

## Regulatory News Alert

### Draft law 7164 implementing Benchmark regulation in Luxembourg

8 September 2017

#### Overview

On 4 August 2017 the *Chambre des Députés* published the draft law 7164 executing the Benchmark Regulation (BMR) in Luxembourg law.

The EU Benchmark Regulation enters into force on 1 January 2018 and will impose new requirements for firms that are: "an administrator for", "a contributor to" or "a user of" a wide range of interest rate, currency, securities and/or commodity indices and/or benchmarks.<sup>1</sup>

The three different statuses under the BMR:

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

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

- The law designates the CSSF as the national competent authority (NCA) to authorise 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.
- Finally, the law modifies the Consumer Code and requires from institutions selling loan arrangements and Mortgages to provide a separate information sheet to the consumer, stating:
  - o the name of the index used to determine the borrowing rate ;
  - o the identity of the administrator ; and
  - o the contingency plans in case the benchmark references in the contract is discontinued or restricted to be used in the EU.

## Agenda and transitional provisions



The Regulation entered into force on 30 June 2016 and will apply to "New" Benchmarks, created after the 1 January 2018, as from 2018.

Transitional arrangements apply to "Existing" benchmarks, administrators providing benchmarks up to 1 January 2018 have until 1 January 2020 to apply to their EU NCA for authorization or registration.

<sup>1</sup> For more information on the scope of the BMR, please refer to this previous alert on [ESMA Q&A on Benchmarks Regulation \(EU\) 2016/1011](#).

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