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Additional Information

Level 1 Regulation
Benchmarks Regulation (BMR) - Regulation 2016/1011

Topic
Benchmarks Regulation

Subject Matter
Application of the Regulation outside the EU (ESMA70-145-114 Q&A_4.4)

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

ESMA Answer

15-12-2023

Original language

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 indices that are used as benchmarks (i.e. for the purposes referred to in point (3) of Article 3(1) of the BMR) exclusively outside the Union. The same reasoning would apply to the contribution of input data with respect to an index that is used as a benchmark exclusively outside the Union. An administrator providing an index exclusively to users outside the Union would have to comply with any applicable third country regimes with respect to benchmarks.

Where an index is used as a benchmark in the Union, BMR will apply unless the administrator is unaware and could not reasonably have been aware it is so used pursuant to Article 2(2)(h).