

PUBLIC STATEMENT

Impact of Brexit on the Benchmark Regulation (BMR)

The European Securities and Markets Authority (ESMA) is issuing this statement in relation to the consequences of Brexit for the ESMA register for benchmark administrators and third country benchmarks under the Benchmark Regulation¹.

BMR: ESMA register of administrators and 3rd country benchmarks

On 29 March 2017, the UK formally notified the European Council of its intention to leave the EU². When the UK, on 31 January 2020, withdrew from the EU and officially became a third country, the EU-UK Withdrawal Agreement entered into force. This Withdrawal Agreement also contains a Brexit transition period ending on 31 December 2020, during which Union law shall still be applicable to and in the United Kingdom³.

After the Brexit transition period, UK administrators included in the “ESMA register of administrators and third-country benchmarks” (ESMA register)⁴ will be deleted from the ESMA register as the BMR will by then no longer be applicable to UK benchmark administrators. UK administrators that were originally included in the ESMA register as EU administrators, will after the Brexit transition period, qualify as third country administrators (for which the BMR foresees different regimes to be included in the ESMA register, being equivalence, recognition or endorsement).

However, during the BMR transitional period until 31 December 2021, as defined in BMR Article 51(5)⁵ this change of the ESMA register would not have an effect on the ability of EU27

¹ Regulation (EU) 2016/1011, OJ L 171, 29.6.2016, p. 1–65.

² In accordance with article 50 of the Treaty of European Union, OJ C 326, 26.10.2012, p. 13–390.

³ See article 126 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community 2019/C 384 I/01, OJ C 384I, 12.11.2019, p. 1–177.

⁴ ESMA register of administrators and third country benchmarks is available here: <https://www.esma.europa.eu/databases-library/registers-and-data>

⁵ See also Q&A 9.3 of ESMA BMR Q&As: https://www.esma.europa.eu/sites/default/files/library/esma70-145-114_qas_on_bmr.pdf

supervised entities to use the benchmarks provided by those third country UK administrators. During the BMR transitional period, third country benchmarks can still be used by supervised entities in the Union if 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. Therefore, EU supervised entities can until 31 December 2021 use third country UK benchmarks even if they are not included in the ESMA register. This BMR transitional provision would be applicable also to the benchmarks provided by the UK administrators deleted from the ESMA register because of Brexit. In the absence of an equivalence decision by the European Commission, UK administrators will have until the end of the BMR transitional period of 31 December 2021 to apply for recognition or endorsement in the EU, in order for the benchmarks provided by these UK administrators to be included in the ESMA register again.

Similarly, if some UK third country benchmarks were included in the ESMA register before the end of the Brexit transition period following a recognition or an endorsement status granted by the UK, those third country benchmarks will be deleted from the ESMA register after the end of the Brexit transition period. The BMR transitional period until 31 December 2021 is also applicable to these third country benchmarks endorsed or recognised in the UK. Therefore, during the BMR transitional period this deletion from the ESMA register would not have an effect on the ability of EU27 supervised entities to use those third country benchmarks that were endorsed or recognised in the UK before the end of the Brexit transition period. In the absence of an equivalence decision by the European Commission, these third country benchmarks previously endorsed or recognised in the UK, will have until the end of the BMR transitional period of 31 December 2021 to apply again for recognition or endorsement in the EU in order to be included in the ESMA register.