

Regulatory News Alert

Publication of the Benchmark and PRIIPs Laws in the Official Journal of Luxembourg, implementing both Regulations in Luxembourg

7 May 2018

Overview of the Benchmark Law

On 17 April 2018, the Benchmark Law has been published in the Luxembourg official Gazette (*Journal officiel Mémorial A*). Following this publication, it entered into force on 23 April 2018 (to the exception of the provisions relating to the insurance law, which are not addressed in this alert, and will be effective on 1 July 2018).

The Benchmark Law implements the European Benchmark Regulation (BMR) in Luxembourg, already fully applicable since 1 January 2018. The EU Benchmark Regulation imposes new requirements for firms that are “an administrator for,” “a contributor to,” or “a user of” a wide range of interest rate, currency, securities or commodity indices and benchmarks. The Luxembourg Benchmark Law defines a few measures specific to Luxembourg, e.g., designating CSSF and CAA as National Competent Authorities for the area of the BMR.

Main provisions of the Benchmark law

- The law designates the CSSF as the National Competent Authority (NCA) to authorize Benchmark administrators and ensure that the different stakeholders respect the requirements set by the BMR. The Commissariat aux assurances (CAA) has the same functions as regard to entities under its supervision.
- The CSSF and the CAA can require administrators to disclose specific information used in the determination of a benchmark, perform on-site inspection, and impose administrative penalties (up to €500,000 in the case of a natural person and in the case of a legal entity, up to €1,000,000 or up to 10% of the total annual turnover of that legal entity according to the last available financial statements approved by the management body, whichever is higher).

Finally, the law modifies the Consumer Code and requires institutions selling loan arrangements and mortgages to provide a separate information sheet to the consumer, stating:

- The name of the index used to determine the borrowing rate;
- The identity of the administrator; and
- The contingency plans in case the benchmark referenced in the contract is discontinued or restricted to be used in the EU.

Overview of the Benchmark Regulation

The BMR imposes the following requirements to entities that act as administrators, contributors, or users of benchmarks indices:

	Administrator	Contributor	User
Role	<ul style="list-style-type: none"> • Administer the arrangements for determining the benchmark • Collect, analyze, or process input data to determine the benchmark • Determine the benchmark through the application of a formula or other method of calculation 	<ul style="list-style-type: none"> • Provide input data not readily available to the administrator in order to determine the benchmark 	<ul style="list-style-type: none"> • Issue a financial instrument that references an index or a combination of indices • Reference an index or a combination of indices to determine the amount payable under a financial instrument or a financial contract • Take part in a financial contract that references an index or a combination of indices • Calculate borrowing rate as a spread or mark-up over an index or a combination of indices • Measure the performance of an investment fund through an index or a

			combination of indices
Key implications	<ul style="list-style-type: none"> • Apply to relevant NCA for authorization or registration under ESMA's register • Governance and control framework to be overhauled to meet requirements. Key areas include: <ul style="list-style-type: none"> • Oversight functions and accountability framework on benchmarks • Controls on input data, transparency of methodologies and codes of conduct • Three lines of defence • Publish a benchmark statement for each benchmark (or family or benchmarks) • Able to apply for applicable exemptions by submitting a compliance statement to the NCA for approval • Issue a Code of Conduct to contributors if applicable • Implement one of three third-country regime options if non-EU benchmarks exist 	<ul style="list-style-type: none"> • Implement governance and control framework to ensure quality of input data, transparency of methodology and adherence to code of conduct issued by administrators • If a supervised entity, further requirements on oversight function and accountability framework 	<ul style="list-style-type: none"> • Implement governance and control framework to ensure the maintenance of inventory of benchmarks used by entity • Regularly check that administrator of benchmarks used are on ESMA's register and that there is a benchmark statement published for each of the benchmarks used • Track any changes to benchmarks used and impact on entity's use • Develop contingency plans for financial contracts and instruments that use benchmarks that may be discontinued or restricted in the EU due to the regulation

Agenda and transitional provisions



The regulation entered into force on 30 June 2016 and applies to "new" benchmarks since 1 January 2018.

Transitional arrangements apply to "existing" benchmarks until 1 January 2020. During this period, administrators of benchmarks that existed prior to 2018 need to apply to their EU NCA for authorization or registration.

Your contacts

Xavier Zaegel, FRM

Partner

Tel : +352 45145 2748

xzaegel@deloitte.lu

Simon Ramos

Partner

Tel : +352 45145 2702

siramos@deloitte.lu

Fabian De Keyn

Director

Tel : +352 45145 3413

fdekeyn@deloitte.lu

Deloitte Luxembourg

560, rue de Neudorf

L-2220 Luxembourg

Tel: +352 451 451

Fax: +352 451 452 401

www.deloitte.lu

Deloitte is a multidisciplinary service organisation which is subject to certain regulatory and professional restrictions on the types of services we can provide to our clients, particularly where an audit relationship exists, as independence issues and other conflicts of interest may arise. Any services we commit to deliver to you will comply fully with applicable restrictions.

Due to the constant changes and amendments to Luxembourg legislation, Deloitte cannot assume any liability for the content of this leaflet. It shall only serve as general information and shall not replace the need to consult your Deloitte advisor.

About Deloitte Touche Tohmatsu Limited:

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see www.deloitte.com/lu/about for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms.

Deloitte provides audit, tax, consulting and financial advisory services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries, Deloitte brings world-class capabilities and deep local expertise to help clients succeed wherever they operate. Deloitte has in the region of 200,000 professionals, all committed to becoming the standard of excellence.

© 2018 Deloitte General Services

Designed and produced by MarCom at Deloitte Luxembourg