

23 March 2020

The EU Benchmarks Regulation ('BMR'): Consultation on the European Commission's Roadmap relating to BMR Review

This circular is being addressed to market participants falling within the scope of BMR, particularly administrators of benchmarks¹, contributors of benchmarks² and users of benchmarks³.

1.0 Background

[Regulation \(EU\) 2016/1011](#) of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, entered into force on 30 June 2016 and most of its provisions came into effect on 1 January 2018.

The BMR introduces a common framework and consistent approach to the regulation of benchmarks across the EU. Particularly, the BMR aims to satisfy the following objectives:-

- Enhancing governance and control arrangements over the benchmark process, in order to make sure that benchmarks administrators avoid, or where not possible, mitigate adequately, conflicts of interest;
- Upgrading the quality of both methodologies and input data which benchmark administrators make use of;
- Ensuring that benchmark contributors as well as the data provided by them is bound by adequate controls, specifically to prevent conflicts of interest; and

¹ In terms of Article 3(1)(5) of BMR, provision of a benchmark means: (a) administering the arrangements for determining a benchmark; (b) collecting, analysing or processing input data for the purpose of determining a benchmark; and (c) determining a benchmark through the application of a formula or other method of calculation or by an assessment of input data provided for that purpose.

² Pursuant to Article 3(1)(8) of BMR, contribution of input data refers to providing any input data not readily available to an administrator, or to another person for the purposes of passing to an administrator, that is required in connection with the determination of a benchmark, and is provided for that purpose;

³ Article 3(1)(7) of BMR defines use of a benchmark as: (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; and (e) measuring the performance of an investment und 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.

- Safeguarding consumers and investors interest through adequate rights of redress and greater transparency.

2.0 Consultation of the European Commission's Roadmap on BMR Review

The Authority would like to inform market participants that the European Commission ('EC') has on 18 March 2020 published a consultation on its Roadmap relating to the review of the BMR. Accordingly, the EC's has, through its roadmap, set out the main problems that the BMR review intends to address, including:

1. Transition from panel-based critical interest rate benchmarks to risk-free rates published by central banks; and
2. Ensuring a level playing field / international perspectives

In this respect, the EC invites stakeholders to provide their feedback, which feedback will then be incorporated in the Commission's legislative proposal for further development and amendment of the BMR, which is planned for the third quarter of 2020.

This consultation is primarily of interest to those involved in the provision of benchmarks, the contribution of input data to a benchmark and the use of a benchmark, but responses are also sought from any other market participant including trade associations and industry bodies, institutional and retail investors, consultants and academics. Therefore, all interested stakeholders are invited to respond to this consultation paper.

The roadmap is open for feedback until 15 April 2020. EC invites all stakeholders to provide feedback on the consultation through the following [link](#). The EC will summarise the responses received in a synopsis report describing how the input will be taken into account, and, where applicable, the reason why particular recommendations cannot be taken on board. Any feedback received will be published on the EC website and consequently must satisfy the [feedback rules](#) set out by the EC.

Contacts

Should you have any queries relating to the above kindly contact the Authority on bmr@mfsa.mt.