

## Briefing

### Implementation of the recognition regime under Article 32 of the Benchmarks Regulation

#### 1 Purpose and scope

1. This briefing focuses on a set of topics regarding the recognition application under Article 32 of the Benchmarks Regulation (BMR).
2. The content of this briefing is not exhaustive and does not constitute new policy. It has been designed to be used by administrators located in a third country and National Competent Authorities.
3. This briefing could be updated with additional topics as need may be.

#### 2 Definitions

BMR	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, OJ L 171, 29.6.2016, p. 1
MSR	Member State of reference
NCA	National Competent Authority

#### 3 Determination of the Member State of Reference under Article 32(4) of the BMR

4. Pursuant to Article 32(4) of BMR, a waterfall approach must be used in order to determine the MSR in the Union of a third-country administrator.
5. In the case where an administrator is part of a group that has one supervised entity in the Union, the MSR shall be the MS where the supervised entity is located.
6. In the case where an administrator is part of a group that contains more than one supervised entity located in the Union, then the MSR is the Member State with the

highest number of supervised entities. In case of equal number of supervised entities, the MSR is the one where the value of financial instruments, financial contracts or investment funds that reference the benchmark is highest.

7. If the above cases are not applicable, the administrator should identify the EU trading venue(s) where financial instruments referencing its benchmarks were admitted to trading or traded for the first time and are still traded. ESMA is of the view that in order to determine these EU trading venue(s), the administrator may wish to use the Financial Instruments Reference Database System (FIRDS)<sup>1</sup>. Indeed, this public database enables its users to identify the EU trading venues in which a financial instrument is traded (and the date of admission), as well as the benchmark that the financial instrument references. The explanation of the different fields of the database is included in the Commission Delegated Regulation (EU) 2017/585<sup>2</sup> and the ESMA Registers - Publication Interface Help File<sup>3</sup>. If the financial instruments were admitted to trading or traded for the first time simultaneously on trading venues in different Member States, and are still traded, the MSR is the one where the value of financial instruments, financial contracts or investment funds that reference the benchmark is highest.
8. If the above cases are not applicable, the MSR should be determined as the one where the highest number of EU supervised entities that use the benchmark are located. For this case, the administrator may make reference to its network of EU clients to which it has licensed the use of its benchmarks or use the data reported by private providers of information. In the event of an equal number of supervised entities, the MSR should be the one where the value of financial instruments, financial contracts or investment funds that reference the benchmark is highest.
9. Finally, if none of the above cases are applicable and an administrator enters into an agreement with a supervised entity consenting to the use of a benchmark it provides, the MSR should be considered the Member State where the supervised entity is located.
10. ESMA is further specifying the way in which the FIRDS database could be used as mentioned in paragraph 7 above:
  - a. Search the benchmarks provided by the administrator. This search can be performed depending on the product:
    - i. For Bonds or other forms of securitised debt related fields: if the index has an ISIN and is a floating rate, search on “Identifier of the index/ benchmark of a floating rate bond” field. Otherwise search on “Name of the

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<sup>1</sup> [https://registers.esma.europa.eu/publication/searchRegister?core=esma\\_registers\\_firds](https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_firds)

<sup>2</sup> Commission Delegated Regulation (EU) 2017/585 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the data standards and formats for financial instrument reference data and technical measures in relation to arrangements to be made by the European Securities and Markets Authority and competent authorities, OJ L 87, 31.3.2017, p. 368:

[https://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ:L:2017:087:TOC&uri=uriserv:OJ.L\\_.2017.087.01.0368.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ:L:2017:087:TOC&uri=uriserv:OJ.L_.2017.087.01.0368.01.ENG)

<sup>3</sup> <https://registers.esma.europa.eu/publication/helpPage>

index/benchmark of a floating rate bond “. In the latter case, if the index is not included in the {INDEX} list as specified in Table 1 of the Annex of the RTS, search on the name of the index;

- ii. For Derivatives and Securitised Derivatives related fields: if the index has an ISIN, search on “Underlying instrument code” field. Otherwise, search on “Underlying index name” either the code of the index if it is included in the {INDEX} list or the name of the index;
  - iii. For Interest rate derivatives, search on “Reference rate” or “Floating rate of leg 2” depending on whether the index is included in the {INDEX} list or the index name.
- b. Look at date of admission to trading or date of first trade and identify the one where the financial instrument referencing any of the benchmarks provided was admitted to trading or traded for the first time.
  - c. Select the termination date field: the date should be greater than the current date to make sure that the financial instrument is still traded. If it is not, repeat the check at paragraph b above but select the next earliest date of admission to trading or date of first trade: then repeat this check of the termination date.
  - d. Select the trading venue field to determine the MSR.

#### **4 Cooperation arrangements under Article 32(5)(a) of the BMR**

11. Article 32(5)(a) of the BMR states that, in order to grant recognition to a third country administrator, where the third country administrator is subject to supervision, an appropriate cooperation arrangement between the NCA of the MSR and the third country authority supervising the third country administrator must be in place.
12. As Article 32(5)(a) of the BMR refers to a third country administrator subject to supervision, ESMA’s view is that this paragraph relates to the supervision of the third country administrator in relation to its activity of provision of benchmarks. Indeed, administrators may not only be “independent” benchmark administrators that perform the activity of provision of benchmarks, but may also be part of a group that may be a supervised entity already subject to supervision for another activity. Article 32(5)(a) BMR can only be applied to administrators which are subject to supervision in respect of their activity of provision of benchmarks.