

25 May 2022

Targeted Consultation on the Regime Applicable to the Use of Benchmarks Administered in a Third Country

This circular is being addressed to market participants, particularly those falling within the scope of Regulation (EU) 2016/1011 of the European Parliament and of the Council on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds (hereinafter referred to as 'the Benchmarks Regulation' or 'BMR'), *inter alia* administrators of benchmarks¹, contributors of benchmarks² and users of benchmarks³.

1.0 Introduction

The Authority would like to inform market participants that on 20 May 2022, the European Commission ('EC') launched a targeted consultation on the regime applicable to the use of benchmarks administered in a third country. The consultation period for this targeted consultation will end on 12 August 2022.

2.0 Target Group

This consultation welcomes contributions from all citizens, organisations, Member States, national competent authorities, European Supervisory Authorities and the European Central Bank. Nevertheless, the Commission is particularly seeking input from benchmark administrators located in the European Union ('EU') or elsewhere, from supervised entities (e.g. credit institutions, investment firms, insurance undertakings, etc - A full list is provided

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 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 Article 3(1)(17) of the Benchmarks Regulation) using benchmarks and from citizens and businesses who are the end-users of financial benchmarks.

3.0 Objective of the Consultation

The [EU Benchmark Regulation](#) was introduced to improve the robustness of financial benchmarks provided and used in the EU. This framework includes rules on the use in the EU of benchmarks provided outside the EU, which will become applicable as from 01 January 2024. The Commission is now seeking views on their expected effects on EU citizens and businesses, with a view for potential improvements.

The outcome of this public consultation will help the Commission prepare a proposal to review the rules for financial benchmarks administered outside the EU, to be published in the last quarter of 2022.

4.0 How to submit your response

Please note that in order to ensure a fair and transparent consultation process, responses should be submitted through the online questionnaire available on the EC's website and which can be accessed through the following [link](#).

5.0 Reference Documents

Before submitting their responses to the targeted consultation, market participants may wish to refer to the consultation document and privacy statement, which may be accessed through the links provided hereunder:

- [Consultation document: Targeted consultation on the regime applicable to the use of benchmarks administered in a third country](#)
- [Specific privacy statement: Targeted consultation on the regime applicable to the use of benchmarks administered in a third country](#)

6.0 Contacts

Should you have any queries in relation the above, please do not hesitate to contact the Authority on Benchmarks@mfsa.mt for any further clarifications.