

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 third subparagraph of Article 30(5) thereof,

01/01/2021

Whereas:

(1) Article 30 of Regulation (EU) 2016/1011 sets out conditions for allowing benchmarks provided by an administrator located in a third country to be used in the Union. One of those conditions is that an equivalence decision has been adopted recognising the legal framework and supervisory practices of the third country as equivalent. Paragraph (4) of Article 30 requires ESMA to establish cooperation arrangements with the competent authority of any third country in respect of which an equivalence decision has been adopted.

(2) The cooperation arrangements should allow ESMA and the competent authority of the third country to exchange all information relevant to the fulfilment of their respective supervisory tasks. The Commission may adopt a number of equivalence decisions, and benchmarks provided by administrators located in each of the relevant countries may then be eligible for use by supervised entities in the Union. It is therefore important that each set of cooperation arrangements contains the same minimum requirements regarding the forms and procedures to be used for the exchange of information, including the same confidentiality provisions and the same terms governing the use of information obtained under the cooperation arrangements.

(3) Competent authorities of third countries whose legal framework and supervisory practices have been recognised as equivalent will have adequate knowledge of all relevant events and changes of circumstance likely to affect benchmark administrators in their jurisdiction. If supervised entities use benchmarks provided by administrators from those jurisdictions in the Union, it is appropriate that the competent authorities in those jurisdictions keep ESMA informed of such events and changes. Cooperation arrangements should therefore include provision for ESMA to be notified of all such events and changes.

(4) Similarly, competent authorities of third countries need to be kept informed of the activities of the administrators that they are supervising. Cooperation arrangements should therefore provide for ESMA to inform the competent authority of a third country if administrators supervised by that authority notify ESMA of their consent to their benchmarks being used by supervised entities in the Union.

(5) With the exception of its obligation under Article 31 of Regulation (EU) 2016/1011 to withdraw the registration of administrators located in third countries, ESMA has no direct supervisory powers over administrators located in third countries. It relies instead on supervision by, and cooperation with, the competent authority of the third country. Cooperation arrangements should therefore include provisions setting out the respective roles of the parties involved in supervisory cooperation, including on-site inspections.

(6) Point (a) of the third subparagraph of Article 32(5) of Regulation (EU) 2016/1011 requires cooperation arrangements between competent authorities of third countries and competent authorities of Member States of reference to have the same minimum content as cooperation arrangements between ESMA and competent authorities of third countries. It is therefore necessary to ensure that, in setting the minimum content for cooperation arrangements with ESMA, the content is also appropriate for cooperation arrangements required by Article 32(5).

(7) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the Commission.

(8) ESMA has not conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, nor has it analysed the potential related costs and benefits, as ESMA concluded that this would have been disproportionate in relation to the scope and impact of the draft regulatory technical standards, taking into account the fact that the regulatory technical standards would only be of direct concern to the competent authorities of third countries, the competent authorities of Member States and ESMA, and not to market participants.

(9) ESMA has 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.

(10) 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,

HAS ADOPTED THIS REGULATION: