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TAIEX Workshop on EU legal regulation on the use of benchmarks on capital markets

Kiev, 18 March 2019

Workshop agenda

1) Road to the BMR

2) Scope of the regulation - benchmark definition

3) Use of a benchmark

4) Benchmark administrators, methodology and powers of a competent authorities

5) BMR „practical” implementation and challenges

Road to the BMR

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„Before the financial crisis, most people hadn't heard of LIBOR, even though it is a key part of the functioning of financial markets" – Andrew Bailey, CEO of the UK FCA, June 2017.

„One of the most important developments during the depths of the global financial crisis following the collapse of Lehman Brothers on September 15, 2008 was the initial discussion about the possible manipulation of the London Interbank Offered Rate (Libor) and its financial cousin, the Euro Interbank Offered Rate (Euribor), two key market benchmark interest rates" - Alexander Eisl; Rainer Jankowitsch; Marti G. Subrahmanyam „The Manipulation Potential of Libor and Euribor" 2012.

- In the summer of 2012 US Commodities and Futures Trading Commission (CFTC), announced that it was imposing a $200 million penalty on Barclays Bank plc for attempted manipulation of, and false reporting concerning, Libor and Euribor benchmark interest rates, from as early as January of 2005.

- As part of the non-prosecution agreement between the US Department of Justice and Barclays, communications between individual traders and rate submitters were made public, providing evidence of the manipulation of the reference rates on particular days.

Tom Hayes

Jonathan Mathew; Alex Pabon; Jay Merchant; and Peter Johnson

Libor manipulation to lower rate

„Hi Guys, We got a big position in 3m libor for the next 3 days. Can we please keep the libor fixing at 5.39 for the next few days. It would really help. We do not want it to fix any higher than that. Thx a lot”

Barclays Bank trader in New York to submitter,
13 September 2006

Market awareness

"JUST BE CAREFUL DUDE." "I agree we shouldn't have been talking about putting fixings for our positions on public chat."

UBS brokers, 2008

„We had no controls, absolutely. Libor has been going since the mid 1980s, and we had no controls in place”

Sir Philip Hampton, Chairman of RBS, 2007

UK Financial Supervisory Authority (FSA) took action

Martin Wheatley, FSA CEO

The Wheatley Review 2012 (1/3)

1. First, the Review has concluded that there is a clear case in favour of comprehensively reforming LIBOR, rather than replacing the benchmark. LIBOR is used in a vast number of financial transactions; it is estimated that contracts with an outstanding value of at least $300 trillion reference the benchmark. A move to replace LIBOR could only be justified by clear evidence that the benchmark is severely damaged, and that a transition to a new, suitable benchmark or benchmarks could be quickly managed to ensure limited disruption to financial markets.

The Wheatley Review 2012 (2/3)

2. Second, the Wheatley Review has concluded that the issues identified with LIBOR, while serious, can be rectified through a comprehensive and far-reaching programme of reform; and that a transition to a new benchmark or benchmarks would pose an unacceptably high risk of significant financial instability, and risk large-scale litigation between parties holding contracts that reference LIBOR.

The Wheatley Review 2012 (3/3)

3. Third, the Review has concluded that transaction data should be explicitly used to support LIBOR submissions. A number of the Review's recommendations are intended to establish strict and detailed processes for verifying submissions against transaction data and limiting the publication of LIBOR to those currencies and tenors that are supported by sufficient transaction data.

4. Fourth, the Review has concluded that market participants should continue to play a significant role in the production and oversight of LIBOR. While LIBOR needs to be reformed to address the weaknesses that have been identified, it would not be appropriate for the authorities to completely take over the process of producing a benchmark which exists primarily for the benefit of market participants.

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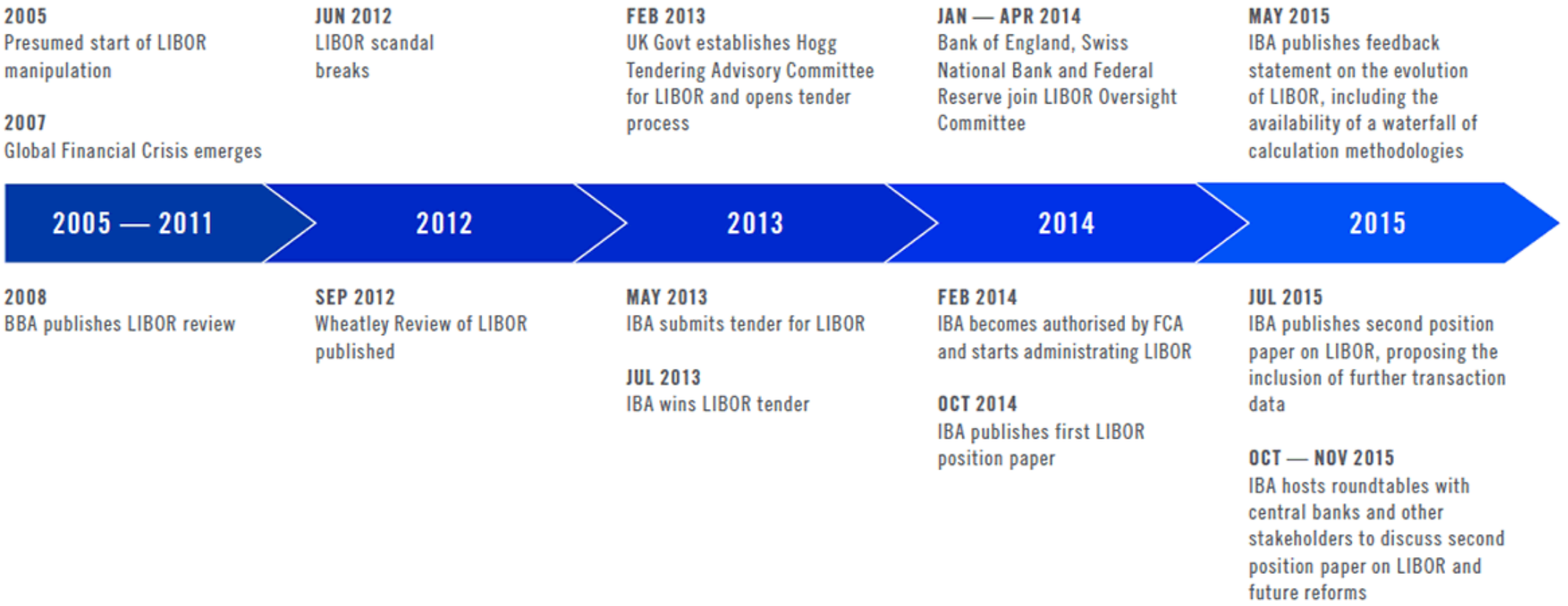
LIBOR Scandal timeline (source: IBA)



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International efforts to create a regulatory framework for financial benchmarks

IOSCO Principles for Benchmarks (1/4)

In July 2013 The International Organization of Securities Commissions (IOSCO) published the final report on Principles for Financial Benchmarks, which provides an overarching framework of principles for benchmarks used in financial markets.

IOSCO Principles for Benchmarks (2/4)

The principles form an integral part of IOSCO´s work in leading efforts to enhance the integrity, the reliability and the oversight of benchmarks by establishing guidelines for benchmark administrators and other relevant bodies in the following areas:

1) Governance: to protect the integrity of the Benchmark determination process and to address conflicts of interest;
2) Benchmark quality: to promote the quality and integrity of Benchmark determinations through the application of design factors;

IOSCO Principles for Benchmarks (3/4)

3) Quality of the methodology: to promote the quality and integrity of Methodologies by setting out minimum information that should be addressed within a Methodology. These principles also call for credible transition policies in case a Benchmark may cease to exist due to market structure change;

4) Accountability mechanisms: to establish complaints processes, documentation requirements and audit reviews.

IOSCO Principles for Benchmarks (4/4)

The principles provide a framework of standards that might be met in different ways, depending on the specificities of each benchmark. In addition to a set of high level principles, the framework offers a subset of more detailed principles for benchmarks having specific risks arising from their reliance on submissions and/or their ownership structure.

The principles provide for benchmark administrators to publicly disclose their compliance with the principles within twelve months of the publication of the report, with the intention of IOSCO reviewing within an 18 month period the extent to which the principles have been implemented.

FSB report (1/2)

In the 2014 Report, the FSB set out a series of recommendations for strengthening existing benchmarks for key interbank offered rates (IBORs) in the unsecured lending markets, and for promoting the development and adoption of alternative nearly risk-free reference rates (RFRs) where appropriate.

FSB report (2/2)

The FSB specified the relevant criteria that should be used to ensure reference rates command widespread private and official sector support:

1. The benchmark rates should minimise the opportunities for market manipulation.

2. The benchmark rates should be anchored in observable transactions wherever
feasible.

3. The benchmark rates should be robust in the face of market dislocation and should command confidence that they remain resilient in times of stress.

Why does the IOSCO Principles in the context of the BMR matters?

„This Regulation should take into account the IOSCO principles, which serve as global standards for regulatory requirements for benchmarks”.

Adoption of the EU Benchmarks framework - timeline

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EU Benchmarks Regulation „**BMR**”

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29.6.2016 EN Official Journal of the European Union L 171/1

I

(Legislative acts)

REGULATIONS

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 and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014

(Text with EEA relevance)

BMR adoption timeline (1/2)

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The Commission published its original proposal for the BMR in 2013 following the settlements reached by regulators with a number of banks concerning the manipulation of the LIBOR and EURIBOR interest rate benchmarks. The Commission aimed to *„protect investors and consumers and limit the risks of future manipulation by improving how benchmarks are produced and used”*

BMR adoption timeline (2/2)

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- 8 June 2016 – after finishing the legislation proces the BMR was finally signed by the European Parliament President Mr. M.Schulz and Council President A.G. Koenders.

- 30 June 2016 – BMR enter into force after its publication in the Official Journal of the European Union.

- 1 January 2018 – the BMR is fully applicable within the EU (Article 59 of the BMR).

- II half of 2018 – publication of the BMR delegated regulations in the the Official Journal of the European Union.

Scope of the delegated regulations (1/3) – RTS/ITS

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1. Procedures, characteristics and positioning of oversight function to avoid conflicts of interest (RTS)
2. Appropriateness and verifiability of input data, internal oversight and verification procedures of contributors (RTS)
3. Information to be provided by administrators for transparency of methodology (RTS)
4. Specification of elements of the contributor code of conduct (RTS)
5. Governance and control requirements for supervised contributors, systems and controls (RTS)
6. Template for compliance statement for significant benchmarks (ITS)

Scope of the delegated regulations (2/3) – RTS/ITS

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7. Specification of qualitative criteria for significant benchmarks (RTS)
8. Template for compliance statement for non-significant benchmarks (RTS)
9. Contents of benchmark statement and cases in which update is required (RTS)
10. Minimum content for cooperation arrangements with third country NCAs (RTS)
11. Form and content for the application for recognition by third country administrators (RTS)
12. Information to be provided in applications for authorisation and registration (RTS)
13. Procedures and forms for exchange of information with NCAs (ITS)

Scope of the delegated regulations (3/3) - TA

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14. how to specify: what constitutes making available to the public for the purposes of the definition of an index, what constitutes administering the arrangements for determining a benchmark, what constitutes the issuance of a financial instrument for the purposes of defining use of a benchmark;
15. the appropriate measurement for measuring the nominal amount of financial instruments other than derivatives, the notional amount of derivatives and the net asset value of investment funds in both the direct case and also in case of the indirect reference to a benchmark within a combination of benchmarks;
16. how the criteria referred to in paragraph 1(c), subparagraph (iii), of Article 20 are to be applied (criteria for identifying critical benchmarks);
17. measures to determine the conditions on which the relevant competent authorities may assess whether there is objective reason for the provision of a benchmark or family of benchmarks in a third country and their endorsement for their use in the Union.
18. how to determine the conditions on which the relevant competent authority may assess whether the cessation or the changing of an existing benchmark to conform with the requirements of this Regulation could reasonably result in a force majeure event, frustrate or otherwise breach the terms of any financial contract or financial instrument which references such benchmark.

Level III measures (non-binding)

- ESMA Q&A on Benchmarks Regulation – first published in July 2017 – last updated in February 2019 (v11)

- ESMA Guidelines on non-significant benchmarks – published in December 2018

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BMR Recital 9

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*„**The critical determinant of the scope of this Regulation should be whether the output value of the benchmark determines the value of a financial instrument or a financial contract, or measures the performance of an investment fund.** Therefore, the scope should not be dependent on the nature of the input data. Benchmarks calculated from economic input data, such as share prices and non-economic numbers, or values such as weather parameters should thus be included. The framework provided for in this Regulation should also acknowledge the existence of a large number of benchmarks and the different impact that they have on financial stability and the real economy. This Regulation should also provide for a proportionate response to the risks that different benchmarks pose. This Regulation should therefore cover benchmarks which are used to price financial instruments listed or traded on regulated venues.”*

Detailed scope of the BMR – Article 2 (1/2)

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1. This Regulation applies to the provision of benchmarks, the contribution of input data to a benchmark and the use of a benchmark within the Union.

