

Chapter



Preamble

THE EUROPEAN COMMISSION,

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 34(8) thereof,

01/01/2021

Whereas:

(1) This Regulation sets out the information that the competent authority should receive with an application for authorisation or registration of an administrator of benchmarks, depending on the characteristics of the applicant or of the benchmarks provided and intended for use in the Union. That specification of the information to be provided in the application for authorisation and in the application for registration promotes a common and consistent process throughout the Union.

(2) It is important for the competent authority to receive the information laid down in this Regulation to be able to assess whether the arrangements established by the applicant for authorisation or registration meet the requirements laid down in the Regulation (EU) 2016/1011.

(3) In order for the competent authority to assess whether any conflicts of interest arising from the benchmark activity and business interests of applicant's owners might affect the independence of that applicant in the benchmark calculation and thus impair the accuracy and integrity of the benchmark, the applicant should be required to submit 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 independence, in the benchmark calculation, of its governing bodies in order for the competent authority to be able to assess whether the corporate governance structure ensures the independence of the applicant in the benchmark calculation and the avoidance and management of conflicts of interest.

(5) The applicant should provide information on its policies and procedures regarding the identification, management, mitigation and disclosure of conflicts of interests in relation to its activity of provision of benchmarks or families of benchmarks. For critical benchmarks, given their greater systemic importance, an applicant should provide the competent authority with an up-to-date inventory of existing conflicts of interest, along with an explanation of how they are managed.

(6) For the purposes of allowing the competent authority to evaluate the pertinence and robustness of the internal control structure, oversight and accountability framework, the applicant should provide the policies and procedures for monitoring the activities of the provision of a benchmark or family of benchmarks. That information is necessary for the competent authority to assess whether those policies and procedures meet the requirements of the Regulation (EU) 2016/1011.

(7) Information should also be included in the application to demonstrate to the competent authority that the controls on the input data used to determine the benchmarks provided by the applicant are adequate to ensure the representativeness, accuracy and integrity of such data, and that the methodology applied for the calculation of the benchmarks have all the characteristics required by the Regulation (EU) 2016/1011.

(8) For the purposes of allowing the competent authority to assess the benchmark's representativeness of the economic reality that it intends to measure, the applicant should provide the competent authority with a description of the benchmark or family of benchmarks provided or intended to be provided and the type of benchmark to which they belong, in line with the provisions of Regulation (EU) 2016/1011. The type to which the benchmark belongs is to be assessed to the best of the knowledge of the applicant and should be provided along with an indication of the sources of data used, so as to allow the competent authority to understand the reliability and exhaustiveness of the underlying information.

(9) The contents of an application for authorisation or registration where the applicant is a natural person should be set out specifically as the organisational set-up of the administrator will very different from those of legal persons.

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

(11) The European Securities and Markets Authority 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.

(12) 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: