

13 September 2022

Circular on the Benchmarks Regulation ('BMR') – Information Gathering Exercise relating to the Use of Benchmarks

This circular is being addressed to market participants, but particularly users of benchmarks¹ 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').

1.0 Background

Benchmarks play an important role in the determination of the price of many financial instruments and financial contracts as well as the measurement of performance for many investment funds. In order to fulfil their economic role, benchmarks need to be representative of the underlying market or economic reality they intend to measure. Should a benchmark no longer be representative of an underlying market, there is a risk of negative effect on, inter alia, market integrity, the financing of households and businesses in the Union.

The Benchmark Regulation distinguishes between different types of benchmarks and specifies the requirements which are applicable to each type of benchmark or the provisions which a particular benchmark could be exempted from. The following are the different types of benchmarks regulated by the BMR and which users may utilise:

a. Critical Benchmarks

Put simply, a critical benchmark is a benchmark with either a value of contracts of at least €500 billion underlying the benchmark, or which is based on submissions by contributors the majority of which are located in one Member State ('MS') and is recognised as being critical in accordance with the procedure laid down in Article 20(2), (3), (4) and (5) of the BMR. A benchmark is also deemed critical where it fulfills all of the following criteria:

- The value of contracts underlying the benchmark is at least €400 billion;

¹ 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.

- The benchmark has no, or very few, appropriate market-led substitutes;
- In the event that the benchmark ceases to be provided, or becomes unrepresentative of the underlying market, there would be significant and adverse impacts on market integrity, financial stability, consumers, the real economy or the financing of households and business in one or more MS.

In this respect, Commission Implementing Regulation (EU) 2021/1122 of 08 July 2021 (the 'Implementing Regulation') provides the latest list of critical benchmarks used in financial markets pursuant to the Benchmarks Regulation. According to the Implementing Regulation there are currently five critical benchmarks, namely;

- Euro Interbank Offered Rate (EURIBOR®);
- Euro Overnight Index Average (EONIA®);
- Stockholm Interbank Offered Rate (STIBOR®);
- Warsaw Interbank Offered Rate (WIBOR®); and
- Norwegian Interbank Offered Rate (NIBOR®).

b. Significant Benchmarks

A benchmark is considered to be a significant benchmark where the value of contracts underlying the benchmark is at least €50 billion, or where there are no or very few market-led substitutes and there would be an impact on financial stability if the benchmark ceased to be produced.

c. Commodity Benchmarks

A benchmark is deemed to be a commodity benchmark, where the underlying asset of the benchmark is a commodity as defined by Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments ('MiFID II'). Commodity benchmarks are subject to the requirements set out in Annex II of the Regulation, unless they are regulated data benchmarks, or are based on submissions the majority of which are supervised entities. The articles relating to significant and non-significant benchmarks do not apply to commodity benchmarks.

d. Regulated Data Benchmarks

In terms of point (24) in Article 3(1) of the BMR, a benchmark is recognised as a regulated data benchmark, where the benchmark is determined by the application of a formula from input data contributed entirely from regulated venues, or net asset values of investment funds. Certain provisions of the regulation do not apply to regulated data benchmarks, and they cannot be classified as critical benchmarks.

e. Interest Rate Benchmarks

A benchmark is deemed to be an Interest rate benchmark, where the benchmark is determined based on the rate at which banks may lend to, or borrow from, other banks or agents in the money markets. Interest rate benchmarks are subject to the requirements set out in Annex I of the Regulation. The articles of the BMR relating to significant and non-significant benchmarks do not apply to interest rate benchmarks.

f. Non-Significant Benchmarks

A non-significant benchmark is a benchmark, with an underlying value of contracts which is less than €50billion, and the benchmark is not a commodity or interest rate benchmark.

2.0 Required Action

As market participants are well aware, this is not the first information-gathering exercise carried out by the Authority on the use of benchmarks within the local industry. Indeed, in February 2021, the MFSA's Banking Supervision Function had issued a 'Dear CEO' letter to its respective license holders with the objective of bringing to their attention the European Central Bank's assessment of banks' preparedness for reforms to the benchmark rates, and in turn requesting license holders to provide the MFSA with information setting out the measures taken to quantify and mitigate the exposure of such banks to this reform.

Furthermore, in view of the fact that the MFSA is the competent authority for the supervision of users, administrators and contributors falling within the scope of the Benchmarks Regulation, by way of its circulars dated 25 March 2021 and 30 July 2021, the MFSA had requested its license holders which fall within the definition of users contained in Article 3(1)(7) of the Benchmarks Regulation to come forward to the Authority and provide quantitative and qualitative information in relation to their use of critical benchmarks.

For the purpose of continuing assessing the use of benchmarks within the local industry, by way of this Circular, the Authority requests all market participants, with the exception of insurance intermediaries, to complete and return a form setting out details of their exposure to the five critical benchmarks mentioned in this Circular and any other benchmark currently in use, which form can be accessed from this [link](#). The information is required as at 31 August 2022.

This form, duly completed, is to be submitted via email to benchmarks@mfsa.mt, by not later than Friday, 14 October 2022.

Only entities making use of benchmarks as at 31 August 2022 are required to respond to this Circular, hence NIL returns are not required. Please be aware that entities which do not provide feedback by the timeframe indicated above will be considered as non-users of Benchmarks for regulatory purposes.

The content of this circular applies to all MFSA license holders, on a cross-sectorial basis, particularly (but not limited to), credit institutions, financial institutions, investment funds (UCITS, AIFs, etc.), investment service providers, insurance undertakings, market operators, etc.

For ease of reference, may we remind you that in terms of the Benchmark Regulation use of a benchmark includes;

- (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.

Contacts

Should you have any queries relating to the Benchmarks Regulation kindly contact the Authority on benchmarks@mfsa.mt.

Any requests for clarification required in connection with the form and the information being requested, should be submitted to the Authority on statistics@mfsa.mt.

We thank you in advance for your cooperation.