2. This Regulation shall not apply to:

(a) a central bank;

(b) a public authority, where it contributes data to, provides, or has control over the provision of, benchmarks for public policy purposes, including measures of employment, economic activity, and inflation;

(c) a central counterparty (CCP), where it provides reference prices or settlement prices used for CCP risk-management purposes and settlement;

(d) the provision of a single reference price for any financial instrument listed in Section C of Annex I to Directive 2014/65/EU;

(e) the press, other media and journalists where they merely publish or refer to a benchmark as part of their journalistic activities with no control over the provision of that benchmark;

Detailed scope of the BMR – Article 2 (2/2)

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(f) a natural or legal person that grants or promises to grant credit in the course of that person's trade, business or profession, only insofar as that person publishes or makes available to the public that person's own variable or fixed borrowing rates set by internal decisions and applicable only to financial contracts entered into by that person or by a company within the same group with their respective clients;

(g) a commodity benchmark based on submissions from contributors the majority of which are non-supervised entities and in respect of which both of the following conditions apply:

(i) the benchmark is referenced by financial instruments for which a request for admission to trading has been made on only one trading venue, as defined in point (24) of Article 4(1) of Directive 2014/65/EU, or which are traded on only one such trading venue;

(ii) the total notional value of financial instruments referencing the benchmark does not exceed EUR 100 million;

(h) an index provider in respect of an index provided by said provider where that index provider is unaware and could not reasonably have been aware that that index is used for the purposes referred to in point (3) of Article 3(1).

Application of the BMR outside the EU

- Q4.3 Does the provision of and contribution to benchmarks that are used outside the European Union only fall within the scope of the BMR?

A4.3 The scope of the Benchmarks Regulation is defined in Article 2(1) of the BMR. As a general rule Article 2(1) of the BMR provides that the BMR "applies to the provision of benchmarks, the contribution of input data to a benchmark and the use of a benchmark within the Union". The term "provision of a benchmark" is defined in point (5) Article 3(1) of the BMR. The BMR's objective is to ensure the proper functioning of the European market and a high degree of consumer and investor protection vis-à-vis benchmarks at Union level, as underlined in Recital 6 of the BMR. In contrast, it is not the ambition of the BMR to protect users of benchmarks worldwide, possibly conflicting with any applicable third country regimes.

Accordingly, Article 29 of the BMR refers to the use of a benchmark in the Union. ESMA therefore considers that the BMR does not apply to the provision of benchmarks that are exclusively used outside the Union. The same reasoning would apply to the contribution of input data with respect to a benchmark that is exclusively used outside the Union. An administrator providing a benchmark exclusively to users outside the Union would have to comply with any applicable third country regimes with respect to benchmarks.

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BMR application transitional period

Transitional provisions

Key provisions are included in Article 51 of the BMR:

1) *„1. An index provider providing a benchmark on 30 June 2016 shall apply for authorisation or registration in accordance with Article 34 by 1 January 2020”.*

2) *„3. An index provider may continue to provide an existing benchmark which may be used by supervised entities until 1 January 2020 or, where the index provider submits an application for authorisation or registration in accordance with paragraph 1, unless and until such authorisation or registration is refused”.*

How to understand BMR's transitional provisions?

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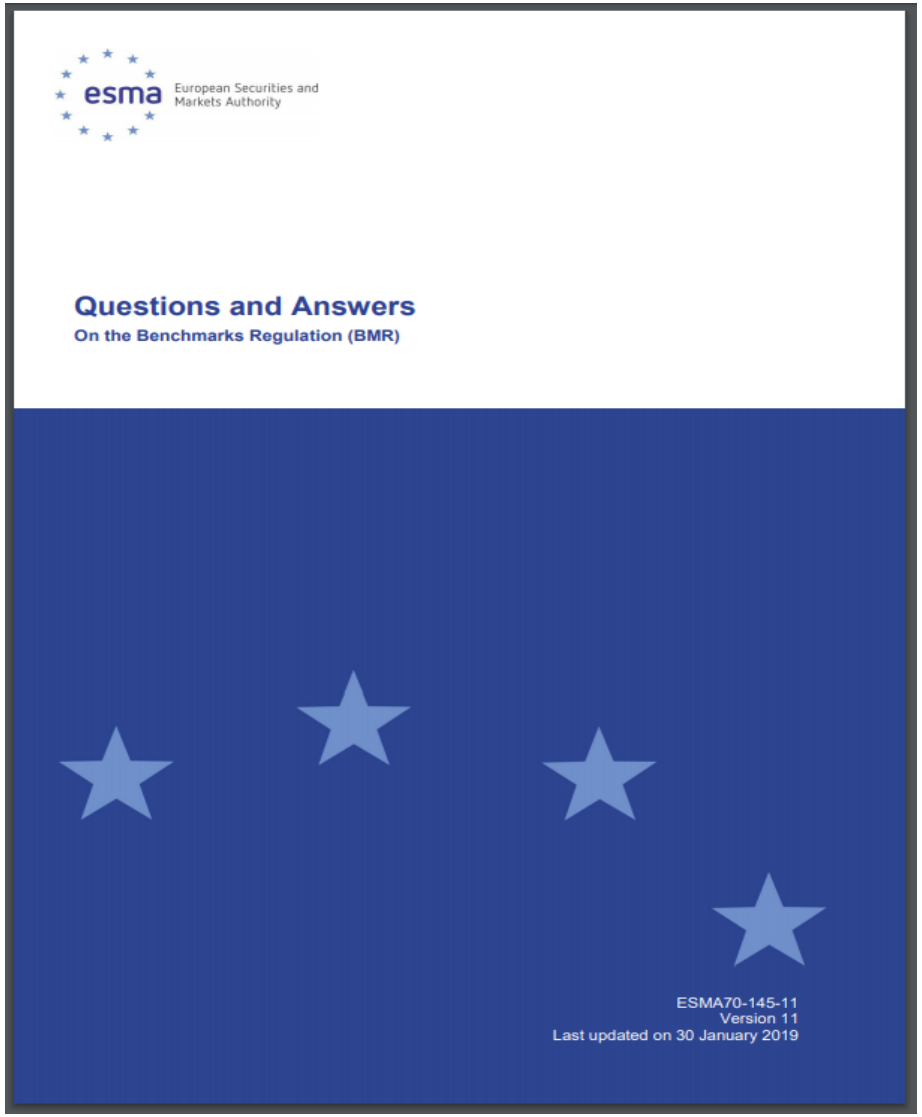

Transitional provisions – ESMA Q&A (1/2)

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Q9.1 Where an EU index provider, that already provided a benchmark on 30 June 2016 and that has not yet been authorised or registered, provides a new benchmark after 1 January 2018, could such a benchmark be used by supervised entities in the Union under the transitional provisions of the Benchmarks Regulation?

A9.1 Article 51(1) allows an EU index provider, already providing a benchmark on 30 June 2016, to apply for authorisation or registration until 1 January 2020. This transitional provision applies at the entity level.

ESMA considers that during such period, the EU index provider is allowed to continue its activity of provision of benchmarks in full and supervised entities in the Union are able to use all the benchmarks provided by EU index providers that qualify for the transitional provisions in Article 51(1). This includes benchmarks already provided before 1 January 2018, updates and modifications of benchmarks already provided before 1 January 2018, as well as the provision of new benchmarks for the first time after 1 January 2018. The transitional provisions of Article 51(1) are to be applied unless and until the authorisation or registration of the EU index provider is refused.

Transitional provisions – ESMA Q&A (2/2)

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Q9.2 Where an EU index provider that was not providing a benchmark on 30 June 2016 starts to provide benchmarks between 1 July 2016 and 31 December 2017, can these benchmarks be used by supervised entities in the Union? Can the same index provider provide new benchmarks after 1 January 2018 and before it is authorised or registered?

A9.2 Article 51(3) allows an EU index provider to continue to provide an existing benchmark which may be used by supervised entities until 1 January 2020 or unless and until authorisation or registration is refused. ESMA considers that the term "existing benchmark" used in Article 51(3) should be understood as "existing on or before 1 January 2018", in light of the fact that Article 51(3) will be applicable as of 1 January 2018. On this ground, ESMA's understanding of the transitional provisions in Article 51(3) is the following:

all benchmarks provided for the first time on or before 1 January 2018 by an EU index provider can be used by a supervised entity until 1 January 2020 or until and unless the authorisation or registration of the EU index provider is refused. Therefore, if an EU index provider starts to provide benchmarks between 30 June 2016 and 1 January 2018, such benchmarks, including their updates and modifications, can be used by supervised entities on and after 1 January 2018 (even if the authorisation or registration is not yet granted) and until 1 January 2020 or until and unless the authorisation or registration of the EU index provider is refused.

However, in the case that an EU index provider starts to provide benchmarks after 30 June 2016 and provides a new benchmark after 1 January 2018, supervised entities will not be allowed to use such newly provided benchmark, unless the EU index provider obtains first authorisation or registration.

What happens if 2020 deadline will not be achieved?

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Article 51 of the BMR:

„4. Where an existing benchmark does not meet the requirements of this Regulation, but ceasing or changing that benchmark to fulfil the requirements of this Regulation would result in a force majeure event, frustrate or otherwise breach the terms of any financial contract or financial instrument or the rules of any investment fund, which references that benchmark, the use of the benchmark shall be permitted by the competent authority of the Member State where the index provider is located. 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.”

What about third country benchmarks?

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MSCI

Bloomberg

THOMSON REUTERS

Third country transitional provisions

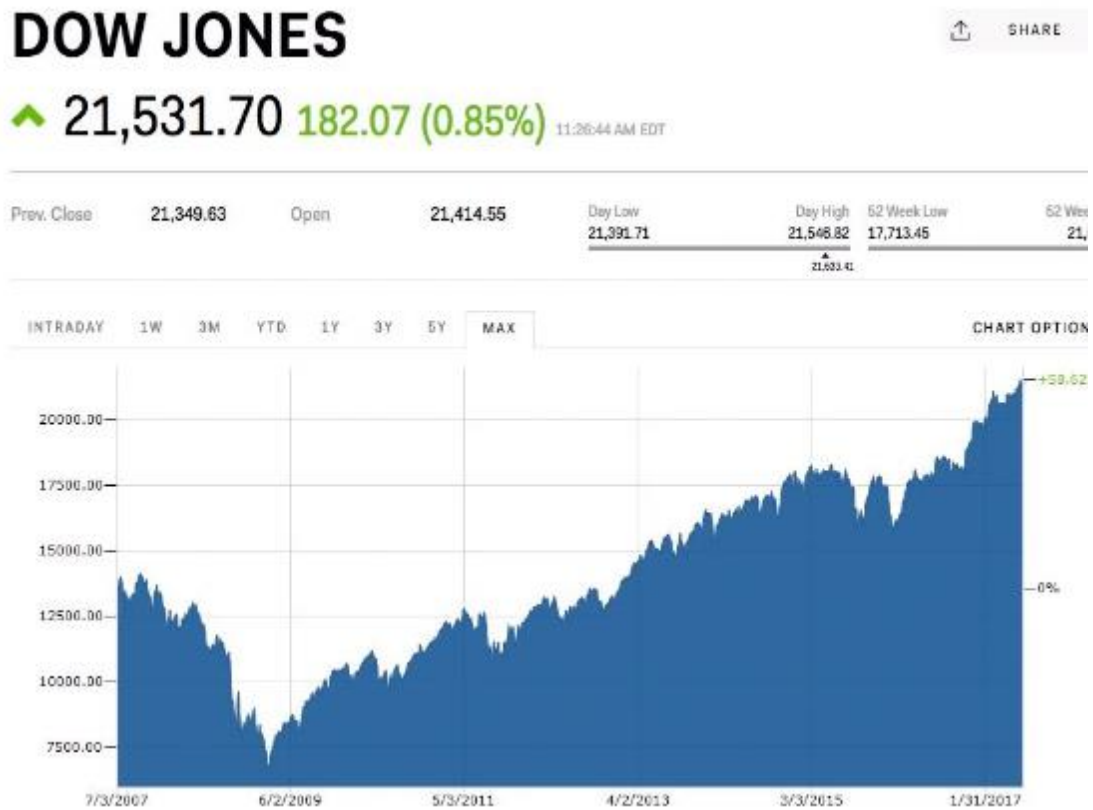
„Unless the Commission has adopted an equivalence decision as referred to in Article 30(2) or (3) or unless an administrator has been recognised pursuant to Article 32, or a benchmark has been endorsed pursuant to Article 33, the use in the Union by supervised entities of a benchmark provided by an administrator located in a third country where the benchmark is already used in the Union as a reference for financial instruments, financial contracts, or for measuring the performance of an investment fund, 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 Union on, or which add a reference to such benchmark prior to, 1 January 2020”.

Transitional periods summary

- Basically all existing index providers within the EU are benefitting from transitional period ending on 1 January 2020 (NCA possibility to allow certain benchmarks to be used by the market after 2020 with regards to the existing contracts)

- Third country benchmarks shall obtain endorsement, recognition or equivalence before 1 January 2020 (Existing contracts can use any third country benchmarks for unlimited time)

Definition of a Benchmark



Definition of a Benchmark (BMR)

Article 3 (1)(3) of the BMR:

*„'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;"*

What stands for „index”? (1/2)

Article 3 (1)(1) of 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

(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;”

What stands for „index”? (2/2)

Making available to the public

„1. A figure shall be deemed to be made available to the public in the meaning of Article 3, paragraph 1, point 1(a), of Regulation (EU) 2016/1011 if the figure is made accessible to a potentially indeterminate number of (legal or natural) persons outside of the provider's legal entity.

2. To be made available to the public as defined in paragraph 1, a figure may be accessed either ***directly or indirectly*** *(as a result, inter alia, of its use by one or more supervised entities as a reference for a financial instrument it issues or to determine the amount payable under a financial instrument or a financial contract, or to measure the performance of an investment fund, or to provide a borrowing rate calculated as a spread or mark-up over such figure), and through a variety of media and modalities, set out by the provider or agreed between the provider and the receiving persons, free or upon payment of a fee, (including, but not limited to, telephone, File Transfer Protocol, internet, open access, news, media, through financial instruments, financial contracts or investment funds referencing the figure or by way of request to the users).”*

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Benchmark definition summary

Benchmark is an index which is „actively” used to determine payements under financial instrument, contract or to calculate investment fund performance fees and impact fund composition (ETF) that is made available to the public

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Types of Benchmarks

Different ways to classify benchmarks included in the BMR (1/2)

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By amount of outstanding financial instruments, contracts, assets of investment funds etc.:

1) Critical benchmarks (500bn Euro threshold -but also qualitative criteria)

2) Significant benchmarks (50bn Euro threshold)

3) Non-significant benchmarks (below 50bn Euro threshold)

Different ways to classify benchmarks included in the BMR (2/2)

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By characteristics of input data:

1) Regulated-data benchmarks

2) Interest rate benchmarks

3) Commodity benchmarks

Critical benchmarks (1/2)

BMR's recital 35:

„The failure of critical benchmarks can impact market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in Member States. Those potentially destabilising effects of the failure of a critical benchmark could be felt in a single Member State or in more than one. It is therefore necessary that this Regulation provides for a process to determine those benchmarks that should be considered to be critical benchmarks and that additional requirements apply to ensure the integrity and robustness of such benchmarks."

Critical benchmarks (2/2)

1) „International” critical benchmark:

„Can be determined by using a quantitative criterion (500bn Euro) or a combination of quantitative (400bn Euro) and qualitative criteria. In addition, in cases where a benchmark does not meet the appropriate quantitative threshold, it could nonetheless be recognised as critical where the benchmark has no or very few market-led substitutes and its existence and accuracy are relevant for market integrity, financial stability or consumer protection in one or more Member States, and where all the relevant competent authorities agree that such a benchmark should be recognised as critical.”

2) „National” critical benchmark:

„Furthermore, a competent authority can also designate a benchmark as critical based on certain qualitative criteria where the administrator and the majority of the contributors to the benchmark are located in its Member State. All critical benchmarks should be included in a list established by a way of an implementing act by the Commission, which should be reviewed and updated regularly.”

Critical benchmark list

ANNEX

ANNEX

List of critical benchmarks pursuant to Article 20(1) of Regulation (EU) 2016/1011

No	Benchmark	Administrator	Location
1	Euro Interbank Offered Rate (EURIBOR®)	European Money Markets Institute (EMMI)	Brussels, Belgium
2	Euro Overnight Index Average (EONIA®)	European Money Markets Institute (EMMI)	Brussels, Belgium
3	London Interbank Offered Rate (LIBOR)	ICE Benchmark Administration (IBA)	London, United Kingdom
4	Stockholm Interbank Offered Rate (STIBOR)	Swedish Bankers' Association (Svenska Bankföreningen)	Stockholm, Sweden

Critical benchmarks – key features

1) Administrators of such benchmarks have to fullfill highest standard of regulatory requirements with regard to the internal governance and control porcedures, input data as well as transparency.

2) NCA's are equipped with additional powers which allow to enforce benchmark continuity.

3) „International" critical benchmark supervisory colleges.

Mandatory administration of a critical benchmark

„The cessation of the administration of a critical benchmark by an administrator could render financial contracts or financial instruments invalid, cause losses to consumers and investors, and impact financial stability. It is therefore necessary to include a power for the relevant competent authority to require mandatory administration ***(for max 2 years)*** *of a critical benchmark in order to preserve the existence of the benchmark in question. In the event of insolvency proceedings of a benchmark administrator, the competent authority should provide an assessment for the consideration of the relevant judicial authority of whether and how the critical benchmark could be transitioned to a new administrator or could cease to be provided."*

Mandatory contribution to a critical benchmark

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„Contributors that cease to contribute input data to critical benchmarks can undermine the credibility of such benchmarks, as the capability of such benchmarks to measure the underlying market or economic reality would as a result be impaired. It is therefore necessary to include a power for the relevant competent authority to require mandatory contributions ***(for max 2 years)*** *from supervised entities to critical benchmarks in order to preserve the credibility of the benchmark in question. Mandatory contribution of input data is not intended to impose an obligation on supervised entities to enter into, or to commit to entering into, transactions."*

Critical benchmarks – supervisory colleges

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1. In order to ensure the effective exchange of supervisory information among competent authorities and coordination of their activities and supervisory measures, colleges, comprising competent authorities and ESMA, should be formed.

2. The activities of the colleges should contribute to the harmonised application of rules under this Regulation and to the convergence of supervisory practices. The competent authority of the administrator should establish written arrangements regarding the exchange of information, the decision-making process, which could include rules on voting procedures, any cooperation for the purposes of mandatory contribution measures, and the cases where the competent authorities should consult each other.

3. ESMA's legally binding mediation is a key element of the achievement of coordination, supervisory consistency and convergence of supervisory practices.

Regulated-data benchmarks (1/3)

Article 3 (1)(24) of the BMR: ‘regulated-data benchmark’ means a benchmark determined by the application of a formula from:

(a) input data contributed entirely and directly from:

(i) a trading venue as defined in point (24) of Article 4(1) of Directive 2014/65/EU or a trading venue in a third country for which the Commission has adopted an implementing decision that the legal and supervisory framework of that country is considered to have equivalent effect within the meaning of Article 28(4) of Regulation (EU) No 600/2014 of the European Parliament and of the Council (22), or a regulated market considered to be equivalent under Article 2a of Regulation (EU) No 648/2012, but in each case only with reference to transaction data concerning financial instruments;

(ii) an approved publication arrangement as defined in point (52) of Article 4(1) of Directive 2014/65/EU or a consolidated tape provider as defined in point (53) of Article 4(1) of Directive 2014/65/EU, in accordance with mandatory post-trade transparency requirements, but only with reference to transaction data concerning financial instruments that are traded on a trading venue;

Regulated-data benchmarks (2/3)

(iii) an approved reporting mechanism as defined in point (54) of Article 4(1) of Directive 2014/65/EU, but only with reference to transaction data concerning financial instruments that are traded on a trading venue and that must be disclosed in accordance with mandatory post-trade transparency requirements;

(iv) an electricity exchange as referred to in point (j) of Article 37(1) of Directive 2009/72/EC of the European Parliament and of the Council (23);

(v) a natural gas exchange as referred to in point (j) of Article 41(1) of Directive 2009/73/EC of the European Parliament and of the Council (24);

(vi) an auction platform referred to in Article 26 or 30 of Commission Regulation (EU) No 1031/2010 (25);

(vii) a service provider to which the benchmark administrator has outsourced the data collection in accordance with Article 10, provided that the service provider receives the data entirely and directly from an entity referred to in points (i) to

(b) net asset values of investment funds;

Regulated-data benchmarks (3/3)

- Regulated-data benchmarks are not subject to application of the input data provisions.

- Regulated data can’t be critical as it make very little sense as majority of critical benchmark is focused on input data provision proces.

- There can be a regulated-data benchmark which is also a commodity benchmark.

Interest rate benchmarks (1/2)

„'interest rate benchmark' means a benchmark which for the purposes of point (1)(b)(ii) of this paragraph is determined on the basis of the rate at which banks may lend to, or borrow from, other banks, or agents other than banks, in the money market;"

Interest rate benchmarks (2/2)

„The specific requirements laid down in Annex I shall apply to the provision of, and contribution to, interest rate benchmarks in addition to, or as a substitute for, the requirements of Title II.

Articles 24, 25 and 26 shall not apply to the provision of, and contribution to, interest rate benchmarks".

That means - interest rate benchmarks can only be either critical interest rate benchmark or interest benchmark. Significant and non significant BMR requirements does not apply.

Commodity benchmarks (1/2)

„Commodity benchmark" means a benchmark where the underlying asset for the purposes of point (1)(b)(ii) of this paragraph is a commodity within the meaning of point **(1) of Article 2 of Commission Regulation (EC) No 1287/2006** (21), excluding emission allowances as referred to in point (11) of Section C of Annex I to Directive 2014/65/EU;

Definition of commodity included in the Commission Regulation (EC) No 1287/2006:

„'commodity' means any goods of a fungible nature that are capable of being delivered, including metals and their ores and alloys, agricultural products, and energy such as electricity;"

Commodity benchmarks (2/2)

- Some commodity benchmarks are excluded from the scope of the BMR (below 100Mn threshold and referenced by instruments admitted for trading on one venue, contributors that are not supervised entities).

- Commodity benchmarks are subject to the requirements laid down in Annex II of the BMR, to the provision of, and contribution to, commodity benchmarks, unless the benchmark in question is a regulated-data benchmark or is based on submissions by contributors the majority of which are supervised entities.

- Where a commodity benchmark is a critical benchmark and the underlying asset is gold, silver or platinum, the general requirements of Title II shall apply instead of Annex II.

Use of a benchmark

Definition - Article 3 (1)(7) of the BMR (1/2)

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‘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;

Definition - Article 3 (1)(7) of the BMR (2/2)

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(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;

Key areas of use of a benchmark

1. Financial instruments
2. Financial contracts
3. Investment funds

Financial instrument

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Financial instrument (1/5)

BMR*:*

„'financial instrument' means any of the instruments listed in Section C of Annex I to Directive 2014/65/EU for which a request for admission to trading on a trading venue, as defined in point (24) of Article 4(1) of Directive 2014/65/EU, has been made or which is traded on a trading venue as defined in point (24) of Article 4(1) of Directive 2014/65/EU or via a systematic internaliser as defined in point (20) of Article 4(1) of that Directive;"

Financial instrument (2/5)

MiFID II*:*

(1) Transferable securities;

(2) Money-market instruments;

(3) Units in collective investment undertakings;

(4) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, emission allowances or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash;

Financial instrument (3/5)

MiFID II*:*

(5) Options, futures, swaps, forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event;

(6) Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market, a MTF, or an OTF, except for wholesale energy products traded on an OTF that must be physically settled;

(7) Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in point 6 of this Section and not being for commercial purposes, which have the characteristics of other derivative financial instruments;

Financial instrument (4/5)

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MiFID II*:*

(8) Derivative instruments for the transfer of credit risk;

(9) Financial contracts for differences;

(10) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event, as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Section, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market, OTF, or an MTF;

Financial instrument (5/5)

MiFID II*:*

(11) Emission allowances consisting of any units recognised for compliance with the requirements of Directive 2003/87/EC (Emissions Trading Scheme).

All of the abovementioned instruments in order to fall within the BMR regulatory framework have to be traded on the trading venue or systematic internaliser.

(but with the MiFIR exception of OTC instruments that share the same characteristics)

Financial contract

Financial contract (1/2)

„’financial contract’ means:

(a) any credit agreement as defined in point (c) of Article 3 of Directive 2008/48/EC;

(b) any credit agreement as defined in point (3) of Article 4 of Directive 2014/17/EU;

Financial contract (2/2)

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Basically the abovementioned definitions refers to the a) mortgage (to consumers) and b) consumer credit.

Therefore all corporate/public sector credits do not fall within the scope of the BMR

Investment funds

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Investment funds

„‘investment fund’ means an AIF as defined in point (a) of Article 4(1) of Directive 2011/61/EU, or a UCITS as defined in Article 1(2) of Directive 2009/65/EC;”

AIF – Alternative Investment Funds

UCITS - Undertakings for Collective Investments in Transferable Securities

Investment funds – ESMA Q&A (1/3)

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- Q5.4 What types of investment funds are considered to be using an index for the purpose of "tracking the return of [an] index"?

A5.4 Article 3(1)(3) of the BMR defines a benchmark, inter alia, as an index that is used to measure the performance of an investment fund with the purpose of tracking the return of such index. ESMA considers that investment funds using indices to measure their performance with the purpose of tracking the return of such indices include:

1. investment funds the strategy of which is to replicate or track the performances of an index or indices e.g. through synthetic or physical replication; and
2. structured investment funds that provide investors with algorithm-based payoffs that are linked to the performance, or to the realisation of price changes or other conditions, of indices.

Investment funds – ESMA Q&A (2/3)

- Q5.5 What types of investment funds are considered to be using an index for the purpose of "defining the asset allocation of a portfolio"?

A5.5 Article 3(1)(3) of the BMR defines a benchmark, inter alia, as an index that is used to measure the performance of an investment fund with the purpose of defining the asset allocation of a portfolio.

ESMA considers that an index is used to measure the performance of an investment fund with the purpose of defining its asset allocation when the documentation, and in particular its investment policy or investment strategy, define constraints on the asset allocation of the portfolio in relation to an index.

For example the investment policy or strategy may require the investment fund to invest a percentage or the whole portfolio in securities that are constituents of an index. Investment funds using indices to measure their performance with the purpose of defining the asset allocation thus may include investment funds that are actively managed (where the manager has discretion over the composition of its portfolio subject to the investment objectives and strategies as opposed to a fund that tracks the return of the index).

Investment funds – ESMA Q&A (3/3)

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- Q5.6 Does the use of a benchmark to measure the performance of an investment fund include the sole mentioning of an index as a comparison?

A5.6 No. ESMA considers that indices referenced in the documentation of an investment fund solely to compare the performance of the investment fund should not be included in the scope of this definition, where no investment constraint on the asset allocation of the portfolio is established in relation to the index.

This is without prejudice to other European or national rules governing the mentioning of indices in fund documentation.

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Not every reference to a benchmark is equal to the „use of a benchmark” in the meaning of the BMR

Requirements for benchmarks users

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Definition of a ‚use of a benchmark'

Article 29 of the BMR:

„'Use of a benchmark'

1. A supervised entity may use a benchmark or a combination of benchmarks in the Union if the benchmark is provided by an administrator located in the Union and included in the register referred to in Article 36 or is a benchmark which is included in the register referred to in Article 36.

2. 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 issuer, offeror, or person asking for admission to trade on a regulated market shall ensure that the prospectus also includes clear and prominent information stating whether the benchmark is provided by an administrator included in the register referred to in Article 36 of this Regulation".

ESMA Register (1/2)

ESMA shall establish and maintain a public register that contains the following information:

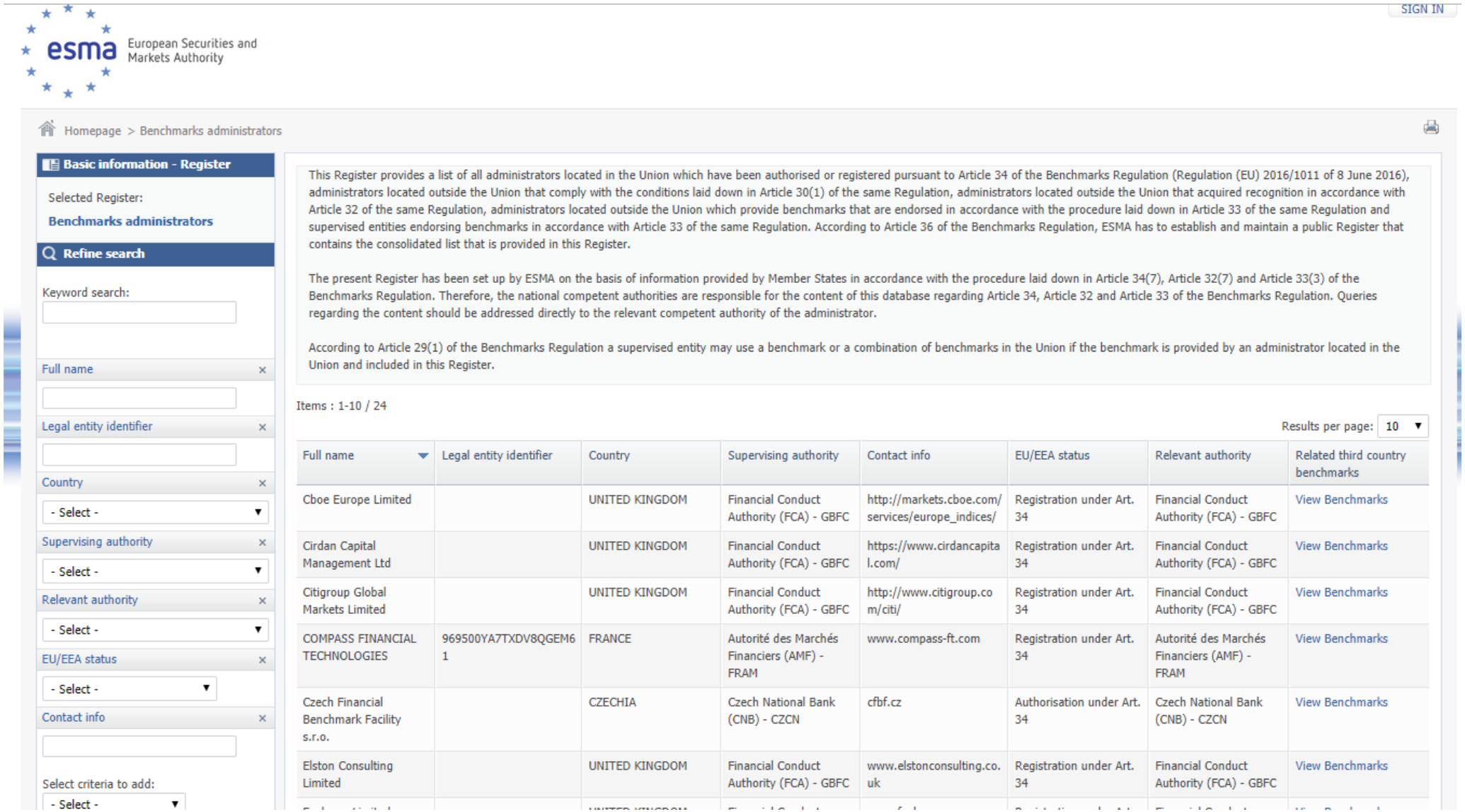
(a) the identities of the administrators authorised or registered pursuant to Article 34 and the competent authorities responsible for the supervision thereof;

(b) the identities of administrators that comply with the conditions laid down in Article 30(1), the list of benchmarks referred to in point (c) of Article 30(1) and the third country competent authorities responsible for the supervision thereof;

(c) the identities of the administrators that acquired recognition in accordance with Article 32, the list of benchmarks referred to in Article 32(7) and, where applicable, the third country competent authorities responsible for the supervision thereof;

(d) the benchmarks that are endorsed in accordance with the procedure laid down in Article 33, the identities of their administrators, and the identities of the endorsing administrators or endorsing supervised entities.

ESMA Register (2/2)



esma European Securities and Markets Authority

SIGN IN

Homepage > Benchmarks administrators

Basic information - Register

Selected Register:

Benchmarks administrators

Refine search

Keyword search:

Full name

Legal entity identifier

Country

- Select -

Supervising authority

- Select -

Relevant authority

- Select -

EU/EEA status

- Select -

Contact info

Select criteria to add:

- Select -

This Register provides a list of all administrators located in the Union which have been authorised or registered pursuant to Article 34 of the Benchmarks Regulation (Regulation (EU) 2016/1011 of 8 June 2016), administrators located outside the Union that comply with the conditions laid down in Article 30(1) of the same Regulation, administrators located outside the Union that acquired recognition in accordance with Article 32 of the same Regulation, administrators located outside the Union which provide benchmarks that are endorsed in accordance with the procedure laid down in Article 33 of the same Regulation and supervised entities endorsing benchmarks in accordance with Article 33 of the same Regulation. According to Article 36 of the Benchmarks Regulation, ESMA has to establish and maintain a public Register that contains the consolidated list that is provided in this Register.

The present Register has been set up by ESMA on the basis of information provided by Member States in accordance with the procedure laid down in Article 34(7), Article 32(7) and Article 33(3) of the Benchmarks Regulation. Therefore, the national competent authorities are responsible for the content of this database regarding Article 34, Article 32 and Article 33 of the Benchmarks Regulation. Queries regarding the content should be addressed directly to the relevant competent authority of the administrator.

According to Article 29(1) of the Benchmarks Regulation a supervised entity may use a benchmark or a combination of benchmarks in the Union if the benchmark is provided by an administrator located in the Union and included in this Register.

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Results per page: 10

Full name	Legal entity identifier	Country	Supervising authority	Contact info	EU/EEA status	Relevant authority	Related third country benchmarks
Cboe Europe Limited		UNITED KINGDOM	Financial Conduct Authority (FCA) - GBFC	http://markets.cboe.com/services/europe_indices/	Registration under Art. 34	Financial Conduct Authority (FCA) - GBFC	View Benchmarks
Cirdan Capital Management Ltd		UNITED KINGDOM	Financial Conduct Authority (FCA) - GBFC	https://www.cirdancapital.com/	Registration under Art. 34	Financial Conduct Authority (FCA) - GBFC	View Benchmarks
Citigroup Global Markets Limited		UNITED KINGDOM	Financial Conduct Authority (FCA) - GBFC	http://www.citigroup.com/citi/	Registration under Art. 34	Financial Conduct Authority (FCA) - GBFC	View Benchmarks
COMPASS FINANCIAL TECHNOLOGIES	969500YA7TXDV8QGEM61	FRANCE	Autorité des Marchés Financiers (AMF) - FRAM	www.compass-ft.com	Registration under Art. 34	Autorité des Marchés Financiers (AMF) - FRAM	View Benchmarks
Czech Financial Benchmark Facility s.r.o.		CZECHIA	Czech National Bank (CNB) - CZCN	cfbf.cz	Authorisation under Art. 34	Czech National Bank (CNB) - CZCN	View Benchmarks
Elston Consulting Limited		UNITED KINGDOM	Financial Conduct Authority (FCA) - GBFC	www.elstonconsulting.co.uk	Registration under Art. 34	Financial Conduct Authority (FCA) - GBFC	View Benchmarks

Contingency measures

Article 28 of the BMR:

„'Changes to and cessation of a benchmark'

1. An administrator shall publish, together with the benchmark statement referred to in Article 27, a procedure concerning the actions to be taken by the administrator in the event of changes to or the cessation of a benchmark which may be used in the Union in accordance with Article 29(1). The procedure may be drafted, where applicable, for families of benchmarks and shall be updated and published whenever a material change occurs.

2. Supervised entities other than an administrator as referred to in paragraph 1 that use a benchmark shall produce and maintain robust written plans setting out the actions that they would take in the event that a benchmark materially changes or ceases to be provided. Where feasible and appropriate, such plans shall nominate one or several alternative benchmarks that could be referenced to substitute the benchmarks no longer provided, indicating why such benchmarks would be suitable alternatives. The supervised entities shall, upon request, provide the relevant competent authority with those plans and any updates and shall reflect them in the contractual relationship with clients."

Contingency measures – ESMA Q&A (1/3)

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- Q8.1 Are supervised entities, other than administrators, required to have robust written plans for cessation or material changes of a benchmark and to reflect them in the contractual relationship with clients as of 1 January 2018?

A8.1 Yes, Article 28(2) of the BMR applies as of 1 January 2018. Therefore, as of this date, supervised entities, other than administrators, are required to produce and maintain robust written plans setting out the actions that they would take in the event that a benchmark they are using materially changes or ceases to be provided.

ESMA considers that supervised entities, other than administrators, are required to reflect such plans in the contractual relationship with clients in contracts entered into after 1 January 2018. In relation to contracts entered into prior to 1 January 2018 and still existing at that date, ESMA expects supervised entities, other than administrators, to amend them where practicable and on a best-effort basis

Contingency measures – ESMA Q&A (2/3)

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- Q8.2 When are the written plans robust?

A8.2 ESMA considers that written plans are robust if they determine operational procedures in writing and if they include detailed courses of action, relevant 23 communication channels and arrangements for different scenarios and contingencies.

Written plans should be thorough and adequate. They should reflect the nature and size of the individual benchmark and the scale of its use in the markets. ESMA further considers that maintaining the robust written plans requires supervised entities to continuously monitor relevant factors and update arrangements as appropriate.

Contingency measures – ESMA Q&A (3/3)

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- Q8.3 How should users reflect written plans in the contractual relationship with clients?

A8.3 The contractual relationships with clients are governed by national contract law and, accordingly, the legally adequate reflection of the written plans may vary among Member States. However, ESMA considers that supervised entities should be able to demonstrate to the NCA that they have communicated their written plans to their clients and that the written plans are legally effective under applicable Member States law.

For example, prospectuses may be contractual documents under national law and supervised entities may then opt to update outstanding prospectuses approved prior to 1 January 2018 in order to guarantee that all new investors in an investment fund are subject to such terms. In other cases, supervised entities may opt to include a reference to their written plans in other contractual documents that they formalise with new investors.

EU benchmark administrator

EU benchmark administrator - definition

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Extract from BMR's definitions (Article 3):

„(2) 'index provider' means a natural or legal person that has control over the provision of an index;

(5) '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;

(6) 'administrator' means a natural or legal person that has control over the provision of a benchmark;"

Administrator authorisation/registration Article 34 BMR (1/3)

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1. A natural or legal person located in the Union that intends to act as an administrator shall apply to the competent authority designated under Article 40 of the Member State in which that person is located in order to receive:

(a) authorisation if it provides or intends to provide indices which are used or intended to be used as benchmarks within the meaning of this Regulation;

(b) registration if it is a supervised entity, other than an administrator, that provides or intends to provide indices which are used or intended to be used as benchmarks within the meaning of this Regulation, on condition that the activity of provision of a benchmark is not prevented by the sectoral discipline applying to the supervised entity and that none of the indices provided would qualify as a critical benchmark; or

(c) registration if it provides or intends to provide only indices which would qualify as non-significant benchmarks.

Administrator authorisation/registration Article 34 BMR (2/3)

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3. The application referred to in paragraph 1 shall be made within 30 working days of any agreement entered into by a supervised entity to use an index provided by the applicant as a reference to a financial instrument or financial contract or to measure the performance of an investment fund.

Administrator authorisation/registration Article 34 BMR (3/3)

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5. Within 15 working days of receipt of the application, the relevant competent authority shall assess whether the application is complete and shall notify the applicant accordingly. If the application is incomplete, the applicant shall submit the additional information required by the relevant competent authority. The time limit referred to in this paragraph shall apply from the date on which such additional information is provided by the applicant.

6. The relevant competent authority shall:

(a) examine the application for authorisation and adopt a decision to authorise or refuse to authorise the applicant within four months of receipt of a complete application;

(b) examine the application for registration and adopt a decision to register or refuse to register the applicant within 45 working days of receipt of a complete application.

BMR third country regime

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BMR third country regime

BMR sets out three different ways for allowing the EU supervised entities to use a third country benchmarks:

1) Equivalence

2) Recognition

3) Endorsement

Equivalence

- In order to ensure investor protection, supervision and regulation in a third country should be equivalent to Union supervision and regulation of benchmarks. Therefore, benchmarks provided from that third country can be used by supervised entities in the Union where a positive decision on equivalence of the third- country regime has been taken by the Commission.

- In such circumstances, competent authorities should enter into cooperation arrangements with supervisory authorities in third countries. ESMA should coordinate the development of such cooperation arrangements and the exchange between competent authorities of information received from third countries.

Recognition

- Recognition should be granted to administrators complying with the requirements of this Regulation. Acknowledging the role of the IOSCO principles as a global standard for the provision of benchmarks, the competent authority of the Member State of reference should be able to grant recognition to administrators on the basis of them applying the IOSCO principles.

- To do so, the competent authority should assess the application of the IOSCO principles by a specific administrator and determine whether such application is equivalent, for the administrator in question, to compliance with the various requirements established in this Regulation, taking into account the specificities of the regime of recognition as compared to the equivalence regime.

Endorsement

- BMR also introduces an endorsement regime allowing, under certain conditions, administrators or supervised entities located in the Union to endorse benchmarks provided from a third country in order for such benchmarks to be used in the Union.

- To do so, the competent authority should take into account whether, in providing the benchmark to be endorsed, compliance with the IOSCO principles would be equivalent to compliance with this Regulation, taking into account the specificities of the regime of endorsement as compared to the equivalence regime.

- An administrator or a supervised entity that has endorsed a benchmark provided from a third country should be fully responsible for such endorsed benchmarks and for the fulfilment of the relevant conditions referred to in this Regulation.

Withdrawal or suspension of authorisation or registration

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A competent authority may withdraw or suspend the authorisation or registration of an administrator where the administrator:

(a) expressly renounces the authorisation or registration or has provided no benchmarks for the preceding 12 months;

(b) has obtained the authorisation or registration, or has endorsed a benchmark, by making false statements or by any other irregular means;

(c) no longer meets the conditions under which it was authorised or registered; or

(d) has seriously or repeatedly infringed the provisions of the BMR.

Summary – becoming an administrator

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Ways to become able to provide benchmarks that can be used by the EU supervised entities:

1) Authorisation
2) Registration
3) Recognition
4) Endorsement
5) Equivalence

Requirements for benchmark administrators

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Governance and conflict of interest requirements for Administrators (1/5)

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- An administrator shall have in place robust governance arrangements which include a clear organisational structure with well-defined, transparent and consistent roles and responsibilities for all persons involved in the provision of a benchmark.

- Administrators shall take adequate steps to identify and to prevent or manage conflicts of interest between themselves, including their managers, employees or any person directly or indirectly linked to them by control, and contributors or users, and to ensure that, where any judgement or discretion in the benchmark determination process is required, it is independently and honestly exercised.

- 2The provision of a benchmark shall be operationally separated from any part of an administrator's business that may create an actual or potential conflict of interest.

Governance and conflict of interest requirements for administrators (2/5)

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- Where a conflict of interest arises within an administrator due to the latter's ownership structure, controlling interests or other activities conducted by any entity owning or controlling the administrator or by an entity that is owned or controlled by the administrator or any of the administrator's affiliates, that cannot be adequately mitigated, the relevant competent authority may require the administrator to establish an independent oversight function which shall include a balanced representation of stakeholders, including users and contributors.

- If such a conflict of interest cannot be adequately managed, the relevant competent authority may require the administrator to either cease the activities or relationships that create the conflict of interest or cease providing the benchmark.

- An administrator shall publish or disclose all existing or potential conflicts of interest to users of a benchmark, to the relevant competent authority and, where relevant, to contributors, including conflicts of interest arising from the ownership or control of the administrator.

Governance and conflict of interest requirements for administrators (3/5)

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- An administrator shall establish and operate adequate policies and procedures, as well as effective organisational arrangements, for the identification, disclosure, prevention, management and mitigation of conflicts of interest in order to protect the integrity and independence of benchmark determinations. Such policies and procedures shall be regularly reviewed and updated. The policies and procedures shall take into account and address conflicts of interest, the degree of discretion exercised in the benchmark determination process and the risks that the benchmark poses, and shall:

  (a) ensure the confidentiality of information contributed to or produced by the administrator, subject to the disclosure and transparency obligations under this Regulation; and

  (b) specifically mitigate conflicts of interest due to the administrator's ownership or control, or due to other interests in the administrator's group or as a result of other persons that may exercise influence or control over the administrator in relation to determining the benchmark.

Governance and conflict of interest requirements for administrators (4/5)

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- Administrators shall ensure that their employees and any other natural persons whose services are placed at their disposal or under their control and who are directly involved in the provision of a benchmark:

  (a) have the necessary skills, knowledge and experience for the duties assigned to them and are subject to effective management and supervision;

  (b) are not subject to undue influence or conflicts of interest and that the compensation and performance evaluation of those persons do not create conflicts of interest or otherwise impinge upon the integrity of the benchmark determination process;

  (c) do not have any interests or business connections that compromise the activities of the administrator concerned;.

Governance and conflict of interest requirements for administrators (5/5)

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(d) are prohibited from contributing to a benchmark determination by way of engaging in bids, offers and trades on a personal basis or on behalf of market participants, except where such way of contribution is explicitly required as part of the benchmark methodology and is subject to specific rules therein; and

(e) are subject to effective procedures to control the exchange of information with other employees involved in activities that may create a risk of conflicts of interest or with third parties, where that information may affect the benchmark.

- 8. An administrator shall establish specific internal control procedures to ensure the integrity and reliability of the employee or person determining the benchmark, including at least internal sign-off by management before the dissemination of the benchmark.

Oversight function (1/3)

- Administrators shall establish and maintain a permanent and effective oversight function to ensure oversight of all aspects of the provision of their benchmarks.

- Administrators shall develop and maintain robust procedures regarding their oversight function, which shall be made available to the relevant competent authorities.

- The oversight function shall be carried out by a separate committee or by means of another appropriate governance arrangement.

Oversight function (2/3)

- 3. The oversight function shall operate with integrity and shall have the following responsibilities, which shall be adjusted by the administrator based on the complexity, use and vulnerability of the benchmark:

(a)reviewing the benchmark's definition and methodology at least annually;

(b)overseeing any changes to the benchmark methodology and being able to request the administrator to consult on such changes;

(c)overseeing the administrator's control framework, the management and operation of the benchmark, and, where the benchmark is based on input data from contributors, the code of conduct;

(d)reviewing and approving procedures for cessation of the benchmark, including any consultation about a cessation;

(e)overseeing any third party involved in the provision of the benchmark, including calculation or dissemination agents;

Oversight function (3/3)

(f)assessing internal and external audits or reviews, and monitoring the implementation of identified remedial actions;

(g)where the benchmark is based on input data from contributors, monitoring the input data and contributors and the actions of the administrator in challenging or validating contributions of input data;

(h)where the benchmark is based on input data from contributors, taking effective measures in respect of any breaches of the code of conduct; and

(i)reporting to the relevant competent authorities any misconduct by contributors, where the benchmark is based on input data from contributors, or administrators, of which the oversight function becomes aware, and any anomalous or suspicious input data.

Control framework requirements (1/2)

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1. Administrators shall have in place a control framework that ensures that their benchmarks are provided and published or made available in accordance with this Regulation.

2. The control framework shall be proportionate to the level of conflicts of interest identified, the extent of discretion in the provision of the benchmark and the nature of the benchmark input data.

3. The control framework shall include:

(a) management of operational risk;

(b) adequate and effective business continuity and disaster recovery plans;

(c) contingency procedures that are in place in the event of a disruption to the process of the provision of the benchmark.

Control framework requirements (2/2)

4. An administrator shall establish measures to:

(a) ensure that contributors adhere to the code of conduct referred to in Article 15 and comply with the applicable standards for input data;

(b) monitor input data including, where feasible, monitoring input data before publication of the benchmark and validating input data after publication to identify errors and anomalies.

5. The control framework shall be documented, reviewed and updated as appropriate and made available to the relevant competent authority and, upon request, to users.

Accountability framework requirements (1/2)

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1. An administrator shall have in place an accountability framework, covering record-keeping, auditing and review, and a complaints process, that provides evidence of compliance with the requirements of this Regulation.

2. An administrator shall designate an internal function with the necessary capability to review and report on the administrator's compliance with the benchmark methodology and this Regulation.

Accountability framework requirements (2/2)

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3. For critical benchmarks, an administrator shall appoint an independent external auditor to review and report on the administrator's compliance with the benchmark methodology and this Regulation, at least annually.

4. Upon the request of the relevant competent authority, an administrator shall provide to the relevant competent authority the details of the reviews and reports provided for in paragraph 2. Upon the request of the relevant competent authority or any user of a benchmark, an administrator shall publish the details of the audits provided for in paragraph 3.

Record-keeping requirements (1/3)

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1. An administrator shall keep records of:

(a) all input data, including the use of such data;

(b) the methodology used for the determination of a benchmark;

(c) any exercise of judgement or discretion by the administrator and, where applicable, by assessors, in the determination of a benchmark, including the reasoning for said judgement or discretion;

(d) the disregard of any input data, in particular where it conformed to the requirements of the benchmark methodology, and the rationale for such disregard;

Record-keeping requirements (2/3)

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(e) other changes in or deviations from standard procedures and methodologies, including those made during periods of market stress or disruption;

(f) the identities of the submitters and of the natural persons employed by the administrator for the determination of a benchmark;

(g) all documents relating to any complaint, including those submitted by a complainant; and

(h) telephone conversations or electronic communications between any person employed by the administrator and contributors or submitters in respect of a benchmark.

Record-keeping requirements (3/3)

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2. An administrator shall keep the records set out in paragraph 1 for **at least five years** in such a form that it is possible to replicate and fully understand the determination of a benchmark and enable an audit or evaluation of input data, calculations, judgements and discretion. Records of telephone conversation or electronic communications recorded in accordance with point (h) of paragraph 1 shall be provided to the persons involved in the conversation or communication upon request and shall be kept for **a period of three years**.

Complaints – handling mechanism

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An administrator shall have in place and publish procedures for receiving, investigating and retaining records concerning complaints made, including about the administrator's benchmark determination process.

Requirements for a specific categories of benchmarks

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- BMR annexes I and II sets out a list of specific requirements applicable only for interest rate and commodity benchmarks.

- Regulated-data benchmarks have much lighter set of requirements when it comes particulatly to the input data submissions

Outsourcing criteria (1/2)

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(a) the service provider has the ability, capacity, and any authorisation required by law, to perform the outsourced functions, services or activities reliably and professionally;

(b) the administrator makes available to the relevant competent authorities the identity and the tasks of the service provider that participates in the benchmark determination process;

(c) the administrator takes appropriate action if it appears that the service provider may not be carrying out the outsourced functions effectively and in compliance with applicable law and regulatory requirements;

(d) the administrator retains the necessary expertise to supervise the outsourced functions effectively and to manage the risks associated with the outsourcing;

Outsourcing criteria (2/2)

(e) the service provider discloses to the administrator any development that may have a material impact on its ability to carry out the outsourced functions effectively and in compliance with applicable law and regulatory requirements;

(f) the service provider cooperates with the relevant competent authority regarding the outsourced activities, and the administrator and the relevant competent authority have effective access to data related to the outsourced activities, as well as to the business premises of the service provider, and the relevant competent authority is able to exercise those rights of access;

(g) the administrator is able to terminate the outsourcing arrangements where necessary;

(h) the administrator takes reasonable steps, including contingency plans, to avoid undue operational risk related to the participation of the service provider in the benchmark determination process.

