



COMMUNIQUÉ

COMMUNICATION REGARDING REGULATION (EU) 2016/1011 ON INDICES USED AS BENCHMARKS (BENCHMARK REGULATION)

This communication is addressed to all entities which are subject to the CSSF's supervision and which are using benchmarks (Concerned Entities).

- Extension of transitional provisions

The CSSF draws the Concerned Entities' attention to the fact that the transitional provisions provided for by the Benchmark Regulation¹ have been extended until 31 December 2021² with respect to the use of benchmarks provided by third country administrators and benchmarks which have been declared as critical by the European Commission.

A detailed list of permitted uses may be found under the last bullet point hereunder.

- Information and fallback provisions

Concerned Entities are reminded that they are subject to the requirements provided for in:

(i) Article 28, paragraph 2 of the Benchmark Regulation with respect to the fallback provisions to be set up by supervised entities. As a consequence, Concerned Entities are strongly urged to be prepared for the cessation of EONIA and LIBOR which is expected in the turn of the year 2021/2022 or the cessation of other important interbank offered rates, as the case may be. For such purpose Concerned Entities should regularly monitor the developments and actions of the European working groups established in this respect and consider their recommendations taking into account the most recent developments. The most recent information on this topic provided by such working groups can be found under https://www.ecb.europa.eu/paym/initiatives/interest_rate_benchmarks/html/index.en.html and <https://www.bankofengland.co.uk/markets/transition-to-sterling-risk-free-rates-from-libor>; and

(ii) Article 29 paragraph 2 of the Benchmark Regulation requiring that where the object of a prospectus to be published under Directive 2003/71/EC or Directive 2009/65/EC is transferable securities or other investment products that reference a benchmark, the prospectus must include clear and prominent information stating whether the benchmark is provided by an administrator included in the ESMA Register.

- Permitted uses by Concerned Entities

As of 1 January 2020, Concerned Entities are restricted to the use of:

- a. an index that does not fall within the scope of the Benchmark Regulation as it is exempted from its requirements pursuant to Article 2 paragraph 2 of the said regulation;
- b. a benchmark which is provided by an administrator located in the European Union and included in the register referred to in Article 36 of the Benchmark Regulation (ESMA Register) or a benchmark which is included in the ESMA Register³;
- c. a benchmark that is provided by an administrator located in a third country (such benchmark may be used until 31 December 2021 without being included in the ESMA Register);

¹ Article 51 of Regulation (EU) 2016/1011

² Article 1 (9) of Regulation (EU) 2019/2089

³ The ESMA Register is accessible under <https://www.esma.europa.eu/databases-library/registers-and-data>

- d. a benchmark that is provided by an administrator located in a third country, where the benchmark is already used in the European Union on or before 31 December 2021⁴ as a reference for financial instruments, financial contracts, or for measuring the performance of an investment fund. The use shall be permitted only for such financial instruments, financial contracts and measurements of the performance of an investment fund that already reference the benchmark in the European Union on, or which add a reference to such benchmark prior to, 31 December 2021 (under these conditions, the benchmark may be further used for an unlimited period of time without being included in the ESMA Register);
- e. a benchmark that is declared critical by the European Commission (such benchmark may be used until 31 December 2021 without being included in the ESMA Register);
- f. a benchmark that is provided by an index provider applying for authorisation or registration by 1 January 2020. Such benchmark may be used, unless and until such authorisation or registration is refused⁵;
- g. a benchmark that is not compliant with the Benchmark Regulation, only if its use is permitted by a national competent authority of a member state of the European Union provided that the particular requirements set out under Article 51 paragraph 4 of the Benchmark Regulation are met. No financial instruments, financial contracts, or measurements of the performance of an investment fund shall add a reference to such an existing benchmark after 1 January 2020. ESMA collects the information of competent authorities' decisions and publishes the list of such decisions and updates whenever needed.

Luxembourg, 24 December 2019

⁴ As per European Securities and Markets Authority Questions and Answers on the Benchmark Regulation – Q&A 9.3

⁵ Pending applications by administrators of benchmarks located in the European Union are published by ESMA on its website under <https://www.esma.europa.eu/press-news/esma-news/esma-provides-information-pending-applications-benchmark-administrators>