



European Securities and
Markets Authority

Final Report

Review of the RTS on the form and content of an application for recognition under the Benchmarks Regulation





Table of Contents

Executive Summary	2
1 Introduction	3
2 Feedback from stakeholders	3
3 Content of the amended RTS	5
4 Annexes	7
4.1 Annex I - Legislative mandate to develop technical standards	8
4.2 Annex II - Cost-benefit analysis.....	9
4.3 Annex III – Draft amendments to the RTS on Recognition.....	11
4.4 Annex IV – Consolidated Draft RTS.....	23

Executive Summary

Reasons for publication

Under Delegated Regulation (EU) 2018/1645¹, an application for recognition of a third country administrator needs to include information on (i) the applicant and its legal representative in the Union and (ii) the benchmarks provided by the applicant. This RTS specifies this information and was published in 2018. The RTS needs to change to reflect the changes to the recognition regime in Regulation (EU) 2016/1011 (the 'Benchmarks Regulation', 'BMR') introduced in 2019 by Regulation (EU) 2019/2175 (the 'ESAs Review') with the transfer of some supervisory responsibilities to ESMA as of January 2022. ESMA is also suggesting requesting additional information or further specifying some of the information already requested in the existing RTS in order to allow ESMA to properly assess whether the applicant has established all the necessary arrangements to meet the requirements of the BMR.

On 8 July 2022, ESMA published a Consultation Paper (CP) on 'Review of the RTS on the form and content of an application for recognition under the Benchmarks Regulation'. ESMA received 5 responses to its public consultation. ESMA welcomes the overall support on the approach proposed in the CP. Following the feedback received, ESMA has taken note of market participants' considerations on ensuring consistency of the proposed RTS with the Benchmarks Regulation with regard to commodity benchmarks for which different requirements are applicable; the draft RTS has been adjusted in this final report taking into account the different types of benchmarks and the related requirements.

Contents

This final report consists of three chapters, covering: (i) the background information on ESMA's legal mandate to develop the draft technical standards, (ii) the feedback received to the open public consultation, and (iii) the proposal for the draft technical standards. The final report also includes in the annexes the amended draft technical standard and a cost-benefit analysis.

Next Steps

The amended draft regulatory technical standards will be submitted to the European Commission. The Commission has three months to decide whether to endorse the regulatory technical standards.

1 Introduction

1. Article 32(9) of the BMR states that ESMA may develop regulatory technical standards to determine the form and content of the application for recognition and the presentation of the information necessary to satisfy the competent authority that the conditions for recognition are met. On 30 March 2017, ESMA published the aforementioned RTS on the application for recognition (the 'RTS'). The corresponding Delegated Regulation was published in the Official Journal in 2018.
2. The RTS specifies the information relating to the administrator of the benchmarks and its legal representative in the Union as well as the information on the benchmarks provided.
3. Subsequently, the ESAs Review was adopted, which introduced, inter-alia, the following amendments to the recognition regime under Article 32 of the BMR:
 - the deletion of the determination of the Member State of reference;
 - the designation of ESMA as the competent authority for recognising and supervising third-country benchmark administrators.
4. On 8 July 2022, ESMA published a consultation paper suggesting amendments to the RTS on recognition. Beyond the changes necessary to align the RTS to the amendments of the BMR, ESMA took this opportunity to have a more substantial review of the RTS to address the shortcomings identified in the meantime based on three full years of NCAs' experience in recognising and supervising third country administrators as well as ESMA's own experience since it started its supervisory mandate in January 2022, specifically related to missing information of an application for recognition.

2 Feedback from stakeholders

5. ESMA received five responses to its open public consultation. All the respondents supported the overall amendments to the draft RTS. They stressed the importance of aligning the requirements of the RTS with the changes of the BMR. They also acknowledged the rationale behind the introduction of the amendments on the general information or the organisational structure and governance that a third-country applicant should provide to ESMA.
6. At the same time, three respondents out of five highlighted that ESMA's RTS were based only on the Title II regime of the BMR and should consider the specificities of some commodity benchmarks that apply Annex II of the BMR instead of Title II. Therefore, these

¹ https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2018.274.01.0036.01.ENG&toc=OJ%3AL%3A2018%3A274%3ATOC

respondents suggested to amend the RTS to include the relevant requirements in Annex II of the BMR.

7. To that end, one respondent proposed to adopt a consistent approach with the Delegated Regulation (EU) 2018/1646 on the information to be provided in an application for authorisation and registration where a specific provision addresses the commodity benchmarks applying Annex II instead of Title II of the BMR.
8. On the proposed changes to the Article 2 of the RTS, one respondent supported limiting the means of submitting applications for recognition under the BMR to electronic forms. This respondent stressed that electronic submission of applications has become the industry standard and should provide further efficiencies for the application process.
9. On the request to provide financial statements, respondents agreed with the proposal and rationale behind the necessity of justifying financial soundness. One respondent pointed out to the timing and format of financial statements that may vary from firm to firm.
10. As per the amendments to the RTS on the organisational structure and governance, while one respondent supported the calculation of the full-time employees, another raised concern on the information requested and the allocation of the employees in different departments or teams. This is because of the complexity to collect such information, that is not necessarily comparable between benchmark administrators, especially when they are part of larger groups.
11. One respondent further suggested to limit the scope of the requirement to provide CVs to the management body only, as it is the administrator's responsibility to determine that employees are experienced and able to meet the obligations under BMR.
12. On the request to provide a recent criminal-record file from the country of origin for each member of the Management Board and Oversight function, one respondent suggested to consider instead the country that is most relevant given their professional activity rather than the country of origin. This is because members may be citizens of a country in which they have not resided for several years. Another respondent however did not support this amendment to the RTS claiming that the self-declaration of good repute should already provide the relevant information.
13. For the self-declaration of good repute, one respondent suggested to limit the scope to any conviction or offence committed in the last 10 years and to the business or regulatory actions that relate solely to financial services. According to this respondent, this limited scope would provide information on the integrity, honesty and reputation of the members of the management body and the oversight function.
14. Another respondent highlighted that the provision of the self-declaration and the criminal-record file at the level of the oversight function members should be clarified in particular when the Oversight function is carried out through multiple forums with an extensive list of

members involved. This respondent suggested to narrow the scope and request the provision of this information only in relation to members of the Oversight Committee and the Chairs of the various oversight forums only.

15. Finally, one respondent stressed the need to ensure that the requirements introduced to the RTS on recognition (i.e. on the financial statements, CVs, criminal records and the self declaration) should also apply to EU based administrators applying for registration and authorisation under the BMR and to consider outlining these requirements in formal ESMA Guidelines or in technical standards rather than in the application regime.
16. On the amendments to provide an estimated reference value of each benchmark, one respondent suggested to specify that this should be done on a best effort basis, due to the lack of available data.
17. One respondent did not support the amendments to the RTS as regards the further specification of the information technology systems and the outsourcing. This is because these additions would be going beyond the level 1 requirements. On the other hand, this respondent stressed the need to ensure that an identical requirement should apply to EU based administrators applying for registration and authorisation under the BMR if ESMA does decide to add these requirements for applicants of recognition.
18. Finally, one respondent suggested to clarify whether any new benchmark introduced by a recognised third country benchmark administrator would need to be approved before the new benchmark could be used in the EU.

3 Content of the amended RTS

19. Following the feedback received and in order to take into account the specificities of the different types of benchmarks, ESMA has amended the draft RTS to include two additional provisions in Article 1 of the RTS relating to the relevant requirements in Annex I and Annex II of the BMR. For example, an administrator of commodity benchmarks applying Annex II of the BMR instead of Title II should only submit documents relevant to the application of such Annex II.
20. On the financial statements, ESMA acknowledges that different firms have different timing and format of the financial reports. However, this does not have an impact on the ESMA assessment during the application process on the financial soundness of the applicant. The financial reports would: (1) allow the identification of possible financial conflicts of interest stemming for example from other activities of the administrator; and (2) provide information regarding the adequate financial resources of the administrator to ensure the robustness of its organisation and subsequently the integrity of the benchmarks provided.



21. Regarding the difficulty to collect the information on the number of employees, ESMA highlights that the information requested is related to the employees of the applicant including when they are part of a larger group.
22. ESMA also suggested in the CP to request a recent criminal-record file from the country of origin of the applicant together with a self-declaration of good repute. ESMA considers that both documents are necessary to thoroughly assess the suitability of senior management. Further, on the proposal to consider the most relevant country given the professional activity of the members of the management Board and Oversight function rather than the country of origin, while ESMA acknowledges the rationale behind such change, it is not clear how to define the most relevant country given the professional activity of the member. This is why, ESMA is in favour keeping the country of origin.
23. Further, any relevant criminal records will be taken into account considering periods of limitation in force in the national law both when such information is provided within the self-declaration (point 3(g)(ii)(1)) or the criminal-record file from the country of origin. Also, the focus on financial services is already captured in the draft RTS in point 3(g)(ii)(3).
24. It is ESMA's understanding that in case the oversight function is carried out through a main committee (i.e. the Oversight Committee) to which different subcommittees report then the information listed in the RTS should be provided with regard to the members of the Oversight Committee (and not its subcommittees). However, in case the oversight function is carried out through two (or more) distinct committees without any dependency, then the information should be provided for the different members of the different committees.
25. ESMA does not consider it an excessive burden to provide the CVs of the employees responsible of the relevant functions of the control framework and the internal function in addition to the management body and the members of the oversight function. This is because only the CVs of the heads of those functions are required.
26. As suggested by one respondent, ESMA has amended the draft RTS on the estimate of the use of benchmarks in the Union (point 9.h of the Annex) to include that it should be provided to the best of the knowledge of the applicant.
27. Finally, as noted already in the CP, ESMA intends to follow up with consistent amendments to the RTS on the authorisation and registration to ensure alignment and equal treatment between EU and TC administrators. Also, ESMA has complemented two provisions of this RTS with the additional wording included in the RTS on the authorisation and registration, i.e. addition in Article 1 of the specific regime applicable to Commodities and interest rates benchmarks and in point 5(b) of the Annex addition of 'including business continuity, and disaster recovery plans'.



4 Annexes



4.1 Annex I - Legislative mandate to develop technical standards

Article 32

[...]

5. An administrator located in a third country intending to obtain prior recognition as referred to in paragraph 1 shall apply for recognition with ESMA. The applicant administrator shall provide all information necessary to satisfy ESMA that it has established, at the time of recognition, all the necessary arrangements to meet the requirements referred to in paragraph 2 and shall provide the list of its actual or prospective benchmarks which are intended for use in the Union and shall, where applicable, indicate the competent authority in the third country responsible for its supervision.

Within 90 working days of receipt of the application referred to in the first subparagraph of this paragraph, ESMA shall verify that the conditions laid down in paragraphs 2 and 3 are fulfilled.

Where ESMA considers that the conditions laid down in paragraphs 2 and 3 are not fulfilled, it shall refuse the recognition request and set out the reasons for that refusal. In addition, no recognition shall be granted unless the following additional conditions are fulfilled:

(a) where an administrator located in a third country is subject to supervision, an appropriate cooperation arrangement is in place between ESMA and the competent authority of the third country where the administrator is located, in compliance with the regulatory technical standards adopted pursuant to Article 30(5), to ensure an efficient exchange of information that enables the competent authority of that third country to carry out its duties in accordance with this Regulation;

(b) the effective exercise by ESMA of its supervisory functions under this Regulation is neither prevented by the laws, regulations or administrative provisions of the third country where the administrator is located, nor, where applicable, by limitations in the supervisory and investigatory powers of that third country's competent authority.

[...]

9. ESMA may develop draft regulatory technical standards to determine the form and content of the application referred to in paragraph 5 and, in particular, the presentation of the information required in paragraph 6.

In the event that such draft regulatory technical standards are developed, ESMA shall submit them to the Commission.

Power is conferred on the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010

4.2 Annex II - Cost-benefit analysis

This section provides a cost-benefit analysis (CBA) of the draft amendment to the RTS on recognition. It is linked to the changes to the form and content of the application of a third-country provider to obtain recognition as envisaged in Article 32 of the Regulation (EU) 2016/1011.

	<i>Qualitative description</i>
<i>Benefits</i>	<p>The RTS specify the set of documents, data and information to be submitted to ESMA to demonstrate compliance with the requirements of Regulation (EU) No 2016/1011, the nature and relevance of the benchmarks intended for offer in the Union and details of the legal representative. The specification of all pieces of information to be provided in the application for recognition would accelerate and streamline the process envisaged by Article 32 of the Regulation (EU) 2016/1011 and ensure its efficiency. The amendments to the existing RTS aim at first addressing changes to the Level 1 text and therefore ensuring alignment with the BMR by deleting the reference to the Member state of reference. Second, these amendments address the shortcomings identified based on three full years of NCAs' experience in recognising and supervising third country administrators, specifically related to missing information in an application for recognition. Without such further amendments, the RTS would not be consistent with the Level 1 text and the information required in an application for recognition would not be comprehensive. As a consequence of the adoption of the amended RTS, the recognition process will be conducted more easily and more rapidly and with less uncertainty about comprehensiveness of received information. Third-country administrators would benefit from the amended draft RTS as they will know in advance the full list of documents, data and information to be submitted in order to obtain the recognition.</p>
<i>Costs</i>	<p>The amended draft RTS are aimed at detailing the contents of an application for recognition, on the basis of the requirements already provided for in the Level 1. The first set of amendments aim only at aligning the RTS with the level 1 text. The deletion of the Member State of reference reduces the costs for administrators linked to the determination of such Member State of reference. The second set of amendments aim at including in this RTS a comprehensive set of information that applicants will need to provide to ESMA. Even without these amendments the required information should nevertheless be provided, in order for the applicant to be granted the recognition in accordance with Article 32 of the Regulation (EU) 2016/1011, but</p>

	<p>following a cumbersome exchange of information between ESMA and the applicant.</p> <p>Therefore, a limited administrative burden or costs for administrators are foreseeable as a direct result of the application of these amended draft RTS. The amended draft RTS may have a larger impact in terms of costs for small third-country index providers, and for third-country index providers that produce a large number of benchmarks, because during the application process, third-country administrators would need to provide specific information on the nature and characteristics of the benchmarks provided. However, these incremental costs are not directly stemming from the application of the draft RTS, as they are nonetheless required to be conducted in accordance with Article 32 of the Regulation (EU) 2016/1011.</p>
--	---



4.3 Annex III – Draft amendments to the RTS on Recognition

COMMISSION DELEGATED REGULATION (EU) .../...

of **XXX**

amending the regulatory technical standards laid down in Delegated Regulation (EU) 2018/1645 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council as regards the form and content of the application for recognition with the European Securities and Markets Authority (ESMA)

(Text with EEA relevance)

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 596/2014², and in particular the third subparagraph of Article 32(9) thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2018/1645³ aims to ensure that ESMA receives uniform and consistent information from third-country benchmark administrators that apply for recognition in the Union. Regulation (EU) 2019/2175⁴ introduced changes to Article 32 of Regulation (EU) 2016/1011 regarding the deletion of the reference to the Member State of reference and the transfer of the competence of recognising and supervising third-country benchmark administrators from national competent

² OJ L 171, 29.6.2016, p. 1.

³ Commission Delegated Regulation (EU) 2018/1645 of 13 July 2018 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards for the form and content of the application for recognition with the competent authority of the Member State of reference and of the presentation of information in the notification to European Securities and Markets Authority (ESMA) (OJ L 274, 5.11.2018, p. 36).

⁴ Regulation (EU) 2019/2175 of the European Parliament and of the Council of 18 December 2019 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, and Regulation (EU) 2015/847 on information accompanying transfers of funds (OJ L 334, 27.12.2019, p. 1).

authorities to ESMA. It is therefore necessary to amend Delegated Regulation (EU) 2018/1645 to take into account those changes.

- (2) Delegated Regulation (EU) 2018/1645 specifies the information to be provided to ESMA in an application for recognition, including information on the number of employees of the applicant. The experience gained in the application of the aforesaid Delegated Regulation has shown that in particular the information on the number of employees of an applicant needs to be further clarified in order to avoid divergent reporting among applicants and enable ESMA to effectively understand the organisational structure of an applicant. Therefore, this Regulation further specifies how the number of employees of an applicant should be calculated and the information needed by ESMA to have a full overview of the different departments composing the structure of an applicant and the different employees (permanent and temporary).
- (3) Furthermore, Delegated Regulation (EU) 2018/1645 relates to information on the governance of the applicant including a self declaration of good repute of the applicant. The self declaration allows ESMA to gain comfort about the good repute of the applicant entity. However, the list of information to be included in this declaration is not sufficient for ESMA to have an overview of all the possible proceedings and not only those of a disciplinary nature. Further, it is important to also provide this self declaration at the level of the management body and the members of the oversight function of the applicant to ensure that they are suitable, guarantee an effective management and safeguard confidence in the integrity of benchmarks. Finally, the curriculum vitae will allow ESMA to assess the skills, knowledge and experience of the relevant employees of the administrator. The financial reports of the applicant will also allow ESMA to assess the financial soundness of the applicant. As a result the additional information is requested in this Regulation.
- (4) In order to ensure the compliance of the applicant with Regulation (EU) 2016/1011, the information to be provided by the applicant is further clarified. These clarifications aim at providing the applicant with comprehensive information to ensure that the content of its application will cover all the information necessary to satisfy ESMA that it has established, at the time of recognition, all the necessary arrangements to meet the requirements of Regulation (EU) 2016/1011. In particular, it is important to provide the relevant competent authority with the necessary information on how the provision of benchmarks is operationally separated from any part of the applicant's business to prevent the occurrence of conflicts of interest relating to the other business activities of the applicant. In addition, the necessary information on the record keeping requirements should also be provided to detect and be able to prove the existence of infringements of Regulation (EU) 2016/1011. Further, the necessary information on the complaints handling mechanism of the applicant will enable ESMA to assess how stakeholders may notify the applicant of complaints and how the applicant evaluates the merits of any complaint.
- (5) Delegated Regulation (EU) 2018/1645 should therefore be amended accordingly.

- (6) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority (ESMA).
- (7) 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 advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁵,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) 2018/1645

Delegated Regulation (EU) 2018/1645 is amended as follows:

(1) Article 2 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. The application for recognition shall be submitted in a language customary in the sphere of international finance.’;

(b) in paragraph 2, the first sentence is replaced by the following:

‘2. The application for recognition shall be submitted by electronic means.’;

(2) the following Article 2a is inserted:

‘Article 2a

Information to be provided for types of benchmarks

1. An applicant providing only interest rate benchmarks shall submit the information listed in the Annex of this Regulation and shall specify how the specific requirements set out in Annex I of Regulation (EU) 2016/1011 are implemented where the provisions in Annex I of Regulation (EU) 2016/1011 apply in addition to, or as a substitute for, the requirements in Title II of Regulation (EU) 2016/1011, pursuant to Article 18 of that Regulation.
2. An applicant providing only commodity benchmarks shall submit the information listed in the Annex of this Regulation and shall specify how the requirements set out in Annex II of Regulation (EU) 2016/1011 are implemented for any commodity benchmark subject to Annex II instead of Title II of Regulation (EU) 2016/1011, pursuant to Article 19 of Regulation (EU) 2016/1011.’;

⁵ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).



(3) The Annex is amended as set out in the Annex to this Regulation.

Article 2

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission

The

President

[For the Commission

On behalf of the President

ANNEX

The Annex to Delegated Regulation (EU) 2018/1645 is amended as follows:

- (1) Section A is amended as follows:
 - (a) subsection 1 is amended as follows:
 - (i) subpoints (i) to (iii) of point (h) are replaced by the following subpoints (i) to (iv):
 - ‘(i) proceedings of a disciplinary nature against it (unless dismissed);
 - (ii) refusal of authorisation or registration by a financial authority;
 - (iii) withdrawal of authorisation or registration by a financial authority;
 - (iv) adverse findings in civil proceedings in connection with the provision of financial services, misconduct or fraud.’;
 - (ii) the following point (i) is added:
 - ‘(i) the annual financial reports, including individual and consolidated financial statements where applicable, for the three financial years preceding the date of the submission of its application to the extent available. Where the financial statements of the administrator are audited, the financial reports shall include the audit report on the annual and consolidated financial statement. Where these financial reports are not available for the requested period of time, the applicant shall provide ESMA with an interim financial report.’;
 - (b) subsection 2 is amended as follows:
 - (i) the title is replaced by the following:
 - ‘2. LEGAL REPRESENTATIVE’;
 - (ii) point (a) is deleted;
 - (iii) in point (b), the introductory wording is replaced by the following:
 - ‘With respect to the legal representative as set out in Article 32(3) of Regulation (EU) 2016/1011, its:’;
 - (c) subsection 3 is amended as follows:
 - (i) in point (a), the introductory wording is replaced by the following:
 - ‘(a) Internal organisational structure with respect to the board of directors, senior management committees, oversight function

and any other internal body exercising significant management functions involved in the provision of a benchmark as described in Article 4(1) of Regulation (EU) 2016/1011 and further specified in the regulatory technical standards adopted under Article 4(9) of Regulation (EU) 2016/1011⁶, including their:';

(ii) point (c) is replaced by the following:

‘(c) The number of employees (temporary and permanent) involved in the provision of a benchmark as follows:

(i) temporary employees;

(ii) permanent employees with under five years of relevant experience;

(iii) permanent employees with at least five years of relevant experience.’;

(iii) the following points are added:

‘(d) the number of temporary and permanent employees per functions/departments;

(e) the information regarding the number of employees in points (c) and (d) shall be provided on a full-time equivalent basis calculated as the total hours worked divided by the maximum number of hours subject to compensation within a working year as defined by the relevant national law;

(f) the curriculum vitae, including employment history with relevant dates, identification of past positions held and a description of the functions occupied, for each of the following:

(i) members of the management body;

(ii) employees responsible for the oversight function or members performing the oversight function in case the oversight function is carried out by a separate committee;

(iii) employees responsible for the functions within the control framework pursuant to Article 6(3) of Regulation (EU) 2016/1011 and for the internal function referred to in Article 7(2) of that Regulation;

⁶ Commission Delegated Regulation (EU) 2021/1350 of 6 May 2021 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying the requirements to ensure that an administrator's governance arrangements are sufficiently robust (OJ L 291, 13.8.2021, p. 9).

- (g) in respect of each member of the applicant's management body and employees responsible for the oversight function or members performing the oversight function in case the oversight function is carried out by a separate committee:
- (i) a recent criminal-record file from the country of origin of the relevant person, unless the relevant national authorities do not issue such a file;
- (ii) a self-declaration including details on whether the relevant person falls under any of the following categories:
- (1) has been convicted of any criminal offence where a criminal-record file is not available;
 - (2) has been subject to or has been notified of any proceedings of a disciplinary nature brought by a regulatory body or of a criminal nature;
 - (3) has been subject to any adverse finding in civil proceedings in connection with the provision of financial services, misconduct, fraud or the management of a legal entity;
 - (4) has been involved with an undertaking whose registration or authorisation was withdrawn by a regulatory body;
 - (5) has been refused the right to carry on activities which require registration or authorisation by a regulatory body or has been investigated or suspended by a regulatory body;
 - (6) has been involved in the management of an undertaking which has gone into insolvency, liquidation or administration while this person was connected to the undertaking or within a year of the person ceasing to be connected to the undertaking;
 - (7) has been involved with an undertaking which was investigated or suspended by a regulatory body and which resulted in an enforcement action;
 - (8) has been disqualified from acting as a director, disqualified from acting in any managerial capacity, dismissed from employment

or other appointment in an undertaking as a consequence of allegations of misconduct or malpractice.’;

(d) subsection 4 is amended as follows:

(i) point (a) is amended as follows:

(a) subpoint (i) is replaced by the following:

‘(i) how current and potential conflicts of interest are or will be identified, recorded, managed, mitigated, prevented or remedied taking into account the requirements set out in Article 4(6) of Regulation (EU) 2016/1011;’;

(b) subpoint (iii) is added:

‘(iii) how the provision of benchmarks is operationally separated from any part of the applicant's business that may create an actual or potential conflict of interest pursuant to Article 4(2) of Regulation (EU) 2016/1011, unless the applicant has chosen not to apply this requirement in respect of its significant or non-significant benchmarks in accordance with Articles 25(1) or 26(1) of that Regulation.’;

(ii) point (b) is replaced with the following:

‘(b) For a benchmark or a family of benchmarks, a list of any actual or potential conflicts of interests identified, along with the respective mitigation measures.’;

(e) subsection 5 is amended as follows:

(i) point (a) is amended as follows:

(a) subpoint (i) is replaced by the following:

‘(i) the information technology systems, including any back-up systems;’;

(b) subpoint (iii) is replaced by the following:

‘(iii) the constitution, role and functioning of the oversight function, as described in Article 5 of Regulation (EU) 2016/1011 and further specified in the regulatory technical standards adopted under Article 5(5) of Regulation (EU) 2016/1011⁷ or in the guidelines issued under Article 5(6) of Regulation (EU) 2016/1011 or the corresponding

⁷ Commission Delegated Regulation (EU) 2018/1637 of 13 July 2018 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards for the procedures and characteristics of the oversight function (see page 1 of this Official Journal).

principles on financial benchmarks agreed by the International Organization of Securities Commissions (IOSCO) on 17 July 2013 ('IOSCO principles for financial benchmarks'), or the Principles for Oil Price Reporting Agencies agreed by the IOSCO on 5 October 2012 ('IOSCO principles for PRAs'), as applicable, including procedures for the appointment, substitution or removal of individuals within the oversight function;';

(c) subpoint (iv) is replaced by the following:

'(iv) the constitution, role and functioning of the control framework, as described in Article 6 of Regulation (EU) 2016/1011 or the corresponding IOSCO Principles for financial benchmarks or for PRAs, as applicable;';

(d) subpoint (v) is replaced by the following:

'(v) the accountability framework as described in Article 7 of Regulation (EU) 2016/1011 or the corresponding IOSCO Principles for financial benchmarks or for PRAs, as applicable;';

(e) subpoints (vi) and (vii) are added:

'(vi) the record keeping obligations as described in Article 8 of Regulation (EU) 2016/1011;

'(vii) the complaints-handling mechanism as described in Article 9 of Regulation (EU) 2016/1011.';

(ii) points (b) and (c) are replaced by the following:

'(b) Contingency plans for determining and publishing a benchmark on a temporary basis, including business continuity and disaster recovery plans.

(c) Procedures for the internal reporting of infringements of Regulation (EU) 2016/1011 by managers, employees and any other natural persons whose services are placed at the provider's disposal or under the control of the provider as described in Article 14 of Regulation (EU) 2016/1011, and further specified in the regulatory technical standards adopted under Article 14(4) of Regulation (EU) 2016/1011⁸.';

(f) subsection 6 is amended as follows:

(i) point (c) is replaced by the following:

⁸ Commission Delegated Regulation (EU) 2021/1351 of 6 May 2021 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying the characteristics of the systems and controls for the identification and reporting of any conduct that may involve manipulation or attempted manipulation of a benchmark (OJ L 291, 13.8.2021, p. 13).

- ‘(i) The rationale behind the administrator's application of any of the exemptions listed under Article 25(1), for significant benchmarks, and Article 26(1), for non-significant benchmarks, of Regulation (EU) 2016/1011 in respect of the benchmark; the information shall be presented, to the extent possible, on the basis of the format established by the implementing technical standards adopted under Articles 25(8) and 26(5) of Regulation (EU) 2016/1011¹⁰, and may refer as relevant to the criteria further specified in the regulatory technical standards adopted under Article 26(6) of Regulation (EU) 2016/1011¹¹.’;
- (iii) the following point is added:
 - ‘(l) The benchmark statement for each benchmark or, where applicable, for each family of benchmarks in accordance with Article 27 of Regulation (EU) 2016/1011, and further specified in the regulatory technical standards adopted under Article 27(3) of Regulation (EU) 2016/1011¹².’;
- (b) in subsection 10, the introductory wording of point (a) is replaced by the following:
 - ‘(a) For each benchmark or family of benchmarks, policies and procedures with respect to input data requirements in accordance with Article 11 of Regulation (EU) 2016/1011, and further specified in the regulatory technical standards adopted under Article 11(5) of Regulation (EU) 2016/1011¹³ or in the guidelines issued under Article 11(6) of Regulation (EU) 2016/1011, including those relating to:’;
- (c) in subsection 10, point (b) is amended as follows:
 - (i) subpoint (i) is replaced by the following:
 - ‘(i) a description of the methodology, highlighting the key elements of the methodology to be published in accordance with Article 13 of Regulation (EU) 2016/1011, and further specified in the regulatory

¹⁰ Commission Implementing Regulation (EU) 2018/1106 of 8 August 2018 laying down implementing technical standards with regard to templates for the compliance statement to be published and maintained by administrators of significant and non-significant benchmarks pursuant to Regulation (EU) 2016/1011 of the European Parliament and of the Council (OJ L 202, 9.8.2018, p. 9).

¹¹ Commission Delegated Regulation (EU) 2021/1348 of 6 May 2021 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria under which competent authorities may require changes to the compliance statement of non-significant benchmarks (OJ L 291, 13.8.2021, p. 1).

¹² Commission Delegated Regulation (EU) 2018/1643 of 13 July 2018 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further the contents of, and cases where updates are required to, the benchmark statement to be published by the administrator of a benchmark benchmarks (OJ L 274, 5.11.2018, p. 29).

¹³ Commission Delegated Regulation (EU) 2018/1638 of 13 July 2018 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further how to ensure that input data is appropriate and verifiable, and the internal oversight and verification procedures of a contributor that the administrator of a critical or significant benchmark has to ensure are in place where the input data is contributed from a front office function (OJ L 274, 5.11.2018, p. 6).

technical standards adopted under Article 13(3) of Regulation (EU) 2016/1011¹⁴ or in the guidelines issued under Article 13(4) of Regulation (EU) 2016/1011 as applicable;’;

(ii) subpoint (ii) is replaced by the following:

‘(ii) policies and procedures, including those relating to:

— the measures taken to provide validation, approval and internal review of the methodology in accordance with Article 13(1)(b) of Regulation (EU) 2016/1011;

— the consultation process on any proposed material change in the methodology in accordance with Article 13(1)(c) of Regulation (EU) 2016/1011;’;

(iii) the following subpoint (iii) is added:

‘(iii) Any documented evidence that the methodology used for determining a benchmark complies with the requirements set out in Article 12 of Regulation (EU) 2016/1011, and further specified in the regulatory technical standards adopted under Article 12(4) of Regulation (EU) 2016/1011¹⁵.’.

¹⁴ Commission Delegated Regulation (EU) 2018/1641 of 13 July 2018 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further the information to be provided by administrators of critical or significant benchmarks on the methodology used to determine the benchmark, the internal review and approval of the methodology and on the procedures for making material changes in the methodology (see page 21 of this Official Journal).

¹⁵ Commission Delegated Regulation (EU) 2021/1352 of 6 May 2021 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying the conditions to ensure that the methodology for determining a benchmark complies with the quality requirements (OJ L 291, 13.8.2021, p. 16).



4.4 Annex IV – Consolidated Draft RTS

COMMISSION DELEGATED REGULATION (EU) No 2018/1645

of 13 July 2018

supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards for the form and content of the application for recognition with the competent authority ~~of the Member State of reference and of the presentation of information in the notification to~~ European Securities and Markets Authority (ESMA)

(Text with EEA relevance)

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 596/2014¹⁶, and in particular **the third subparagraph of Article 32(9) thereof**,

Whereas:

(1) Commission Delegated Regulation (EU) 2018/1645¹⁷ aims to ensure that ESMA receives uniform and consistent information from third-country benchmark administrators that apply for recognition in the Union. Regulation (EU) 2019/2175¹⁸ introduced changes to Article 32 of Regulation (EU) 2016/1011 regarding the deletion of the reference to the Member State of

¹⁶ OJ L 171, 29.6.2016, p. 1

¹⁷ Commission Delegated Regulation (EU) 2018/1645 of 13 July 2018 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards for the form and content of the application for recognition with the competent authority of the Member State of reference and of the presentation of information in the notification to European Securities and Markets Authority (ESMA) (Text with EEA relevance.) *OJ L 274, 5.11.2018, p. 36–42*

¹⁸ Regulation (EU) 2019/2175 of the European Parliament and of the Council of 18 December 2019 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, and Regulation (EU) 2015/847 on information accompanying transfers of funds (Text with EEA relevance) (Text with EEA relevance) *OJ L 334, 27.12.2019, p. 1–145*



reference and the transfer of the competence of recognising and supervising third-country benchmark administrators from national competent authorities to ESMA. It is therefore necessary to amend Delegated Regulation (EU) 2018/1645 to take into account those changes.

(2) Delegated Regulation (EU) 2018/1645 specifies the information to be provided to ESMA in an application for recognition, including information on the number of employees of the applicant. The experience gained in the application of the aforesaid Delegated Regulation has shown that in particular the information on the number of employees of an applicant needs to be further clarified in order to avoid divergent reporting among applicants and enable ESMA to effectively understand the organisational structure of an applicant. Therefore, this Regulation further specifies how the number of employees of an applicant should be calculated and the information needed by ESMA to have a full overview of the different departments composing the structure of an applicant and the different employees (permanent and temporary).

(3) Furthermore, Delegated Regulation (EU) 2018/1645 relates to information on the governance of the applicant including a self declaration of good repute of the applicant. The self declaration allows ESMA to gain comfort about the good repute of the applicant entity. However, the list of information to be included in this declaration is not sufficient for ESMA to have an overview of all the possible proceedings and not only those of a disciplinary nature. Further, it is important to also provide this self declaration at the level of the management body and the members of the oversight function of the applicant to ensure that they are suitable, guarantee an effective management and safeguard confidence in the integrity of benchmarks. Finally, the curriculum vitae will allow ESMA to assess the skills, knowledge and experience of the relevant employees of the administrator. The financial reports of the applicant will also allow ESMA to assess the financial soundness of the applicant. As a result the additional information is requested in this Regulation.

(4) In order to ensure compliance of the applicant with Regulation (EU) 2016/1011 the information to be provided by the applicant is further clarified. These clarifications aim at providing the applicant with a comprehensive information to ensure that the content of its application will cover all the information necessary to satisfy ESMA that it has established, at the time of recognition, all the necessary arrangements to meet the requirements of Regulation (EU) 2016/1011. In particular, it is important to provide the relevant competent authority with the necessary information on how the provision of benchmarks is operationally separated from any part of the applicant's business to prevent the occurrence of conflicts of interest relating to the other business activities of the applicant. In addition, the necessary information on the record keeping requirements should also be provided to detect and be able to prove the existence of infringements of Regulation (EU) 2016/1011. Further, the necessary information on the complaints handling mechanism of the applicant will enable ESMA to assess how stakeholders may notify the applicant of complaints and how the applicant evaluates the merits of any complaint.

(5) Delegated Regulation (EU) 2018/1645 should therefore be amended accordingly.

(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 in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council¹⁹.

(8) 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:

Article 1

General requirements

1. An administrator located in a third country shall when applying for recognition pursuant to Article 32 of Regulation (EU) 2016/1011 provide the information listed in the Annex.
2. Where the applicant has left out any of the required information, the application shall include an explanation as to why that information has not been provided.

Article 2

Format of the application

1. The application for recognition shall be submitted ~~in a language customary in the sphere of international finance the official language or one of the official languages of the Member State of reference, unless otherwise indicated in the Annex. The documents referred to in point 8 of the Annex shall be submitted in a language customary in the sphere of international finance or in the official language or one of the official languages of the Member State of reference.~~
2. The application for recognition shall be submitted by electronic means ~~or, if accepted by the relevant competent authority, in paper form.~~ Those electronic means shall ensure that completeness, integrity and confidentiality of the information are maintained during the transmission. The applicant shall ensure that each submitted document clearly identifies to which specific requirement of this Regulation it refers.

Article 2a

Information to be provided for types of benchmarks

¹⁹ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).



1. An applicant providing only interest rate benchmarks shall submit the information listed in the Annex of this Regulation and shall specify how the specific requirements set out in Annex I of Regulation (EU) 2016/1011 are implemented where the provisions in Annex I of Regulation (EU) 2016/1011 apply in addition to, or as a substitute for, the requirements in Title II of Regulation (EU) 2016/1011, pursuant to Article 18 of that Regulation.

2. An applicant providing only commodity benchmarks shall submit the information listed in the Annex of this Regulation and shall specify how the requirements set out in Annex II of Regulation (EU) 2016/1011 are implemented for any commodity benchmark subject to Annex II instead of Title II of Regulation (EU) 2016/1011 pursuant to Article 19 of Regulation (EU) 2016/1011.

Article 3

Specific information concerning policies and procedures

1. Any policies and procedures established to comply with requirements of Regulation (EU) 2016/1011 and described in an application shall contain or be accompanied by:

(a) an indication of the identity of the person or persons responsible for the approval and maintenance of the policies and procedures;

(b) a description of how compliance with the policies and procedures is monitored and the identity of the person or persons responsible for this monitoring;

(c) a description of the measures to be taken in the event of a breach of the policies and procedures.

2. Where an applicant is a company within a group, it may comply with paragraph 1 by submitting the policies and procedures of its group where they relate to the provision of benchmarks.

Article 4

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from [date].



This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
The President
[...]

[Choose between the two options, depending on the person who signs.]

On behalf of the President
[...]
[Position]

ANNEX

Information to be provided in an application for recognition under Article 32 of Regulation (EU) 2016/1011

SECTION A - INFORMATION ON THE PROVIDING PERSON AND ITS LEGAL REPRESENTATIVE IN THE UNION

1. GENERAL INFORMATION

- (a) Full name of the applicant and its Legal Entity Identifier (LEI).
- (b) Address of the office in the country of location.
- (c) Legal Status.
- (d) Website, if any.
- (e) Where the applicant is supervised in the non-EU country where it is located, information about its current authorisation status, including the activities for which it is authorised, the name and address of the competent authority of the non-EU country and the link to the register of such competent authority, where available; where more than one authority is responsible for supervision, the details of the respective areas of competence shall be provided.
- (f) A description of the operations of the applicant in the EU and in non-EU countries, whether or not subject to any EU or extra-EU financial regulation, that are relevant for the activity of provision of benchmarks, along with a description of where these operations are conducted.
- (g) Where the applicant is part of a group, its group structure, along with the ownership chart, showing the links between any parent undertaking and subsidiaries. The undertakings and subsidiaries shown in the chart shall be identified by their full name, legal status and address of the registered office and head office.

- (h) A self-declaration of good repute including details, if applicable, of any:
- (i) proceedings of a disciplinary nature against it (unless dismissed);
 - (ii) refusal of authorisation or registration by a financial authority;
 - (iii) withdrawal of authorisation or registration by a financial authority;
 - (iv) adverse findings in civil proceedings in connection with the provision of financial services, misconduct or fraud.
- (i) the annual financial reports, including individual and consolidated financial statements where applicable, for the three financial years preceding the date of the submission of its application to the extent available. Where the financial statements of the administrator are subject to audit, the financial reports shall include the audit report on the annual and consolidated financial statement. Where these financial reports are not available for the requested period of time, the applicant shall provide ESMA with an interim financial report.

2. LEGAL REPRESENTATIVE ~~IN THE MEMBER STATE OF REFERENCE~~

- ~~(a) Documented evidence supporting the choice of the Member State of reference, by application of the criteria laid down in Article 32(4) of Regulation (EU) 2016/1011.~~
- ~~(b)~~ With respect to the legal representative ~~established in the Member State of reference~~ as set out in Article 32(3) of Regulation (EU) 2016/1011, its:
- (i) full name;
 - (ii) title, in case of a natural person, or legal status, in case of a legal person;
 - (iii) deed of incorporation, articles of association or other constitutional documents, in case of a legal person, and clarification of whether it is supervised by a supervisory authority;
 - (iv) address;
 - (v) email address;
 - (vi) telephone number;
 - (vii) written confirmation of the authority of the legal representative to act on behalf of the applicant in accordance with Article 32(3) of Regulation (EU) 2016/1011;
 - (viii) details of the performance of the oversight function by the legal representative relating to the provision of benchmarks that may be used in the Union;
 - (ix) the name, title, address, email address and telephone number of a contact person within the legal representative.

3. ORGANISATIONAL STRUCTURE AND GOVERNANCE

- (a) Internal organisational structure with respect to the board of directors, senior management committees, oversight function and any other internal body exercising significant management functions involved in the provision of a benchmark **as described in Article 4(1) of Regulation (EU) 2016/1011 and further specified in the regulatory technical standards adopted under Article 4(9) of Regulation (EU) 2016/1011²⁰**, including their:
- (i) terms of reference or summary thereof; and
 - (ii) adherence to any governance codes or similar provisions.
- (b) Procedures ensuring that the employees of the administrator and any other natural persons whose services are placed at its disposal or under its control and who are directly involved in the provision of a benchmark have the necessary skills, knowledge and experience for the duties assigned to them and operate in respect of the provisions under Article 4(7) of Regulation (EU) 2016/1011.
- (c) The number of employees (temporary and permanent) involved in the provision of a benchmark, **as follows:**
- (i) temporary employees;
 - (ii) permanent employees with under five years of relevant experience;
 - (iii) permanent employees with at least five years of relevant experience.
- (d) the number of temporary and permanent employees per functions/departments;
- (e) the information regarding the number of employees in points (c) and (d) shall be provided on a full-time equivalent basis calculated as the total hours worked divided by the maximum number of hours subject to compensation within a working year as defined by the relevant national law;
- (f) the curriculum vitae, including employment history with relevant dates, identification of past positions held and a description of the functions occupied, for each of the following:
- (i) members of the management body;
 - (ii) employees responsible for the oversight function or members performing the oversight function in case the oversight function is carried out by a separate committee;
 - (iii) employees responsible for the functions within the control framework pursuant to Article 6(3) of Regulation (EU) 2016/1011 and for the internal function referred to Article 7(2) of that Regulation.

²⁰ Commission Delegated Regulation (EU) 2021/1350 of 6 May 2021 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying the requirements to ensure that an administrator's governance arrangements are sufficiently robust (OJ L 291, 13.8.2021, p. 9).

(g) in respect of each member of the applicant's management body and employees responsible for the oversight function or members performing the oversight function in case the oversight function is carried out by a separate committee:

(i) a recent criminal-record file from the country of origin of the relevant person, unless the relevant national authorities do not issue such a file;

(ii) a self-declaration including details on whether the relevant person falls under any of the following categories:

(1) has been convicted of any criminal offence where a criminal-record file is not available;

(2) has been subject to or has been notified of any proceedings of a disciplinary nature brought by a regulatory body or of a criminal nature;

(3) has been subject to any adverse finding in civil proceedings in connection with the provision of financial services, misconduct, fraud or the management of a legal entity;

(4) has been involved with an undertaking whose registration or authorisation was withdrawn by a regulatory body;

(5) has been refused the right to carry on activities which require registration or authorisation by a regulatory body or has been investigated or suspended by a regulatory body;

(6) has been involved in the management of an undertaking which has gone into insolvency, liquidation or administration while this person was connected to the undertaking or within a year of the person ceasing to be connected to the undertaking;

(7) has been involved with an undertaking which was investigated or suspended by a regulatory body and which resulted in an enforcement action;

(8) has been disqualified from acting as a director, disqualified from acting in any managerial capacity, dismissed from employment or other appointment in an undertaking as a consequence of allegations of misconduct or malpractice.

4. CONFLICTS OF INTEREST

(a) Policies and procedures that address:

(i) how current and potential conflicts of interest are or will be identified, recorded, managed, mitigated, prevented or remedied **taking into account the requirements set out in Article 4(6) of Regulation (EU) 2016/1011**;

(ii) particular circumstances which apply to the applicant or to any particular benchmark provided by the applicant and which may be used in the Union, in relation to which conflicts of interest are most likely to arise, including where expert judgment or discretion is exercised in the benchmark's determination process, where the applicant is within the same group as a user of a benchmark and where the provider is a participant in the market or economic reality that the benchmark intends to measure.

- (iii) how the provision of benchmarks is operationally separated from any part of the applicant's business that may create an actual or potential conflict of interest pursuant to Article 4(2) of Regulation (EU) 2016/1011, unless the applicant has chosen not to apply this requirement in respect of its significant or non-significant benchmarks.
- (b) For a benchmark or a family of benchmarks, a list of any ~~material~~ actual or potential conflicts of interests identified, along with the respective mitigation measures.
- (c) The structure of the remuneration policy, specifying the criteria used to determine the remuneration of the persons involved directly or indirectly in the activity of provision of benchmarks.

5. INTERNAL CONTROL STRUCTURE, OVERSIGHT AND ACCOUNTABILITY FRAMEWORK

- (a) Policies and procedures for monitoring the activities of the provision of a benchmark or a family of benchmarks, including those relating to:
 - (i) the information technology systems, **including any back-up systems;**
 - (ii) the risk management, together with a mapping of risks which may arise and which may impact the accuracy, integrity and representativeness of the benchmarks provided or the continuity of the activity of provision, along with the respective mitigation measures;
 - (iii) the constitution, role and functioning of the oversight function, as described in Article 5 of Regulation (EU) 2016/1011 and further specified in the regulatory technical standards adopted under Article 5(5) of Regulation (EU) 2016/1011²¹ or **in the guidelines issued under Article 5(6) of Regulation (EU) 2016/1011** or the corresponding principles on financial benchmarks agreed by the International Organization of Securities Commissions (IOSCO) on 17 July 2013 ('IOSCO principles for financial benchmarks'), or the Principles for Oil Price Reporting Agencies agreed by the IOSCO on 5 October 2012 ('IOSCO principles for PRAs'), as applicable, including procedures for the appointment, substitution or removal of individuals within the oversight function;
 - (iv) the constitution, role and functioning of the control framework, as described in Article 6 of Regulation (EU) 2016/1011 or the corresponding IOSCO Principles for financial benchmarks or for PRAs, as applicable, ~~including procedures for the appointment, substitution or removal of individuals who are responsible for this framework;~~
 - (v) the accountability framework as described in Article 7 of the Regulation (EU) 2016/1011 or the corresponding IOSCO Principles for financial benchmarks or for PRAs, as applicable, ~~including procedures for the appointment, substitution or removal of individuals who are responsible for this framework.~~
 - (vi) **the record keeping obligations as described in Article 8 of Regulation (EU) 2016/1011;**

²¹ Commission Delegated Regulation (EU) 2018/1637 of 13 July 2018 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards for the procedures and characteristics of the oversight function (see page 1 of this Official Journal).

- (vii) the complaints-handling mechanism as described in Article 9 of Regulation (EU) 2016/1011.
- (b) Contingency plans for determining and publishing a benchmark on a temporary basis, including business continuity, and disaster recovery plans.
- (c) Procedures for the internal reporting of infringements of Regulation (EU) 2016/1011 by managers, employees and any other natural persons whose services are placed at the provider's disposal or under the control of the provider as described in Article 14 of Regulation (EU) 2016/1011, and further specified in the regulatory technical standards adopted under Article 14(4) of Regulation (EU) 2016/1011²².

6. OUTSOURCING

Where any activity forming a part of the process for the provision of a benchmark or family of benchmarks is outsourced:

- (a) the outsourcing arrangements, including service-level agreements, which demonstrate compliance with Article 10 of the Regulation (EU) 2016/1011 or the corresponding IOSCO Principles for financial benchmarks or for PRAs, as applicable;
- (b) details of the outsourced functions, unless this information is already included in the relevant contracts;
- (c) policies and procedures regarding the oversight of the outsourced activities, including an explanation of how the applicant intends to identify, manage and monitor the risks posed by the outsourcing unless this information is already included in the relevant contracts.
- (d) where available, any internal or external report on the outsourced activities issued in the past five years.

7. COMPLIANCE WITH IOSCO PRINCIPLES

- (a) Where available, an assessment by an independent external auditor of compliance with the Principles for financial benchmarks agreed by the International Organization of Securities Commissions (IOSCO) on 17 July 2013 or the Principles for Oil Price Reporting Agencies agreed by IOSCO on 5 October 2012, as applicable.
- (b) Where available, in cases where the applicant is subject to supervision, a certification provided by the competent authority of the non-EU country where the applicant is located, attesting compliance with the IOSCO principles referred to in letter (a).

²² Commission Delegated Regulation (EU) 2021/1351 of 6 May 2021 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying the characteristics of the systems and controls for the identification and reporting of any conduct that may involve manipulation or attempted manipulation of a benchmark (OJ L 291, 13.8.2021, p. 13).



8. OTHER INFORMATION

(a) The applicant may provide any additional information relevant to its application that it considers appropriate.

(b) The applicant shall provide this information in a manner and form stipulated by ~~the competent authority~~ ESMA.

SECTION B – INFORMATION ON THE BENCHMARKS

9. DESCRIPTION OF THE ACTUAL OR PROSPECTIVE BENCHMARKS OR FAMILIES OF BENCHMARKS THAT MAY BE USED IN THE UNION

(a) A list including all the benchmarks provided by the applicant that are already used in the Union and, where available, their International Securities Identification Numbers (ISINs).

(b) A description of the benchmark or family of benchmarks provided and that are already used in the Union, including a description of the underlying market or economic reality that the benchmark or the family of benchmarks is intended to measure, along with an indication of the sources used to provide these descriptions, and a description of contributors, if any, to this benchmark or family of benchmarks.

