

PUBLIC STATEMENT

Impact of Brexit on the Benchmark Regulation

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 Regulation (BMR)¹.

BMR: ESMA register of administrators and 3rd country benchmarks

On 31 January 2020, as the EU-UK Withdrawal Agreement entered into force, the UK withdrew from the EU and officially became a third country. The Withdrawal Agreement provided for a transition period which ensured that EU law continued to apply to the UK from 1 February 2020 to 31 December 2020. At the end of the transition period, the UK left the Single Market ².

Now that the Brexit transition period has ended, **UK based administrators** that were initially included in the “ESMA register of administrators and third-country benchmarks” (ESMA register)³ have been deleted as the BMR is no longer applicable to UK based benchmark administrators. UK based administrators that were originally included in the ESMA register as EU administrators, are now qualified as third country administrators (for which the BMR foresees different regimes to be included in the ESMA register, being equivalence, recognition or endorsement).

However, due to the fact that recently the BMR transitional period, as defined in BMR Article 51(5)⁴ has been extended to 31 December 2023⁵, the change in the ESMA register does not

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

² 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.

³ ESMA register of administrators and third country benchmarks is available here: <https://www.esma.europa.eu/databases-library/registers-and-data>

⁴ See also Q&A 9.3 of ESMA BMR Q&As: https://www.esma.europa.eu/sites/default/files/library/esma70-145-114_gas_on_bmr.pdf

⁵ See Regulation (EU) 2021/168 of the European Parliament and of the Council of 10 February 2021 amending Regulation (EU) 2016/1011 as regards the exemption of certain third-country spot foreign exchange benchmarks and the designation of replacements for certain benchmarks in cessation, and amending Regulation (EU) No 648/2012, OJ L 49, 12.2.2021, p. 6–17

yet have an effect on the ability of EU27 supervised entities to use the benchmarks provided by any third country administrators, including UK ones. 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 2023 use third country UK based benchmarks even if they are not included in the ESMA register. In the absence of an equivalence decision by the European Commission, UK based administrators have until the end of the extended BMR transitional period (31 December 2023) to apply for recognition or endorsement in the EU, in order for the benchmarks provided by these UK based administrators to be included in the ESMA register again.

Similarly, the **UK recognised or endorsed third country benchmarks** that 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, have been deleted from the ESMA register at the time the Brexit transition period ended. The extended BMR transitional period (running until 31 December 2023) is however also applicable to these third country benchmarks endorsed or recognised in the UK. Therefore, during the BMR transitional period, deletion from the ESMA register does 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 2023 to apply again for recognition or endorsement in the EU in order to be included in the ESMA register again.