

Chapter



Preamble

THE EUROPEAN COMMISSION,
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Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014, and in particular the fourth subparagraph of Article 16(5) thereof,

01/01/2021

Whereas:

(1) Article 16 of Regulation (EU) 2016/1011 imposes certain governance and control requirements on supervised contributors, including a requirement to have in place a control framework to ensure the integrity, accuracy and reliability of input data and a requirement to have in place effective systems and controls to ensure the integrity and reliability of all contributions of input data. Some of these requirements are already addressed in Articles 11 and 15 of Regulation (EU) 2016/1011 and the corresponding delegated regulations. However, in certain respects the provision of this Commission Delegated Regulation go beyond those in Articles 11 and 15 of Regulation (EU) 2016/1011 and certain supervised contributors might not be subject to the provisions of Articles 11 and 15 because they are contributing data to benchmarks provided by administrators who are exempted from the scope of Regulation (EU) 2016/1011. In order to avoid legal uncertainty, the requirements set forth by this Commission Delegated Regulation are without prejudice to Articles 11 and 15 of Regulation (EU) 2016/1011 and the corresponding delegated regulations and are therefore applicable only to the extent they complement the aforementioned provisions.

(2) The control framework established by a supervised contributor should include a procedure for detecting and managing breaches of Regulation (EU) 2016/1011 and breaches of the applicable code of conduct, and policies on whistle-blowing, oversight and periodic review of the process for contributing input data. This is so that supervised contributors can ensure that they are acting lawfully and submitting input data that is accurate and reliable.

(3) The training that submitters employed by a supervised contributor are required to have pursuant to Article 16(2)(b) of Regulation (EU) 2016/1011 should also include training in how the benchmark is intended to measure the underlying market or economic reality

and training in all the elements of the code of conduct applicable to the contribution of input data. This is an essential tool in ensuring that submitters act appropriately and in line with the methodology of the benchmark.

(4) The measures for the management of conflicts of interest that a supervised contributor is required to have in place pursuant to Article 16(2)(c) of Regulation (EU) 2016/1011 should include measures for the separation of submitters from other employees of the contributor and measures on the contributor's remuneration policy for submitters in order to minimise the incentives on submitters to manipulate the contribution of input data.

(5) The record-keeping systems that a supervised contributor is required to have in place pursuant to Article 16(2)(d) of Regulation (EU) 2016/1011 should include the requirement to keep records of communications in relation to the provision of input data, including the names of the submitters. This is in order to provide an adequate level of transparency.

(6) Allowing contributors to use discretion creates a risk that different experts use it differently or that even the same expert uses it differently over time. Discretion also increases the vulnerability of the relevant benchmark to manipulation. It is therefore necessary that the policies established pursuant to Article 16(3) of Regulation (EU) 2016/1011 include a framework to ensure consistency in the use of judgement or the exercise of discretion and to reduce the risk of manipulation. Such a framework should impose an obligation to conduct regular internal reviews of the application of expert judgement. It should also identify types of information to be considered or not to be considered in order to frame the margin for discretion appropriately.

(7) Administrators should be given sufficient time to ensure compliance with the requirements of this Regulation. This Regulation should therefore start to apply two months after it enters into force.

(8) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(9) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council,

HAS ADOPTED THIS REGULATION: