



European Securities and
Markets Authority

Consultation Paper

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



Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

1. respond to the question stated;
2. indicate the specific question to which the comment relates;
3. contain a clear rationale; and
4. describe any alternatives ESMA should consider.

ESMA will consider all comments received by **9 September 2022**.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading '[Data protection](#)'.

Who should read this paper?

This paper may be specifically of interest to third country administrators of benchmarks.



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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 BMR recognition regime introduced in 2019 in the context of the ESAs review with the transfer of some supervisory responsibilities to ESMA as of January 2022. ESMA is also suggesting adding or further specifying some of the already requested information that will allow ESMA to properly assess that the applicant has established all the necessary arrangements to meet the requirements of the BMR.

In this context, ESMA considers it necessary to introduce amendments to this RTS to ensure that the information provided is aligned with the changes introduced to the Benchmarks Regulation and that all information necessary are provided to ESMA. This consultation paper (CP) explains ESMA's proposal. Stakeholders are invited to provide feedback on this proposal. The input from stakeholders will help ESMA to finalise its proposed amendments to this RTS.

Contents

Section 1 explains the background to ESMA's proposals to amend the RTS. Section 2 sets out the proposed amendments to the RTS and the reasoning behind. The CP also includes in the annexes a first version of the review of the RTS and a preliminary high-level cost-benefit analysis.

Next Steps

ESMA will consider the feedback it receives to this consultation and expects to publish a final report and submission of the draft technical standards to the European Commission for endorsement in Q4 2022.

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

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. Regulation (EU) 2019/2175² (ESAs Review) introduced, *inter-alia*, the following amendments to the recognition regime under Article 32 of the BMR:
 - a. the deletion of the determination of the Member State of reference;
 - b. ESMA as the competent authority for recognising and supervising third-country benchmark administrators.
4. The rationale behind the deletion of the Member State of reference was twofold (i) the procedure to determine the Member State of reference for benchmark administrators was cumbersome and time-consuming for both applicants and national competent authorities; (ii) such determination was subject to the risk of potential supervisory arbitrage.
5. In addition, the co-legislators favoured a harmonised approach with ESMA becoming the competent authority for the recognition and supervision of third-country benchmark administrators. Furthermore, as the only competent authority for all recognised third-country benchmark administrators, ESMA would be also the sole counterpart in the Union to the third countries' supervisors of the recognised administrators, making cross-border cooperation more efficient and effective.
6. Following these amendments to the Article 32 of the BMR, ESMA suggests in this CP to amend the related RTS. Beyond the changes necessary to align the RTS to the amendments of the BMR, ESMA takes 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, specifically related to missing information of an application for recognition.

² 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 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R2175>

7. The Delegated Regulation (EU) 2018/1646³ provides the information required for an application for authorisation and registration of an applicant located in the Union to be authorised or registered as a benchmark administrator. That information should be consistent with the one required from an applicant located outside the Union applying for recognition in the Union, in order to avoid a disparity of treatment between third-country and EU benchmark administrators and to ensure a level playing field. Therefore, ESMA intends to follow up and build upon the feedback received to this consultation with a specific consultation on the review of the Delegated Regulation (EU) 2018/1646.

2 Content of the amended RTS

2.1 Amendments stemming from the ESAs review

8. Following the ESAs review, ESMA is now the relevant competent authority for recognising third country administrators. Therefore, the first amendment relates to the replacement of national competent authorities with ESMA. This is relevant for the Annex of the RTS point 8(b) on the other information that the applicant may provide to ESMA.
9. The second amendment stemming from the ESAs review is the removal of the Member State of reference from the BMR. Therefore, ESMA has also deleted such reference in this RTS. This change was implemented in the enacting terms of the RTS (i.e. Article 2.1), and points 2(a) and 2(b) of the Annex. Further, as the language of the application of the RTS referred to the official language of the Member State of reference that is now deleted, ESMA suggests submitting the application in a language customary in the sphere of international finance.

Q1: Do you agree on the proposed changes stemming from the ESAs review?

2.2 Other amendments to the enacting terms of the RTS

10. The content of the application for recognition should cover all information necessary to ESMA to conclude whether the required arrangements for meeting the relevant regulatory requirements have been put in place.
11. Following NCAs' experience of the recognition regime and assessing applications, ESMA is suggesting amending the RTS in the areas where further clarification is needed. The suggested amendments to the RTS also aim at providing applicants with more clarity on the necessary information to be provided in order to accelerate and streamline the application process.

³ Commission Delegated Regulation (EU) 2018/1646 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 information to be provided in an application for authorisation and in an application for registration (Text with EEA relevance.) OJ L 274, 5.11.2018, p. 43–50



12. One amendment in Article 2.2 is the removal of the paper form mean for submitting the application. This amendment is for efficiency reasons as electronic means are now the preferred option being secured and widely used especially following the pandemic.

Q2: Do you agree on the proposed changes to the Article 2? Do you have any other suggestions?

2.3 Other amendments to the Annex to the RTS

13. The Annex to the RTS includes the list of information to be provided at administrator level (Section A) and at benchmark level (Section B).

14. Regarding the general information, ESMA suggests adding to the self-declaration of good repute of the administrator as following:

- a. adverse findings in civil proceedings in connection with the provision of financial services, misconduct or fraud;
- b. existing or past investigation by any regulatory authority or government bodies or agencies.

15. This is to enlarge the scope of the proceedings to be submitted to ESMA beyond those relating to disciplinary nature and also to capture investigations. This additional information will allow ESMA to have a complete overview of the entity and its good repute.

16. Moreover, the annual financial reports of the administrator are added as information to be provided to ESMA. While ESMA acknowledges that the BMR does not include any requirement relating to the financial reporting of the entity, ESMA's view is that this information is nevertheless useful to assess 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.

17. Also, to be noted that this request is consistent with the delegated regulation on the benchmark's fees⁴ that requires the audited figures confirming the revenues accrued in relation to the use of its benchmarks in the Union during the most recently completed financial year.

Q3: Do you agree with the amendments to the RTS as regards the general information that a third-country applicant should provide to ESMA?

18. As concerns the organisational structure and governance (point 3 of the Annex), ESMA added the information relating to (i) the total number of employees (temporary and

⁴ Commission Delegated Regulation (EU) 2022/805 of 16 February 2022 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council by specifying fees applicable to the supervision by the European Securities Markets Authority of certain benchmark administrators OJ L 145, 24.5.2022, p. 14–19



permanent including a distinction relating to the number of years of service) (ii) the number of employees in the different functions / departments. This additional information will allow ESMA to have a holistic view of the organisation of the administrator and the employees working in the different functions of the benchmarks business activities.

19. ESMA also suggests adding a point to clarify how the calculation of the number of employees shall be performed. The number of employees should be 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. This harmonisation of the calculation will benefit both ESMA and the applicants that know in advance the information that ESMA is expecting.
20. Moreover, pursuant to Article 4(7)(a) of the BMR, the competent authority should ensure that the “employees and any other natural persons whose services are placed at their disposal or under their control and who are directly involved in the provision of a benchmark” have the necessary skills, knowledge and experience. In that respect, ESMA is adding the curriculum vitae of the members of the management body of the entity, the members of the oversight function and other officers responsible for the control framework and internal function.
21. Additionally, recital 21 of the BMR states that administrators should implement adequate governance arrangements to control conflicts of interest and to safeguard confidence in the integrity of benchmarks. Further, Article 4(7) of the BMR refers to an effective management and to the employees of the administrator not being subject to undue influence or conflicts of interest. Finally, and pursuant to Article 4(8) of the BMR, the administrator should establish procedures with the objective of ensuring the integrity and reliability of its employees. In this context, in light of the importance of the management body and the oversight function within the governance framework of an administrator, a detailed self-declaration is required for each member of those bodies together with the criminal-record file from the country of origin. This information will help ESMA assess the suitability of the senior managers of the applicant.

Q4: Do you agree with the amendments to the RTS as regards the organisational structure and governance that a third-country applicant should provide to ESMA?

Q5: Do you agree with the amendments introduced regarding the self-declaration and the criminal-record file of the members of the management body and the oversight function? Do you think that other information should be requested?

22. The remaining changes stem from the following:

- a. Referring existing requested information to the level 1 requirement and where relevant to the related delegated regulation or guidelines:
 - i. Annex 3(a) on the organisational structure;
 - ii. Annex 4(a)(i) on the conflicts of interest;

- iii. Annex 5(a)(iii) on the guidelines for the oversight function;
- iv. Annex 5(c) on the reporting of infringements;
- v. Annex 9(i) referring to the RTS on compliance statement;
- vi. Annex 10(a) on the input data requirements;
- vii. Annex 10(b)(ii) and (iii) on the transparency of the methodology.

These amendments aim at giving the applicant more information on the full regulatory provisions and how they can be fulfilled.

Q6: Do you agree with the amendments to the RTS as regards the link to the level 1, level 2 and level 3 requirements?

- b. Requesting new information and linking it to the related BMR provision when such provision was not captured by the Annex in order to ensure completeness of the information provided in the application:
 - i. Annex 4(a)(iii) refers to the BMR requirement relating to the operational separation of the benchmark activity;
 - ii. Annex 5(a)(vi) regarding the record keeping requirement;
 - iii. Annex 5(a)(vii) relating to the complaints mechanism;
 - iv. Annex 9(h) refers now to the estimate of the use of benchmarks in order to clarify that the estimate reference value of each benchmark should be provided in the application;
 - v. Annex 9(l) refers to the benchmark statement;
 - vi. Annex 10(b)(iii) on the requirements related to the methodology.

It is to be noted that these are not to be considered additional requirements as they were in any case requested from competent authorities for compliance with the BMR but simply not explicitly mentioned in the RTS.

23. ESMA deleted the reference to the “procedures for the appointment, substitution or removal of individuals who are responsible for these frameworks” in the internal control structure, oversight and accountability framework (points iv and v) in order to limit the burden on administrators.

Q7: Do you agree with the amendments to the RTS as regards the reference to the BMR requirement for completeness?

24. Further specifying the information to be provided, such as in Annex 5(a)(i), which now refers not only to the information technology systems but also to the back-up systems in



order to verify their existence. Also, in Annex 6(c), the identification, monitoring and management of the outsourcing risks is added and Annex 6(d) now includes any report on the outsourced functions to enable ESMA to have a comprehensive assessment of the outsourced activities.

Q8: Do you agree with the amendments to the RTS as regards the further specification of the information technology systems and the outsourcing?

Q9: Do you have any other suggestions of amendments to the RTS?



3 Annexes

3.1 Annex I - Summary of questions

Q1: Do you agree on the proposed changes stemming from the ESAs review?

Q2: Do you agree on the proposed changes to the Article 2? Do you have any other suggestions?

Q3: Do you agree with the amendments to the RTS as regards the general information that a third-country applicant should provide to ESMA?

Q4: Do you agree with the amendments to the RTS as regards the organisational structure and governance that a third-country applicant should provide to ESMA?

Q5: Do you agree with the amendments introduced regarding the self-declaration and the criminal-record file of the members of the management body and the oversight function? Do you think that other information should be requested?

Q6: Do you agree with the amendments to the RTS as regards the link to the level 1, level 2 and level 3 requirements?

Q7: Do you agree with the amendments to the RTS as regards the reference to the BMR requirement for completeness?

Q8: Do you agree with the amendments to the RTS as regards the further specification of the information technology systems and the outsourcing?

Q9: Do you have any other suggestions of amendments to the RTS?



3.2 Annex II - 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.

3.3 Annex III - Preliminary Cost-benefit analysis

This section provides a high-level cost-benefit analysis (CBA) of the draft amendment to the RTS on recognition. A more detailed CBA will be published together with the final ESMA proposal.

This CBA 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>	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.
<i>Costs</i>	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>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>
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3.4 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 with regard to regulatory technical standards for 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) 2016/1011⁵ of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014, and in particular Article 32(9) thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2018/1645⁶ aims to ensure that ESMA receives uniform and consistent information from third-country benchmark administrators that apply for recognition in the Union. Regulation (EU) 2019/2175⁷ 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 authorities to ESMA. It is therefore necessary to update Delegated Regulation (EU) 2018/1645 to take into account those changes.

⁵ OJ L 171, 29.6.2016, p. 1

⁶ 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*

⁷ 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*

- (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) Another set of information relates to 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 past and pending 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.
- (4) The remaining amendments are linked to information that were not explicitly captured in the Delegated Regulation (EU) 2018/1645 and that will allow ESMA to assess the related requirements and ensure compliance with Regulation (EU) 2016/1011. In particular, these amendments 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.
- (5) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority (ESMA).
- (6) 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 Council⁸,

⁸ 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)



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. The documents referred to in point 8 of the Annex 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 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) in point (h), the following subpoints are added:

‘(iv) adverse findings in civil proceedings in connection with the provision of financial services, misconduct or fraud;

(v) existing or past investigation by any regulatory authority or government bodies or agencies.’;

(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 subject to statutory audit within the meaning given in Article 2(1) of Directive 2006/43/EC⁹, 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:

‘(b) 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

⁹ Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts. [OJ L 157, 9.6.2006, p. 87]

technical standards adopted under Article 4(9) of Regulation (EU) 2016/1011¹⁰, 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 service;
- (iii) permanent employees with at least five years of service.’

(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) members performing the oversight function;
- (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.

(g) in respect of each member of the applicant’s management body and oversight function:

(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;

¹⁰ 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 (see page 9 of this Official Journal).

(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) in subsection 4, point (a) is amended as follows:

(i) 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;’

(ii) 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.’

(e) in subsection 5, point (a) is amended as follows:

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

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

(ii) 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) 2016/1011¹¹ or in the guidelines issued under Article 5(6) of Regulation (EU) 2016/1011¹² 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;’

(iii) 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;’

(iv) 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;’

(v) subpoint (vi) is added:

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

(vi) subpoint (vii) is added:

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

(f) in subsection 5, point (c) is replaced by the following:

‘(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

¹¹ 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 (OJ L 274, 5.11.2018, p. 1).

¹² Section V.I of ESMA Guidelines on non-significant benchmarks under the Benchmarks Regulation: https://www.esma.europa.eu/sites/default/files/library/esma70-145-1209_guidelines_on_non-significant_benchmarks_0.pdf

technical standards adopted under Article 14(4) of Regulation (EU) 2016/1011¹³ ;’

(g) subsection 6 is amended as follows:

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

‘(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.’

(ii) point (d) is added:

‘(d) where available, any internal or external report on the outsourced activities issued in the past five years.’

(h) in subsection 8, point (b) is replaced by the following:

‘(b) The applicant shall provide this information in a manner and form stipulated by ESMA.’

(2) Section B is amended as follows:

(a) subsection 9 is amended as follows:

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

‘(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 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) 2018/66¹⁴ 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.’

¹³ 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).

¹⁴ 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).

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

‘(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) 2016/1011¹⁵, and may refer as relevant to the criteria further specified in the regulatory technical standards adopted under Article 26(6) of Regulation (EU) 2016/1011¹⁶;’

(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) 2016/1011¹⁷;’

(b) in subsection 10, 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) 2016/1011¹⁸ or in the guidelines issued under Article 11(6) of Regulation (EU) 2016/1011¹⁹, 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 technical standards adopted under Article 13(3) of Regulation (EU)

¹⁵ 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).

¹⁶ 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).

¹⁷ 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).

¹⁸ 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 (Text with EEA relevance.) OJ L 274, 5.11.2018, p. 6–10

¹⁹ Section V.II of ESMA Guidelines on non-significant benchmarks under the Benchmarks Regulation: https://www.esma.europa.eu/sites/default/files/library/esma70-145-1209_guidelines_on_non-significant_benchmarks_0.pdf

2016/1011²⁰ or in the guidelines issued under Article 13(4) of Regulation (EU) 2016/1011²¹ 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) 2016/1011²²;’

²⁰ 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 (OJ L 274, 5.11.2018, p. 21).

²¹ Section V.III of ESMA Guidelines on non-significant benchmarks under the Benchmarks Regulation: https://www.esma.europa.eu/sites/default/files/library/esma70-145-1209_guidelines_on_non-significant_benchmarks_0.pdf

²² 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).



3.5 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 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 596/2014²³, and in particular Article 32(9) thereof,

Whereas:

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

(2) The application for recognition should include information related to the legal representative pursuant to Article 32(3) of Regulation (EU) 2016/1011. That information should enable ESMA to satisfy itself that a legal representative of the administrator in a non-EU country is established in the Union and has the power to act as required by Regulation (EU) 2016/1011.

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

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

²³ OJ L 171, 29.6.2016, p. 1



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

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

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

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

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

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

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

(11) Commission Delegated Regulation (EU) 2018/1645²⁴ aims to ensure that ESMA receives uniform and consistent information from third-country benchmark administrators that apply for recognition in the Union. Regulation (EU) 2019/2175²⁵ introduced changes to Article 32 of

²⁴ 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*

²⁵ 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)



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

(12) 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).

(13) Another set of information relates to 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 past and pending 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.

(14) The remaining amendments are linked to information that were not explicitly captured in the Delegated Regulation (EU) 2018/1645 and that will allow ESMA to assess the related requirements and ensure compliance with Regulation (EU) 2016/1011. In particular, these amendments 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.

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

(16) 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

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



accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council²⁶.

(17) 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 documents referred to in point 8 of the Annex shall be submitted in a language customary in the sphere of international finance
2. The application for recognition shall be submitted by electronic means. 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 3

Specific information concerning policies and procedures

²⁶ 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. 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) past and pending 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;
 - (v) existing or past investigation by any regulatory authority or government bodies or agencies.
- (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 statutory audit within the meaning given in Article 2(1) of Directive 2006/43/EC²⁷, 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.

²⁷ within the meaning given in Article 2(1) of Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts. OJ L 157, 9.6.2006, p. 87–107

2. LEGAL REPRESENTATIVE

With respect to the legal representative 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) 2016/1011²⁸, 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 service;

²⁸ 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 (see page 9 of this Official Journal).

- (iii) permanent employees with at least five years of service.
- (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) members performing the oversight function;
 - (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.
- (g) in respect of each member of the applicant's management body and oversight function:
 - (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 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) 2016/1011²⁹ or in the guidelines issued under Article 5(6) of Regulation (EU) 2016/1011³⁰ 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;

²⁹ 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).

³⁰ Section V.I of ESMA Guidelines on non-significant benchmarks under the Benchmarks Regulation: https://www.esma.europa.eu/sites/default/files/library/esma70-145-1209_guidelines_on_non-significant_benchmarks_0.pdf

- (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;
 - (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.
 - (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.
- (b) Contingency plans for determining and publishing a benchmark on a temporary basis.
 - (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) 2016/1011³¹.

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.

³¹ 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).



- (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).

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 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 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) 2018/66³² 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) 2016/1011³³, and may refer as relevant to the criteria further specified in the regulatory technical standards adopted under Article 26(6) of Regulation (EU) 2016/1011³⁴;

(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)

³² 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).

³³ 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).

³⁴ 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).



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) 2016/1011³⁵;

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 Regulation (EU) 2016/1011³⁶ or in the guidelines issued under Article 11(6) of Regulation (EU) 2016/1011³⁷, 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 Regulation (EU) 2016/1011, and further specified in the regulatory technical standards adopted under

³⁵ 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).

³⁶ 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).

³⁷ Section V.II of ESMA Guidelines on non-significant benchmarks under the Benchmarks Regulation: https://www.esma.europa.eu/sites/default/files/library/esma70-145-1209_guidelines_on_non-significant_benchmarks_0.pdf



Article 13(3) of Regulation (EU) 2016/1011³⁸ or in the guidelines issued under Article 13(4) of Regulation (EU) 2016/1011³⁹, 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;

— 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) 2016/1011, and further specified in the regulatory technical standards adopted under Article 12(4) of Regulation (EU) 2016/1011⁴⁰;

³⁸ 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).

³⁹ Section V.III of ESMA Guidelines on non-significant benchmarks under the Benchmarks Regulation: https://www.esma.europa.eu/sites/default/files/library/esma70-145-1209_guidelines_on_non-significant_benchmarks_0.pdf

⁴⁰ 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).