Key takeways:

- Administrator is a new type of supervised entity in the EU which have to comply with a set of strict requirements set out in the BMR.

- Abovementioned requirements are applied on a proportional basis.

Methodology and input data

Methodology (1/2)

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An administrator shall use a methodology for determining a benchmark that:

(a) is robust and reliable;

(b) has clear rules identifying how and when discretion may be exercised in the determination of that benchmark;

(c) is rigorous, continuous and capable of validation including, where appropriate, back-testing against available transaction data;

(d) is resilient and ensures that the benchmark can be calculated in the widest set of possible circumstances, without compromising its integrity;

(e) is traceable and verifiable.

Methodology (2/2)

When developing a benchmark methodology, a benchmark administrator shall:

(a) take into account factors including the size and normal liquidity of the market, the transparency of trading and the positions of market participants, market concentration, market dynamics, and the adequacy of any sample to represent the market or economic reality that the benchmark is intended to measure;

(b) determine what constitutes an active market for the purposes of that benchmark; and

(c) establish the priority given to different types of input data.

Transparency of methodology

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An administrator shall develop, operate and administer the benchmark and methodology transparently. To that end, the administrator shall publish or make available the following information:

(a) the key elements of the methodology that the administrator uses for each benchmark provided and published or, when applicable, for each family of benchmarks provided and published;

(b) details of the internal review and the approval of a given methodology, as well as the frequency of such review;

(c) the procedures for consulting on any proposed material change in the administrator's methodology and the rationale for such changes, including a definition of what constitutes a material change and the circumstances in which the administrator is to notify users of any such changes.

Input data (1/5)

(a) the input data shall be sufficient to represent accurately and reliably the market or economic reality that the benchmark is intended to measure. The input data shall be transaction data, if available and appropriate. If transaction data is not sufficient or is not appropriate to represent accurately and reliably the market or economic reality that the benchmark is intended to measure, input data which is not transaction data may be used, including estimated prices, quotes and committed quotes, or other values;

(b) the input data referred to in point (a) shall be verifiable;

(c) the administrator shall draw up and publish clear guidelines regarding the types of input data, the priority of use of the different types of input data and the exercise of expert judgement, to ensure compliance with point (a) and the methodology;

Input data (2/5)

(d) where a benchmark is based on input data from contributors, the administrator shall obtain, where appropriate, the input data from a reliable and representative panel or sample of contributors so as to ensure that the resulting benchmark is reliable and representative of the market or economic reality that the benchmark is intended to measure;

(e) the administrator shall not use input data from a contributor if the administrator has any indication that the contributor does not adhere to the code of conduct, and in such a case shall obtain representative publicly available data.

Input data (3/5)

Administrators shall ensure that their controls in respect of input data include:

(a) criteria that determine who may contribute input data to the administrator and a process for selecting contributors;

(b) a process for evaluating a contributor's input data and for stopping the contributor from providing further input data, or applying other penalties for non-compliance against the contributor, where appropriate; and

(c) a process for validating input data, including against other indicators or data, to ensure its integrity and accuracy.

Input data (4/5)

Where the input data of a benchmark is contributed from a front office function, meaning any department, division, group, or personnel of contributors or any of its affiliates that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring, or brokerage activities, the administrator shall:

(a) obtain data from other sources that corroborate that input data; and

(b) ensure that contributors have in place adequate internal oversight and verification procedures.

Input data (5/5)

Where an administrator considers that the input data does not represent the market or economic reality that a benchmark is intended to measure, that administrator shall, within a reasonable time period, either change the input data, the contributors or the methodology in order to ensure that the input data does represent such market or economic reality, or else cease to provide that benchmark.

Governance and control requirements for supervised contributors (1/4)

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The following governance and control requirements shall apply to a supervised contributor:

(a) the supervised contributor shall ensure that the provision of input data is not affected by any existing or potential conflict of interest and that, where any discretion is required, it is independently and honestly exercised based on relevant information in accordance with the code of conduct;

(b) the supervised contributor shall have in place a control framework that ensures the integrity, accuracy and reliability of input data and that input data is provided in accordance with this Regulation and the code of conduct.

Governance and control requirements for supervised contributors (2/4)

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A supervised contributor shall have in place effective systems and controls to ensure the integrity and reliability of all contributions of input data to the administrator, including:

(a) controls regarding who may submit input data to an administrator including, where proportionate, a process for sign-off by a natural person holding a position senior to that of the submitter;

(b) appropriate training for submitters;

(c) measures for the management of conflicts of interest, including organisational separation of employees where appropriate and consideration of how to remove incentives, created by remuneration polices, to manipulate a benchmark;

Governance and control requirements for supervised contributors (3/4)

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(d) record-keeping, for an appropriate period of time, of communications in relation to provision of input data, of all information used to enable the contributor to make each submission, and of all existing or potential conflicts of interest including, but not limited to, the contributor's exposure to financial instruments which use a benchmark as a reference;

(e) record-keeping of internal and external audits.

Governance and control requirements for supervised contributors (4/4)

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- Where input data relies on expert judgement, supervised contributors shall establish, in addition to the systems and controls, policies guiding any use of judgement or exercise of discretion and shall retain records of the rationale for any such judgement or discretion. Where proportionate, supervised contributors shall take into account the nature of the benchmark and its input data.

- A supervised contributor shall fully cooperate with the administrator and the relevant competent authority in the auditing and supervision of the provision of a benchmark and make available the information and records kept in accordance.

Key BMR's documents

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Key BMR’s documents

Administrator is obliged to create two documents which are of crucial importance:

1) Code of conduct;

2) Benchmark statement.

Code of conduct (1/4)

- **Document designed for the non-regulated data benchmark contributors.**

„Where a benchmark is based on input data from contributors, its administrator shall develop a code of conduct for each benchmark clearly specifying contributors' responsibilities with respect to the contribution of input data and shall ensure that such code of conduct complies with this Regulation. The administrator shall be satisfied that contributors adhere to the code of conduct on a continuous basis and at least annually and in case of changes to it.”

Code of conduct (2/4)

The code of conduct shall include at least the following elements:

(a) a clear description of the input data to be provided and the requirements necessary to ensure that input data is provided in accordance with BMR's requirements;

(b) identification of the persons that may contribute input data to the administrator and procedures to verify the identity of a contributor and any submitters, as well as authorisation of any submitters that contribute input data on behalf of a contributor;

(c) policies to ensure that a contributor provides all relevant input data;

Code of conduct (3/4)

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(d) the systems and controls that a contributor is required to establish, including:

(i) procedures for contributing input data, including requirements for the contributor to specify whether input data is transaction data and whether input data conforms to the administrator's requirements;

(ii) policies on the use of discretion in contributing input data;

(iii) any requirement for the validation of input data before it is provided to the administrator;

(iv) record-keeping policies;

(v) reporting requirements concerning suspicious input data;

(vi) requirements concerning the management of conflicts of interest.

Code of conduct (4/4)

What is important - administrators may develop a single code of conduct for each family of benchmarks they provide (similarly to one oversight function per family of benchmarks.

'family of benchmarks' means a group of benchmarks provided by the same administrator and determined from input data of the same nature which provides specific measures of the same or similar market or economic reality;

Benchmark statement (1/5)

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- Within two weeks of the inclusion of an administrator in the ESMA register, the administrator shall publish, by means that ensure fair and easy access, a benchmark statement for each benchmark or, where applicable, for each family of benchmarks, that may be used in the Union.

- The administrator shall review and, where necessary, update the benchmark statement for each benchmark or family of benchmarks in the event of any changes to the information at least every two years.

- **This document is designed for benchmarks users**

Benchmark statement (2/5)

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The benchmark statement shall:

(a) clearly and unambiguously define the market or economic reality measured by the benchmark and the circumstances in which such measurement may become unreliable;

(b) lay down technical specifications that clearly and unambiguously identify the elements of the calculation of the benchmark in relation to which discretion may be exercised, the criteria applicable to the exercise of such discretion and the position of the persons that can exercise discretion, and how such discretion may be subsequently evaluated;

Benchmark statement (3/5)

(c) provide notice of the possibility that factors, including external factors beyond the control of the administrator, may necessitate changes to, or the cessation of, the benchmark; and

(d) advise users that changes to, or the cessation of, the benchmark may have an impact upon the financial contracts and financial instruments that reference the benchmark or the measurement of the performance of investment funds.

Benchmark statement (4/5)

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A benchmark statement shall contain at least:

(a) the definitions for all key terms relating to the benchmark;

(b) the rationale for adopting the benchmark methodology and procedures for the review and approval of the methodology;

(c) the criteria and procedures used to determine the benchmark, including a description of the input data, the priority given to different types of input data, the minimum data needed to determine a benchmark, the use of any models or methods of extrapolation and any procedure for rebalancing the constituents of a benchmark's index;

(d) the controls and rules that govern any exercise of judgement or discretion by the administrator or any contributors, to ensure consistency in the use of such judgement or discretion;

Benchmark statement (5/5)

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(e) the procedures which govern the determination of the benchmark in periods of stress or periods where transaction data sources may be insufficient, inaccurate or unreliable and the potential limitations of the benchmark in such periods;

(f) the procedures for dealing with errors in input data or in the determination of the benchmark, including when a re-determination of the benchmark is required; and

(g) the identification of potential limitations of the benchmark, including its operation in illiquid or fragmented markets and the possible concentration of inputs.

Competent authorities

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KNF

FMA

FSMA

BULGARIAN NATIONAL BANK

ΕΠΙΤΡΟΠΗ ΚΕΦΑΛΑΙΑΓΟΡΑΣ ΚΥΠΡΟΥ
CYPRUS SECURITIES AND EXCHANGE COMMISSION

ATVP

ČNB ČESKÁ NÁRODNÍ BANKA

FINANSTILSYNET

FINANSSIVALVONTA FINANSINSPEKTIONEN
FINANCIAL SUPERVISORY AUTHORITY

AUTORITÉ DES MARCHÉS FINANCIERS
AMF

BaFin

Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystem

MFSA
MALTA FINANCIAL SERVICES AUTHORITY

COMISSÃO DO MERCADO DE VALORES MOBILIÁRIOS
CMVM

FINANSINSPEKTIONEN

AFM

Επιτροπή Κεφαλαιαγοράς
Hellenic Capital Market Commission

MAGYAR NEMZETI BANK

cssf
Commission de Surveillance du Secteur Financier

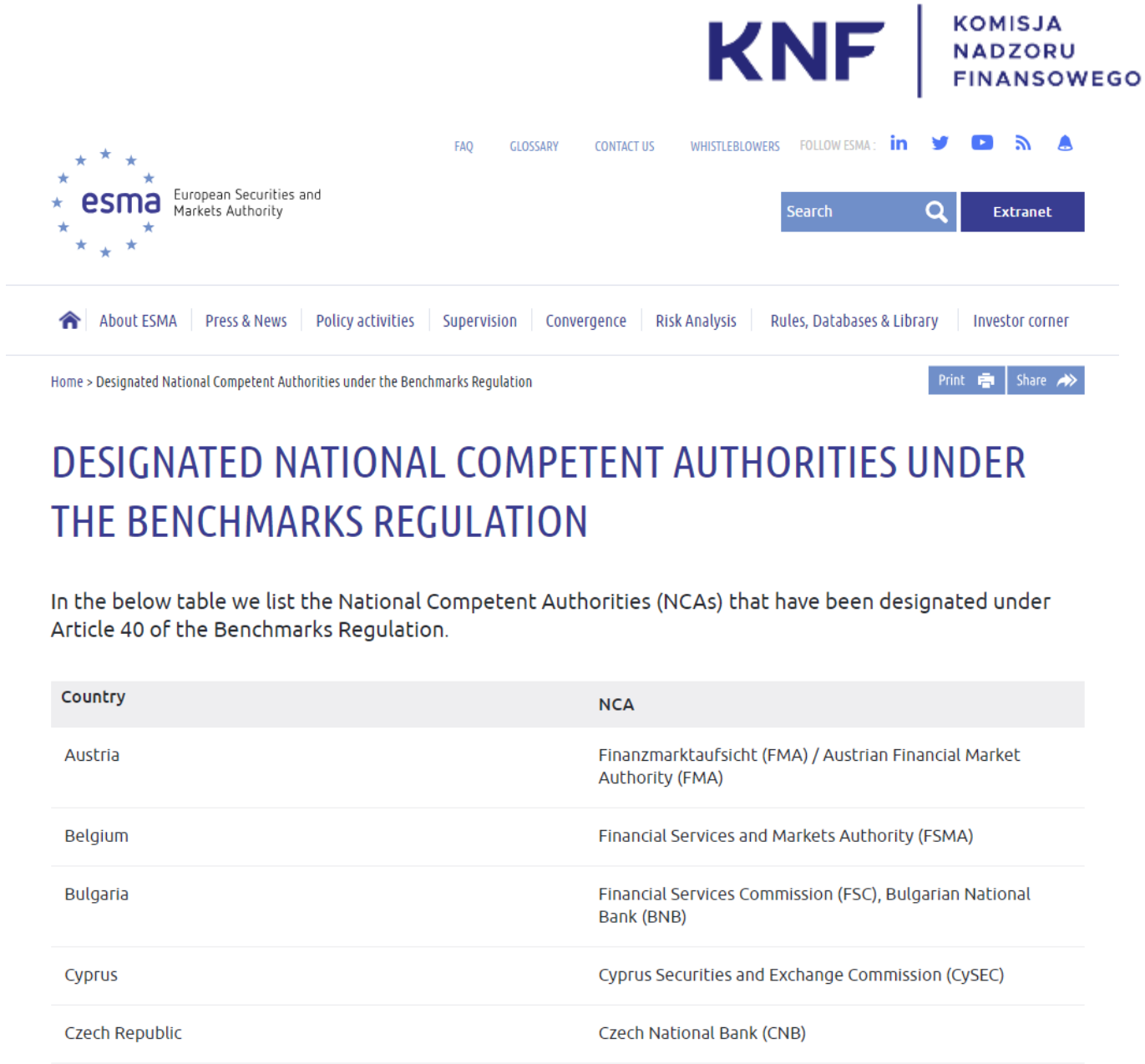
CNMV
COMISIÓN NACIONAL DEL MERCADO DE VALORES

FCA FINANCIAL CONDUCT AUTHORITY

NÁRODNÁ BANKA SLOVENSKA
EUROSYSTÉM

Competent authorities

For administrators and supervised entities, each Member State shall designate the relevant competent authority responsible for carrying out the duties under this Regulation and shall inform the Commission and ESMA thereof.



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Print Share

DESIGNATED NATIONAL COMPETENT AUTHORITIES UNDER THE BENCHMARKS REGULATION

In the below table we list the National Competent Authorities (NCAs) that have been designated under Article 40 of the Benchmarks Regulation.

Country	NCA
Austria	Finanzmarktaufsicht (FMA) / Austrian Financial Market Authority (FMA)
Belgium	Financial Services and Markets Authority (FSMA)
Bulgaria	Financial Services Commission (FSC), Bulgarian National Bank (BNB)
Cyprus	Cyprus Securities and Exchange Commission (CySEC)
Czech Republic	Czech National Bank (CNB)

Powers of competent authorities (1/3)

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In order to fulfil their duties under this Regulation, competent authorities shall have, in conformity with national law, at least the following supervisory and investigatory powers:

(a) access to any document and other data in any form, and to receive or take a copy thereof;

(b) require or demand information from any person involved in the provision of, and contribution to, a benchmark, including any service provider to which functions, services or activities in the provision of a benchmark have been outsourced as provided for in Article 10, as well as their principals, and if necessary, summon and question any such person with a view to obtaining information;

(c) request, in relation to commodity benchmarks, information from contributors on related spot markets according, where applicable, to standardised formats and reports on transactions, and direct access to traders' systems;

Powers of competent authorities (2/3)

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(d) carry out on-site inspections or investigations, at sites other than the private residences of natural persons;

(e) enter premises of legal persons, without prejudice to Regulation (EU) No 596/2014, in order to seize documents and other data in any form, where a reasonable suspicion exists that documents and other data related to the subject-matter of the inspection or investigation may be relevant to prove a breach of this Regulation. Where prior authorisation is needed from the judicial authority of the Member State concerned, in accordance with national law, such power shall only be used after having obtained that prior authorisation;

(f) require existing recordings of telephone conversations, electronic communications or other data traffic records held by supervised entities;

Powers of competent authorities (3/3)

(g) request the freezing or sequestration of assets or both;

(h) require temporary cessation of any practice that the competent authority considers contrary to this Regulation;

(i) impose a temporary prohibition on the exercise of professional activity;

(j) take all necessary measures to ensure that the public is correctly informed about the provision of a benchmark, including by requiring the relevant administrator or a person that has published or disseminated the benchmark or both to publish a corrective statement about past contributions to or figures of the benchmark.

Administrative sanctions and other administrative measures (1/2)

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a) an order requiring the administrator or supervised entity responsible for the infringement to cease the conduct and to desist from repeating that conduct;

(b) the disgorgement of the profits gained or losses avoided because of the infringement where those can be determined;

(c) a public warning which indicates the administrator or supervised entity responsible and the nature of the infringement;

(d) withdrawal or suspension of the authorisation or the registration of an administrator;

(e) a temporary ban prohibiting any natural person, who is held responsible for such infringement, from exercising management functions in administrators or supervised contributors;

Administrative sanctions and other administrative measures (2/2)

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(f) the imposition of maximum administrative pecuniary sanctions of at least three times the amount of the profits gained or losses avoided because of the infringement where those can be determined;

(g) in respect of a natural person, maximum administrative pecuniary sanctions of at least EUR 500 000 (or EUR 100 000 in some cases) or in the Member States whose official currency is not the euro, the corresponding value in the national currency on 30 June 2016;

(h) in respect of a legal person, maximum administrative pecuniary sanctions of at least either EUR 1 000 000 (or EUR 250 000 in some cases) or, in the Member States whose official currency is not the euro, the corresponding value in the national currency on 30 June 2016, or 10 % (or 2 % in some cases) of its total annual turnover according to the last available accounts approved by the management body, whichever is the higher.

Future of the EU benchmarks

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EURIBOR

ICE LIBOR

CAC 40

FTSE Russell

DAX 30

WIG 20

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Case study – BMR real-life adoption

Waterfall methodology in Annex I of the BMR (1/2)

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General the priority of use of input data shall be as follows:

(a) a contributor's transactions in the underlying market that a benchmark intends to measure or, if not sufficient, its transactions in related markets, such as:

— the unsecured inter-bank deposit market,

— other unsecured deposit markets, including certificates of deposit and commercial paper, and

— other markets such as overnight index swaps, repurchase agreements, foreign exchange forwards, interest rate futures and options, provided that those transactions comply with the input data requirements in the code of conduct;

Waterfall methodology in Annex I of the BMR (2/2)

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(b) a contributor's observations of third party transactions in the markets described in point (a);

(c) committed quotes;

(d) indicative quotes or expert judgements.

Input data may be adjusted by application of the following criteria:

(a) proximity of transactions to the time of provision of the input data and the impact of any market events between the time of the transactions and the time of provision of the input data;

(b) interpolation or extrapolation from transactions data;

(c) adjustments to reflect changes in the credit standing of the contributors and other market participants.

LIBOR - history

LIBOR as a contractually defined term was developed in May 1970 to facilitate loan transactions. Its development was further driven by the growth in new financial instruments which also required standardised interest rate benchmarks. Such a standardised rate was developed in the 1980s and was administered by the British Bankers' Association ("BBA") through BBA LIBOR Limited and published as BBA LIBOR from January 1986.

After the LIBOR manipulation crisis - in September 2012, the Wheatley Review of LIBOR set out a ten-point plan for its reform. The recommendations from the review included: statutory regulation of the administration of, and submission to, LIBOR; an Approved Persons regime; and both civil and criminal enforcement. These measures
came into force on 1 April 2013.

The Wheatley Review also recommended transferring responsibility for LIBOR administration from the BBA to a new administrator. **IBA became the new administrator in February 2014.**

LIBOR – key facts

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- LIBOR is referenced by an estimated US $350 trillion of outstanding contracts in maturities ranging from overnight to more than 30 years.

- It is produced for five currencies (CHF, EUR, GBP, JPY and USD) and seven tenors (Overnight/Spot Next, 1 Week, 1 Month, 2 Months, 3 Months, 6 Months and 12 Months) based on submissions from a reference panel of between 11 and 16 banks for each currency, resulting in the publication of 35 rates every applicable London business day.

- LIBOR is used globally, LIBOR is often referenced in derivative, bond and loan documentation, and in a range of consumer lending instruments such as mortgages and student loans. It is also used as a gauge of market expectation regarding central bank interest rates, liquidity premiums in the money markets and, during periods of stress, as an indicator of the health of the banking system.

LIBOR – old methodology

„Each bank submits the rates at which it could obtain unsecured funding in each maturity for the relevant currency. IBA calculates LIBOR rates using a trimmed arithmetic mean, by excluding the highest and lowest quartile of submissions”.

LIBOR – BMR adjustment proces (1/3)

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IBA has consulted widely with stakeholders from around the world on the evolution of LIBOR. This resulted in the publication of the Roadmap for ICE LIBOR in March 2016.

„Guided by the recommendations and principles in the Wheatley Review of LIBOR, the IOSCO Principles for Financial Benchmarks and the Financial Stability Board's report on Reforming Major Interest Rate Benchmarks, the Roadmap ***sets out our framework to evolve LIBOR so that it can continue to provide an indication of the average rates at which LIBOR panel banks can obtain wholesale unsecured funding****. As part of this framework, the Roadmap included the ICE LIBOR Output Statement (which was updated pursuant to a further consultation), which* ***set out a single LIBOR definition and a standardised "Waterfall Methodology" for the submission of rates by panel banks****.*

LIBOR – BMR adjustment proces (2/3)

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- IBA has worked with panel banks to develop the infrastructure and systems necessary to make LIBOR submissions using the Waterfall Methodology.

- Between September 15 and December 15, 2017, all 20 panel banks were required to make test parallel LIBOR submissions using the Waterfall Methodology to the same standard as their current LIBOR submissions.

- The test LIBOR rates calculated by IBA during this time were published on March 17, 2018, alongside previously published LIBOR calculated using the existing methodology for the same period.

LIBOR – BMR adjustment proces (3/3)

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- On 25 April 2018, IBA announced in its report on ICE LIBOR's evolution that it intends to transition panel banks to the Waterfall Methodology on a gradual basis, in order to minimise operational and technology risks.

- By the end of February 2019 all of the LIBOR panel banks were supposed to adopt the Waterfall Methodology in contribution proces.

LIBOR – new definition (1/2)

Prior to transitioning to the Waterfall Methodology, LIBOR panel banks base their submissions on the following LIBOR Submission Question:

"At what rate could you borrow funds, were you to do so by asking for and then accepting interbank offers in a reasonable market size just prior to 11 am?"

LIBOR – new definition (2/2)

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The ICE LIBOR Output Statement defines currently LIBOR as:

"A wholesale funding rate anchored in LIBOR panel banks' unsecured wholesale transactions to the greatest extent possible, with a waterfall to enable a rate to be published in all market circumstances".

LIBOR – new methodology

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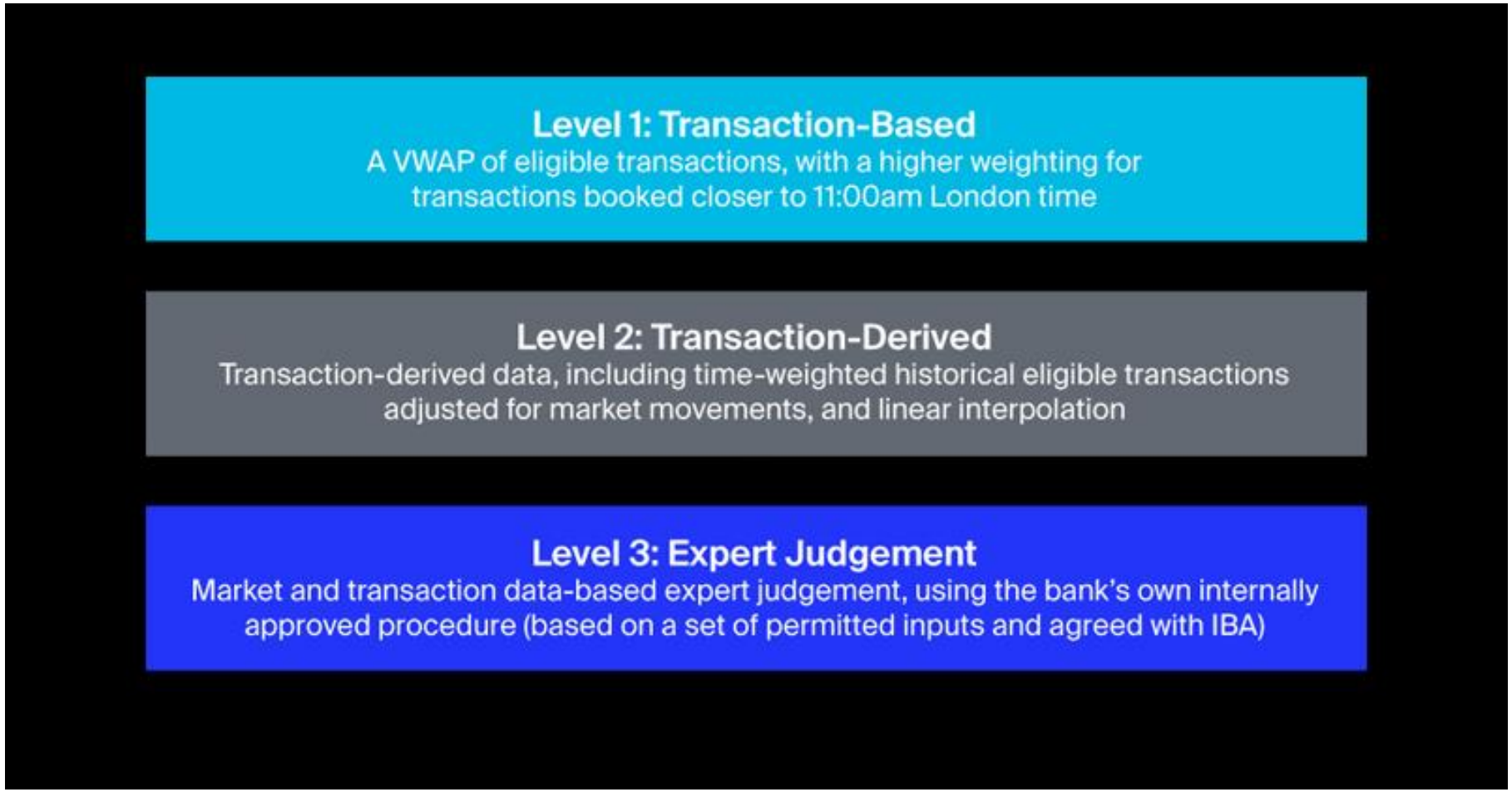

LIBOR – a questionable future? (1/2)

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Andrew Bailey (CEO of the UK FCA) in June 2017th gave speech on the LIBOR future:

„While significant improvements have been made to LIBOR since April 2013, the absence of active underlying markets raises a serious question about the sustainability of the LIBOR benchmarks that are based upon these markets.

