

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 Article 32(9) thereof,

01/01/2021

Whereas:

(1) A benchmark administrator located in a third country can apply for recognition in the Union. In the application for recognition that administrator has to provide a comprehensive representation of the arrangements, policies and procedures it has established in order to fulfil the applicable requirements set out in Regulation (EU) 2016/1011. This Regulation aims to ensure that the competent authorities across the Union receive uniform and consistent information by benchmark administrators in non-EU countries that apply for recognition.

(2) The application for recognition should include information related to the choice of Member State of reference, pursuant to Article 32(4) of Regulation (EU) 2016/1011, and to the legal representative in the Member State of reference. That information should enable the competent authority of the Member State of reference to satisfy itself that the Member State of reference has been correctly identified and that a legal representative of the administrator in a non-EU country is established in that Member State and has the power to act as required by Regulation (EU) 2016/1011.

(3) In order for the competent authority to assess whether there are conflicts of interest arising from the business interests of the applicant's owners that might affect the independence of the applicant, and thus impair the accuracy and integrity of its benchmarks, the applicant should provide information regarding the activities of its owners and the ownership of its parent undertakings.

(4) The applicant should provide information on the composition, functioning and degree of independence of its governing bodies, in order for the competent authority to assess

whether the corporate governance structure ensures the independence of the administrator in the benchmark calculation and the avoidance of conflicts of interest.

(5) For the purposes of assessing how conflicts of interest are eliminated, or managed and disclosed, the applicant should provide the competent authority with an explanation as to how any resulting conflicts of interest are identified, recorded, managed, mitigated, prevented and remedied.

(6) For the purposes of enabling the competent authority to evaluate the pertinence and robustness of the internal control structure, oversight and accountability framework, the applicant provider should provide the competent authority with the policies and procedures for monitoring the activities of the provision of a benchmark or family of benchmarks.

(7) The application for recognition should include information demonstrating that the controls on the input data, on the basis of which the benchmarks provided by the applicant are calculated, are adequate to ensure the representativeness, accuracy and integrity of such data.


(8) For the purpose of enabling the competent authority to evaluate whether the benchmarks provided by the applicant are suitable for their continued or prospective use in the Union, with the final objective of their inclusion in the register of Article 36 of Regulation (EU) 2016/1011, a list of all benchmarks provided by the applicant which are already used in the Union or intended for future use in the Union and a description of them should be provided within the application for recognition.

(9) Information on the nature and characteristics of the benchmarks provided by the applicant is relevant in order to demonstrate to the competent authority whether the assessment of compliance with the applicable requirements of Regulation (EU) 2016/1011 is to be conducted with reference to any of the special regimes applicable, to regulated-data benchmarks and to commodity benchmarks not based on submissions by contributors the majority of which are supervised entities, as set out in Regulation (EU) 2016/1011.

(10) Where the applicant considers one or more of its benchmarks as significant or non-significant, it should include in the application for recognition information on the degree of use of such benchmark(s) in the Union, so that the competent authority could assess whether the categorisation as significant or non-significant is correct. Benchmarks provided by the applicant that are not yet used in the Union and that are included in the application for recognition for reason of their prospective use in the Union are in accordance with point (27) of Article 3(1) of Regulation (EU) 2016/1011 considered as non-significant benchmarks.

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

(12) 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 Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council.



(13) Administrators should be given sufficient time to prepare applications and to ensure compliance with the requirements of this Regulation and the regulatory technical standards referred to in the Annex. This Regulation should therefore start to apply two months after it enters into force,

HAS ADOPTED THIS REGULATION: