

European Commission proposes Benchmark Regulation amendments

AT A GLANCE

October 2023

What's new?

- On 17 October 2023, the European Commission published a [proposal](#) to amend the Benchmark Regulation (or 'BMR') to significantly reduce the scope of benchmark administrators subject to its requirements.
- The Commission's proposal follows a [review](#) of the scope and third country regime of the BMR, which recognised the heavy reliance of EU benchmark users on non-EU benchmarks, who's future availability has been uncertain.

What does this mean?

- The proposal provides for a simplified approach to EU and third country benchmarks in the EU, the provision and use of which have been regulated activities under the BMR since 2016.
- The proposals do not affect the scope of the UK BMR, which is how the UK's on-shored framework is known.
- Most benchmarks (more than 3.6 million) are produced by administrators outside of the EU, including in the UK and US. Non-EU benchmarks are currently available for use in the EU until 31 December 2025, under the BMR's transitional provisions.
- Under the current EU framework, after that date EU benchmark users can only use third country benchmarks that have been endorsed by an EU benchmark administrator, recognised in the EU, or if the third country has a framework that has been deemed equivalent to that of the EU.
- UK benchmark administrators, like other non-EU providers, would be subject to these requirements, potentially limiting their availability in the EU.

- EU authorities have been concerned that the potential impacts on financial stability, as well as competition between benchmark providers, if the number of benchmarks available to EU firms dramatically reduces.

Reduced scope

- The proposal reduces the scope of the BMR to those benchmarks that are significant or critical to the EU's financial markets.
- The quantitative thresholds, at EUR 50 billion and EUR 500 billion respectively, will be kept the same.
- EU Climate Transition Benchmarks, EU Paris-Aligned Benchmarks, and non-EU benchmarks that meet the thresholds will also be in scope.
- Only administrators of those categories of benchmarks will be subject to the BMR's registration or authorisation processes, and mandatory compliance with the organisational requirements. These cover (i) governance arrangements, (ii) oversight functions, (iii) conduct standards, (iv) reporting and disclosure requirements.
- The proposal ensures benchmark users will continue to have access to the majority of non-EU

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benchmarks, as those that fall below the thresholds for being designated as significant or critical will be out of scope of the BMR.

- Providers of benchmarks that do meet the criteria will need to comply with the BMR's third country provisions once the transitional period expires.
- National supervisors and ESMA will continue to be able to designate additional benchmarks that do not reach the quantitative thresholds as significant, if their discontinuation is deemed to have the potential to cause significant and adverse impacts on market integrity, financial stability, or consumers.

Streamlined regulatory burden

- The effect of the proposal is to significantly reduce the regulatory burden on administrators of benchmarks that are not economically significant in the EU by taking them out of scope.
- The Commission also proposes to remove the need for benchmark users to individually verify the regulatory status of each benchmark used. Instead, firms can rely on ESMA's 'Article 36' register to verify that no prohibitions against a particular benchmark's use exist.

What do firms need to do?

- The UK Government has said it will consider and operationalise potential changes to ensure an appropriate third country benchmarks regime for the UK.
- While HM Treasury has [extended](#) the third country regime transitional period to align with the EU timing, it has not yet confirmed whether it will make similar changes to the UK BMR's scope.
- UK benchmark users should consider whether changes to the availability of third country benchmarks would impact them in the context of potential reform to the UK BMR.
- In an EU context, UK benchmark administrators need to monitor their benchmark usage 'within the Union' and self-report when they reach the quantitative thresholds.
- All administrators (including those of non-significant benchmarks) should continue to follow the [IOSCO Principles for Financial Benchmarks](#), as these represent firmly established market practice, demonstrating their compliance through public statements where possible.
- In addition firms are required to continue to comply with the requirements under the Market Abuse Regulation.

Next steps

The Commission's proposal needs to go through the European legislative process. Subject to that, the proposed date for the new rules to apply is 1 January 2026.



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