

ICMA's response to the European Commission's consultation on the EU Benchmarks Regulation

ICMA submitted a [response](#) to the European Commission's [consultation paper](#) on the EU Benchmarks Regulation (EU BMR) in December 2019. A summary of the key points in ICMA's response is set out below.

Critical benchmarks and IBOR reform and cessation

- Broader powers for competent authorities to require the administrator to change the methodology of a critical benchmark could help to ensure continuation of critical benchmarks and thereby avoid market disruption which could occur upon the cessation of a critical benchmark such as LIBOR or EURIBOR.
- However, it will be very important that competent authorities and administrators are mindful of the need to support contractual continuity as far as possible if the methodology of a benchmark is modified.
- Any broader powers should be confined to situations in which mandatory administration or contribution to a critical benchmark is triggered.
- It is not clear whether it is necessary to mandate pre-cessation triggers in the EU BMR given existing market practice and other initiatives in this area. If the inclusion of pre-cessation triggers in contracts is mandated, this should not have a retroactive effect and it must be drafted in a clear and objective way.

Authorisation and registration of benchmarks

- A drafting change to ensure it is clear that a competent authority has the power to withdraw or suspend authorisation or registration of an administrator in respect of one or more benchmarks only would be welcome.

- Continued publication and use of a benchmark should be allowed in certain specified circumstances when the authorisation of the administrator has been withdrawn (and not only suspended, as currently envisaged in the EU BMR).

ESMA register of administrators and benchmarks

- It would be helpful if the ESMA register were to list authorised benchmarks as well as administrators.

Non-EEA benchmarks

- ICMA's [article](#), *The Impact of the EU BMR on the Use of Third Country Benchmarks*, noted several concerns with the third country regime under the EU BMR. Continued efforts to provide timely equivalence rulings, clear guidance and proportionate application of requirements can all contribute positively to assuaging the concerns. Consideration should also be given to expanding the definition of "public authority" to include third country administrators of FX spot rates in non-convertible and pegged currencies.
- It will be crucial that EU27 supervised entities are able to continue using LIBOR under the EU BMR in the event that LIBOR becomes a third country benchmark from an EU27 perspective, and conversely it will also be important that the other EU critical benchmarks continue to be available for use by supervised entities under a post-Brexit UK regime.

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