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Additional Information

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

Topic
Benchmarks Regulation

Subject Matter
Scope of the Benchmark Regulation (ESMA70-145-114 Q&As BMR - Q&A 4.7)

Question
Can supervised entities in the Union use benchmarks provided by 3rd country public authorities after the end of the transitional period applicable to 3rd country benchmarks?

ESMA Answer

29-07-2021

Original language

Answer provided by the European Commission in accordance with article 16b(5) of the ESMA Regulation

Article 2(2)(b) of the Benchmark Regulation excludes from the scope of application public authorities where they contribute data, provide or have control over the provision of, benchmarks for public policy purposes, including measures of employment, economic activity, and inflation.

The concept of “public authority” is defined in article 3(1)(29) of the Benchmark Regulation as:

“*(a) any government or other public administration, including the entities charged with or intervening in the management of the public debt;*

(b) any entity or person either performing public administrative functions under national law or having public responsibilities or functions or providing public services, including measures of employment, economic activities and inflation, under the control of an entity within the meaning of point (a)”.

No provision of the Benchmark Regulation specifies that only public authorities located in the Union may be excluded from the scope of application of the Benchmark Regulation. Hence, supervised entities in the Union can continue to use benchmarks provided by public authorities located in third countries also after the end of the transitional period applicable to third country benchmarks where those public authorities meet the definition in article 3(1)(29) of the Benchmark Regulation and comply with the conditions set out in Article 2(2)(b) of that Regulation.

Disclaimer

The answer clarifies provisions already contained in the applicable legislation. It does not extend in any way the rights and obligations deriving from such legislation nor does it introduce any additional requirements for the concerned operators and competent authorities. The answer is merely intended to

assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.