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Additional Information

Level 1 Regulation
Benchmarks Regulation (BMR) - Regulation 2016/1011

Topic
Contribution

Subject Matter
Article 16 during the transitional period (ESMA70-145-114_Q&A 6.1)

Question
How should supervised contributors apply Article 16 during the transitional period?

ESMA Answer

22-03-2018

Original language

During the transitional period (i.e. as long as the transitional provisions of Article 51 apply), and until the administrator of a benchmark is authorised or registered, there may be cases where it is not clear to a supervised entity that provides data used in an index which BMR provisions apply to it and how they should be complied with. It is therefore important to clarify how Article 16 of the BMR "*Governance and control requirements for supervised contributors* " should be applied in this period and how it interacts with any code of conduct of the administrator.

Article 16 sets out a number of requirements that apply directly to supervised entities when they contribute input data to an administrator located in the Union, i.e. when they are " *supervised contributors*", as defined in point (10) of Article 3(1). Article 16 is relevant only to those supervised entities which "*contribute input data*" as defined in point (8) of Article 3(1).

For supervised contributors to interest rate benchmarks, points 5 to 12 of Annex I BMR apply in addition to Article 16, while Article 16(5), re. the regulatory technical standards under this Article, does not apply.

The provisions of Article 16 and of Annex I of the BMR apply from 1 January 2018, as Article 51 of the BMR does not contain transitional provisions applicable to governance and control requirements for supervised contributors. The provisions of Article 16(1) include elements that refer to the "*code of conduct referred to in Article 15*" of the BMR. Also points 6 and 12 of Annex I of the BMR refer to the "*code of conduct*".

Supervised contributors are not responsible for the compliance of a code of conduct with the requirements of Article 15, as this provision applies to administrators. The development of a code of conduct in line with the provisions of Article 15 is an obligation that only administrators can comply with.

The administrator’s compliance with Article 15 is subject to scrutiny by the relevant National Competent Authority during the application process for authorisation or registration and to ongoing supervision once the administrator has obtained either.

ESMA considers that the adherence by supervised contributors to a code of conduct not yet considered as compliant by the relevant National Competent Authority (because the administrator is not authorised or registered) does not impede a supervised contributor to be compliant with the BMR. In this case, supervised contributors should comply with Article 16, and where applicable points 5 to 12 of Annex I, also where such BMR requirements are more stringent than the elements included in the code of conduct.

In case no code of conduct exists, ESMA considers that supervised contributors should comply with Article 16, and where applicable points 5 to 12 of Annex I, only to the extent that these provisions are applicable without a code of conduct.