combination of indices for the purpose of tracking the return of such index or combination of indices, of defining the asset allocation of a portfolio, or of computing the performance fees;

In addition, the MFSA would like to also identify which entities make use of EU Climate Transition Benchmarks and/or EU Paris-aligned Benchmarks ('Green Benchmarks'), as defined under the amending Regulation (EU) 2019/2089.

[iii] Required Action

Entities which make use of Benchmarks as defined under the BMR are required to ensure that they only make use of Benchmarks that are provided by benchmark administrators included in the ESMA Benchmarks Register.⁴

In order for the Authority to determine and assess the actual usage of Benchmarks, the Company is kindly requested to participate in this study by completing this brief [Questionnaire](#).

² Article 3 1. (1)

³ Article 3 1. (3)

⁴ The ESMA Register can be accessed on: <https://registers.esma.europa.eu/publication/>

Please respond by completing this Questionnaire as soon as possible and in any event by not later than Friday 20 March 2020.

Please be aware that entities which do not submit the Questionnaire by the timeframe indicated above will be considered as non-users of Benchmarks for regulatory purposes.

Any queries in relation to the completion of the Questionnaire should be addressed to sms@mfsa.com.mt.

We thank you in advance for your cooperation in this exercise.