(c) A list including all the benchmarks that are intended to be marketed for their use in the Union and, where available, their ISINs.

(d) A description of the benchmark or family of benchmarks that are intended to be marketed for its use in the Union, including a description of the underlying market or economic reality that the benchmark or the family of benchmarks is intended to measure, along with an indication of the sources used to provide these descriptions, and a description of contributors, if any, to this benchmark or family of benchmarks.

(e) Any documented evidence that a benchmark or family of benchmarks described under points (b) and (d) may be considered regulated-data benchmarks, in accordance with the definition set out in point (24) of Article 3(1) of Regulation (EU) 2016/1011, and is thus entitled to the exemptions listed by Article 17(1) of the same Regulation.

(f) Any documented evidence that a benchmark or family of benchmarks described under points (b) and (d) may be considered commodity benchmarks, in accordance with the definition set out in point (23) of Article 3(1) of Regulation (EU) 2016/1011, and that it is not based on submissions by contributors the majority of which are supervised entities, along with

any evidence of the implementation of the special regime requirements as set out by Article 19 and Annex II of the Regulation or the corresponding IOSCO Principles for PRAs.

(g) Any documented evidence that a benchmark or family of benchmarks described under points (b) and (d) may be considered interest rate benchmarks, in accordance with the definition set out in point (22) of Article 3(1) of Regulation (EU) 2016/1011, along with any evidence of the implementation of the special regime requirements as set out by Article 18 and Annex I of the Regulation.

(h) Any documented evidence that a benchmark or family of benchmarks described under point (b) has a degree of use within the Union territory which qualifies this benchmark or all the benchmarks included in that family of benchmarks either as significant benchmarks, as defined by point (26) Article 3(1) of Regulation (EU) 2016/1011, or as non-significant benchmarks, as defined by point (27) of Article 3(1) of Regulation (EU) 2016/1011. The information to be provided shall **include an estimate, to the best of the knowledge of the applicant, of the use of the benchmarks directly or indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance of investments. This estimate shall** be determined, to the extent possible, on the basis of the provisions in Commission Delegated Regulation (EU) 2018/66²³ for the assessment of the nominal amount of financial instruments other than derivatives, the notional amount of derivatives and the net asset value of investment funds that make reference to the non-EU-country benchmarks, within the Union, including in the event of an indirect reference to any such benchmark within a combination of benchmarks.

(i) The rationale behind the administrator's application of any of the exemptions listed under Article 25(1), for significant benchmarks, and Article 26(1), for non-significant benchmarks, of Regulation (EU) 2016/1011 in respect of the benchmark; the information shall be presented, to the extent possible, on the basis of the format established by the implementing technical standards adopted under Articles 25(8) and 26(5) of Regulation (EU) 2016/1011²⁴,

²³ Commission Delegated Regulation (EU) 2018/66 of 29 September 2017 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council specifying how the nominal amount of financial instruments other than derivatives, the notional amount of derivatives and the net asset value of investment funds are to be assessed (OJ L 12, 17.1.2018, p. 11).

²⁴ Commission Implementing Regulation (EU) 2018/1106 of 8 August 2018 laying down implementing technical standards with regard to templates for the compliance statement to be published and maintained by administrators of significant and non-significant benchmarks pursuant to Regulation (EU) 2016/1011 of the European Parliament and of the Council (OJ L 202, 9.8.2018, p. 9).



and may refer as relevant to the criteria further specified in the regulatory technical standards adopted under Article 26(6) of Regulation (EU) 2016/1011²⁵.

(j) Information on measures to deal with corrections to a benchmark determination or publication.

(k) Information on the procedure to be undertaken by the provider in the event of changes to or the cessation of a benchmark, in compliance with Article 28(1) of the Regulation (EU) 2016/1011 or the corresponding IOSCO Principles for financial benchmarks or for PRAs, as applicable.

(l) the benchmark statement for each benchmark or, where applicable, for each family of benchmarks in accordance with Article 27 of Regulation (EU) 2016/1011, and further specified in the regulatory technical standards adopted under Article 27(3) of Regulation (EU) 2016/1011²⁶;

10. INPUT DATA AND METHODOLOGY

(a) For each benchmark or family of benchmarks, policies and procedures with respect to input data requirements in accordance with Article 11 of Regulation (EU) 2016/1011, and further specified in the regulatory technical standards adopted under Article 11(5) of

²⁵ Commission Delegated Regulation (EU) 2021/1348 of 6 May 2021 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria under which competent authorities may require changes to the compliance statement of non-significant benchmarks (OJ L 291, 13.8.2021, p. 1).

²⁶ Commission Delegated Regulation (EU) 2018/1643 of 13 July 2018 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further the contents of, and cases where updates are required to, the benchmark statement to be published by the administrator of a benchmark (OJ L 274, 5.11.2018, p. 29).

Regulation (EU) 2016/1011²⁷ or in the guidelines issued under Article 11(6) of Regulation (EU) 2016/1011, including those relating to:

- (i) the type of input data used, their priority of use and any exercise of discretion or expert judgment;
- (ii) any process for ensuring that input data is sufficient, appropriate and verifiable;
- (iii) the criteria that determine who may contribute input data to the administrator and the selection process of the contributors;
- (iv) the evaluation of the contributor's input data and the process of validating input data.

(b) For each benchmark or family of benchmarks, with respect to the methodology:

(i) a description of the methodology, highlighting the key elements of the methodology **to be published** in accordance with Article 13 of ~~the~~ Regulation (EU) 2016/1011, and further specified in the regulatory technical standards adopted under Article 13(3) of Regulation (EU) 2016/1011²⁸ **or in the guidelines issued under Article 13(4) of Regulation (EU) 2016/1011, as applicable;**

(ii) Policies and procedures, including those relating to:

— the measures taken to provide validation, **approval** and **internal** review of the methodology **in accordance with Article 13(1)(b) of Regulation (EU) 2016/1011, including any trials or back-testing performed;**

— the consultation process on any proposed material change in the methodology **in accordance with Article 13(1)(c) of Regulation (EU) 2016/1011.**

(iii) Any documented evidence that the methodology used for determining a benchmark complies with the requirements set out in Article 12 of Regulation (EU)

²⁷ Commission Delegated Regulation (EU) 2018/1638 of 13 July 2018 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further how to ensure that input data is appropriate and verifiable, and the internal oversight and verification procedures of a contributor that the administrator of a critical or significant benchmark has to ensure are in place where the input data is contributed from a front office function (OJ L 274, 5.11.2018, p. 6).

²⁸ Commission Delegated Regulation (EU) 2018/1641 of 13 July 2018 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further the information to be provided by administrators of critical or significant benchmarks on the methodology used to determine the benchmark, the internal review and approval of the methodology and on the procedures for making material changes in the methodology (see page 21 of this Official Journal).



2016/1011, and further specified in the regulatory technical standards adopted under Article 12(4) of Regulation (EU) 2016/1011²⁹.

²⁹ Commission Delegated Regulation (EU) 2021/1352 of 6 May 2021 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying the conditions to ensure that the methodology for determining a benchmark complies with the quality requirements (OJ L 291, 13.8.2021, p. 16).