Panel bank support to sustain LIBOR until end-2021 will enable a transition that can be planned and executed smoothly.

Work must begin in earnest on planning the transition to alternative reference rates that are based firmly on transactions".

LIBOR – a questionable future? (2/2)

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Megan Butler from the FCA in February 2019:

„LIBOR is an anachronism. The markets for which it was originally built have, as Andrew Bailey described last year, changed beyond recognition.

The unsecured interbank lending market has dwindled. And the eurocurrency markets no longer exist as a distinct entity. Meaning LIBOR is essentially measuring the rate at which banks are not borrowing from each other.”.

EURIBOR waterfall methodology case (1/7)

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Old Euribor:

„Euribor (Euro Interbank Offered Rate) is a benchmark giving an indication of the average rate at which banks **lend unsecured funding in the euro interbank market** for a given period”.

New Euribor:

“the rate at which **wholesale funds in euro** could be obtained by credit institutions in the EU and EFTA countries in the unsecured money market.”

EURIBOR waterfall methodology case (2/7)

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- Euribor reform started in 2015 when the EMMI has published its first consultation paper on the possible change of the Euribor methodology. After that it was decided that EMMI will start to develop transaction based methodology for the Euribor.

- EMMI has performed a Pre-Live Verification Program on the Euribor new fully transaction based methodology. Program was aimed to determine the feasibility of a seamless transition to a transaction-based Euribor.

- The Program has provided EMMI with a clear understanding of the market underpinning Euribor, which shows a change in the market activity as a result of the current regulatory requirements and a negative rate interest environment.

EURIBOR waterfall methodology case (3/7)

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- During the Pre-Live Verification Program EMMI collected transactional data of 31 banks from 12 different countries for a six-month period running from September 2016 to February 2017.

- EMMI's analysis has concluded that under the current market conditions it will not be feasible to evolve the current Euribor methodology to a fully transaction-based methodology following a seamless transition path. These findings have been corroborated by analyses carried out by the Belgian Financial Services and Markets Authority (FSMA).

EURIBOR waterfall methodology case (4/7)

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"EMMI has already implemented a robust governance framework for the Euribor benchmark. We remain committed to reform the benchmark methodology to anchor Euribor in real transaction market data to the extent possible, in line with the EU Benchmarks Regulation. Over the next months we will focus on developing a hybrid methodology, capable of adapting to the prevailing market conditions, and hence fit-for-purpose at all times" - Guido Ravoet, Secretary General of EMMI.

- In effect another consultation and testing phase was launched. As a consequence in the 2018 proposition of the hybrid methodology was presented to the market.

- 3-month testing period run from 2 May 2018 to 31 July 2018.

EURIBOR waterfall methodology case (5/7)

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Level 1	Submission based solely on transactions in the Underlying Interest at the Defined Tenor from the prior TARGET day, using a formulaic approach provided by EMMI.
Level 2	Submission based on transactions in the Underlying Interest across the money market maturity spectrum and from recent TARGET days, using a defined range of formulaic calculation techniques provided by EMMI.
Level 3	Submission based on transactions in the Underlying Interest and/or other data from a range of markets closely related to the unsecured euro money market, using a combination of modelling techniques and/or the panel bank's judgment, following EMMI's guidelines.

EURIBOR waterfall methodology case (6/7)

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- In February 2019 EMMI has published the stakeholder feedback summary on the second consultation paper on a hybrid methodology for Euribor.
- Market participants has agreed that new hybrid methodology is acceptable.
- As a consequence EMMI will file for authorisation to the Belgian Financial Services and Markets Authority (FSMA) by Q2 2019. Subsequently, EMMI will start transitioning panel banks from the current Euribor methodology to the hybrid methodology, with a view of finishing the process before the end of 2019.

EURIBOR waterfall methodology case (7/7)

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- Although the Euribor methodology was changed to become compliant with the BMR it is still far from becoming a benchmark which can be the one and only one that the eurozone will rely on.

- It has been decided that there is a strong need to find an alternative for the Euribor.

EONIA non compliant with the BMR (1/6)

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- Eonia (Euro OverNight Index Average) is the effective overnight reference rate for the euro. It is computed as a weighted average of all overnight unsecured lending transactions in the interbank market, undertaken in the European Union and European Free Trade Association (EFTA) countries.

- In 2016, EMMI, as administrator of the Euro OverNight Index Average (EONIA), launched the Eonia Review, a programme which sought to enhance the governance and control framework for the Eonia benchmark, and align it with the requirements of the BMR.

EONIA non compliant with the BMR (2/6)

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The Eonia Review was organized in two different phases:

- The first phase aimed at establishing a robust stand-alone governance framework for Eonia, which included the formulation of contingency and fallback arrangements to enable the calculation of Eonia under periods of limited input data or market stress.

- The goal of the second phase was focused, in turn, on the enhancement of Eonia's methodology, which required a more in-depth analysis of unsecured interbank money market activity.

EONIA non compliant with the BMR (3/6)

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In the Eonia Consultative Paper2 of August 2016, EMMI presented the results of an initial analysis done with indicators derived from panel banks' submissions, spanning seventeen years of Eonia's life cycle from 1999 until the end of 2015. The data revealed the following main trends:

- A decrease in the aggregated notional value of underlying transactions;
- An increase in volume concentration;
- A decrease in the number of Eonia panel banks with daily non-zero submission volumes; and
- A reduction in the number of countries represented daily in the Eonia benchmark.

EONIA non compliant with the BMR (4/6)

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The second phase of the Eonia Review started in summer 2017. As detailed in the Guidelines on the Eonia Review Data Exercise published by EMMI, an in-depth analysis on data covering a six-month period from 1st September 2016 to 28th February 2017 was performed. According to the data received from participating banks, EMMI concluded that Eonia presents a twofold concentration:

- On the one hand, interbank lending activity captured by Eonia presents a fair degree of concentration, which may increase the influence of single contributors on the benchmark rate;
- On the other hand, there is a geographical concentration.

EONIA non compliant with the BMR (5/6)

ECB states that *“data availability for borrowing transactions is higher than that for lending transactions. MMSR data show that the number of active reporting agents each day is, on average, higher for borrowing than for lending, although the selection is limited to interbank transactions”* .

It is indicated that the banks are more active in the borrowing side than on the lending side. Additionally, it concludes that *“unsecured interbank funding has not been the main component of total unsecured overnight borrowing in the recent past as transactions with other financial corporations (including undertakings located outside the area) represent a sizeable portion of the unsecured borrowing”*

EONIA non compliant with the BMR (6/6)

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- EMMI believes that, should market conditions and dynamics remain unchanged, Eonia's compliance with the BMR by January 2020 cannot be warranted, as long as its definition and calculation methodology remain in its current format.

- It was decided that due to the fact that changing the Eonia methodology to be compliant with the BMR is too complicated and results can be far from satisfactory, the works on the Eonia reform shall be terminated and **Eonia will be published as it is.** At the same time decision has been made to develop new benchmark that will serve as Eonia replacement (*short term Eonia reform – slide 188).

- Eonia benefits from the BMR transitional provisions, and as a critical benchmark it will be eligible to benefit from the possible extension of the transitional regime for the critical benchmarks (still not adopted by the EU).

Alternatives

In order to implement the Financial Stability Board's recommendation to develop alternative risk-free rates (RFRs) from 2014 for use instead of Libor-style reference rates – and because of the BMR implementation struggles - in almost all key markets there was established a industry led working group that is aimed to work on alternatives.

Alternatives – eurozone (1/3)

Under the umbrella of the ECB in 2018 there was established the Working group on euro risk-free rates.

- This industry-led working group was established to identify and recommend risk-free rates that could serve as a basis for an alternative to current benchmarks used in a variety of financial instruments and contracts in the euro area.

- The group put forward three risk-free rate candidates and, based on feedback received during a public consultation announced its recommendation on 13 September 2018 that ESTER be used as the risk-free rate for the euro area.

Alternatives – eurozone (2/3)

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- The working group has also put forward its preferred methodology for calculating a term structure based on ESTER derivatives markets. The working group considers that a methodology based on firm, tradable OIS quotes offers the best prospect for producing a viable fallback rate for EURIBOR-linked contracts within a reasonable time period.

- The working group proposes that the market transition to ESTER using, for an interim period, a recalibration approach, i.e. where the EONIA methodology no longer relies on a panel of banks, as in the current methodology, but is calculated as a fixed spread over the new ESTER.

Alternatives – eurozone (3/3)

„Calculated in this way, EONIA would continue to represent the euro overnight unsecured market, but draw on a more representative and stable set of input data based on a higher volume of transactions. To smooth out any perceived valuation transfer and balance sheet impact, the working group recommends adding a spread. To ensure that there is an incentive for market participants to transition from EONIA to ESTER, the availability of the evolved EONIA would be limited in time. The working group also believes that during that closed period, the evolved EONIA should be authorised under the EU Benchmarks Regulation” – ECB website.

Alternatives – LIBOR (sterling)

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- In April 2017, the Working Group in the UK recommended the SONIA benchmark as their preferred RFR and since then has been focused on how to transition to using SONIA across sterling markets.

- SONIA is a measure of the rate at which interest is paid on sterling short-term wholesale funds in circumstances where credit, liquidity and other risks are minimal. It was reformed after the 2016 to fit into the needs of the market as well as to the BMR framework:

  - Inputs to SONIA were broadened to include overnight unsecured transactions negotiated bilaterally as well as those arranged through brokers. The averaging methodology for calculating SONIA changed to a volume-weighted trimmed mean.

Alternatives – LIBOR (dollar)

- The New York Federal Reserve in April 2018 has begun to publish the Secured Overnight Financing Rate (SOFR), a rate that regulators hope will eventually be adopted to back U.S. dollar-based derivatives and loans.

- SOFR is based on transactions in the Treasury repurchase market, where banks and investors borrow or loan Treasuries overnight. A group of large banks, the Alternative Reference Rate Committee (ARRC), selected the rate as an alternative to the London interbank offered rate (Libor) in derivatives. It cited the depth and robustness of the market where around $800 billion is traded daily.

Alternatives – LIBOR (CHF)

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- In the late 2017 a working group at the Swiss National Bank has proposed using the Swiss Average Rate Overnight (SARON) for secured loans as an alternative benchmark to the traditional CHF LIBOR.

- The SARON index is based on actual market transactions and quotes made on the regulated trading platform SIX Repo during the day.

- Although Swizerland is the third country, there has been a decision that SARON administrator will apply for the recognition/endorsement in one of the EU countries by the end of the transitional period.

Poland – future of WIBOR

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- There are ongoing works concentrated on adjusting the WIBOR methodology to the BMR standard. The proces kicked off in the middle of the 2017 where WIBOR setting proces was transferred to the Warsaw Stock Exchange subsidiary from the ACI Polska (money market dealers association).

- Warsaw Repo Rate was presented as the possible alternative for WIBOR. It is currently at a very early stage of development.

Stock market benchmarks

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- In general - it is fair to say that the BMR regulation does not create problems for the stock market benchmarks like DAX, FTSE, CAC or WIG.
- These benchmarks are regulated data benchmarks which are based on a real transactions on a trading venue which are secure from the manipulation.
- All EU stock market benchmarks providers have to however adopt the BMR controls in place and apply for registration/authorisation as benchmark providers.
- Important: if EU entity would like to use a stock market benchmark from the third country, this benchmark will have to comply with the BMR third country regime.

The end – Q&A

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