

## **Chapter 2**

# **Commission Delegated Regulation (EU) 2016/2021**

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) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, and in particular the third subparagraph of Article 37(4) thereof,

01/01/2021

Whereas:

(1) Regulation (EU) No 600/2014 provides for the non-discriminatory access for clearing and trading between central counterparties (CCPs) and trading venues, including access to licences of and information relating to benchmarks which are used to determine the value of some financial instruments for trading and clearing purposes. Given the variety of benchmarks, the information CCPs and trading venues need for clearing or trading purposes may vary depending on a number of factors, including the relevant financial instrument being traded or cleared and the type of benchmark that the financial instrument references. Therefore, CCPs and trading venues should be allowed to request access to any information, provided it is required for clearing or trading purposes.

(2) The diversity of benchmarks and the different uses identified render a one size fits all approach inappropriate and a high degree of harmonisation on the content of licence agreements unsuitable. Limiting the conditions under which access is granted on predetermined and exhaustive terms might therefore be detrimental to all parties.

(3) A person with proprietary rights to a benchmark should be able to set different conditions for different categories of CCPs and trading venues to access its benchmark only where objectively justified, such as in terms of the quantity, scope or field of use demanded and applied in a proportionate manner. The different categories and the criteria defining the various categories of CCPs and trading venues should be made publicly available.

(4) The way a benchmark is assessed as new or not will vary on a case by case basis. The person with proprietary rights to a benchmark should therefore demonstrate in what way that benchmark is new, if that is invoked as the reason for denying immediate access. Each assessment of a declared new benchmark should consider a combination of various

factors and their appropriate weightings and not rely on a single factor to assess whether or not the benchmark meets the criteria specified in Regulation (EU) No 600/2014.

(5) Although the values of two benchmarks could be highly correlated, particularly in the short run, their compositions or methodology could be fundamentally different. The long run correlation and similarities in the composition and the methodology of each of the benchmarks should therefore be taken into account for assessing whether a benchmark is new. Considering the heterogeneity of benchmarks, in addition to the factors laid down in this Regulation, a person with proprietary rights to a benchmark should also take into account additional factors, considering standards in use, that are specific to the type of benchmark concerned. For commodity benchmarks other factors should be assessed, including whether the relevant benchmarks are based on different underlying commodities and different delivery locations.

(6) New series of benchmarks are released on a periodic basis, such as credit default swaps benchmarks. In those cases, the newly released benchmark is a continuation of the previous series and should therefore not be considered a new benchmark.

(7) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the provisions laid down in Regulation (EU) No 600/2014 apply from the same date.

(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: