

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 of the European Parliament and of the Council, and in particular the third subparagraph of Article 25(9) thereof,

01/01/2021

Whereas:

(1) Article 25(1) of Regulation (EU) 2016/1011 allows the administrator of a significant benchmark to choose not to apply certain provisions of that Regulation. If an administrator chooses not to apply one or more of those provisions, the competent authority has power to decide that the administrator should nonetheless apply one or more of them. Article 25(3) of that Regulation specifies criteria that a competent authority must take into account in assessing whether it would be appropriate for the administrator to apply those provisions.

(2) The criteria that a competent authority is required to take into account should take into consideration the nature of the provisions under Regulation (EU) 2016/1011 that administrators of significant benchmarks may choose not to apply. Administrators of significant benchmarks may choose not to apply certain provisions that require them to put in place organisational measures to reduce the risk of conflicts of interest resulting from their employees' involvement in the provision of the benchmark. When taking into account the criteria specified in points (a), (c) and (i) of Article 25(3) of that Regulation, competent authorities should therefore also consider whether other adequate means are in place to protect the benchmark's integrity, instead of the organisational measures that are required by those provisions.

(3) When taking into account the criteria specified in Article 25(3) of Regulation (EU) 2016/1011, competent authorities should also consider the benchmark's impact on one or more specific markets, the economy more generally and the benchmark's importance in ensuring financial stability. For this purpose, competent authorities should use information which is in the public domain or has been made available to them through disclosure by the administrator or otherwise.

(4) When taking into account the criterion specified in point (f) of Article 25(3) of Regulation (EU) 2016/1011, competent authorities should also consider whether the administrator has adequate alternative technical means and control mechanisms in place to maintain the continuity of the provision of the benchmark and its robustness, taking into account the nature of the provisions that the administrator has chosen not to apply.

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

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

(7) The 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: