

Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (Text with EEA relevance)

TITLE VIII

TRANSITIONAL AND FINAL PROVISIONS

Article 51

Transitional provisions

1 An index provider providing a benchmark on 30 June 2016 shall apply for authorisation or registration in accordance with Article 34 by 1 January 2020.

2 By 1 January 2020, the competent authority of the Member State where an index provider applying for authorisation in accordance with Article 34 is located shall have the power to decide to register that index provider as an administrator even if it is not a supervised entity, under the following conditions:

- a the index provider does not provide a critical benchmark;
- b the competent authority is aware, on a reasonable basis, that the index or indices provided by the index provider are not widely used, within the meaning of this Regulation, in the Member State where the index provider is located as well as in other Member States.

The competent authority shall notify ESMA of its decision adopted in accordance with the first subparagraph.

The competent authority shall keep evidence of the reasons for its decision adopted in accordance with the first subparagraph, in such a form that it is possible to fully understand the evaluations of the competent authority that the index or indices provided by the index provider are not widely used, including any market data, judgement or other information, as well as information received from the index provider.

3 An index provider may continue to provide an existing benchmark which may be used by supervised entities until 1 January 2020 or, where the index provider submits an application for authorisation or registration in accordance with paragraph 1, unless and until such authorisation or registration is refused.

4 Where an existing benchmark does not meet the requirements of this Regulation, but ceasing or changing that benchmark to fulfil the requirements of this Regulation would result in a force majeure event, frustrate or otherwise breach the terms of any financial contract or financial instrument or the rules of any investment fund, which references that benchmark, the use of the benchmark shall be permitted by the competent authority of the Member State where the index provider is located. No financial instruments, financial contracts, or measurements of the performance of an investment fund shall add a reference to such an existing benchmark after 1 January 2020.

5 Unless the Commission has adopted an equivalence decision as referred to in Article 30(2) or (3) or unless an administrator has been recognised pursuant to Article 32, or a benchmark has been endorsed pursuant to Article 33, the use in the Union by supervised entities of a benchmark provided by an administrator located in a third country where the benchmark is already used in the Union as a reference for financial instruments, financial contracts, or for measuring the performance of an investment fund, shall be permitted only for such financial instruments, financial contracts and measurements of the performance of an investment fund that already reference the benchmark in the Union on, or which add a reference to such benchmark prior to, 1 January 2020.

6 The Commission shall be empowered to adopt delegated acts in accordance with Article 49 concerning measures to determine the conditions on which the relevant competent authority may assess whether the cessation or the changing of an existing benchmark to conform with the requirements of this Regulation could reasonably result in a force majeure event, frustrate or otherwise breach the terms of any financial contract or financial instrument or the rules of any investment fund which references such benchmark.

Article 52

Deadline for updating the prospectuses and key information documents

Article 29(2) is without prejudice to outstanding prospectuses approved under Directive 2003/71/EC prior to 1 January 2018. For prospectuses approved prior to 1 January 2018 under Directive 2009/65/EC, the underlying documents shall be updated at the first occasion or at the latest within 12 months after that date.

Article 53

ESMA reviews

1 ESMA shall seek to build a common European supervisory culture and consistent supervisory practices and ensure consistent approaches among competent authorities in relation to the application of Articles 32 and 33. To that end, the recognitions granted in accordance with Article 32 and the endorsements authorised in accordance with Article 33 shall be reviewed by ESMA every two years.

ESMA shall issue an opinion to each competent authority that has recognised a third country administrator or endorsed a third country benchmark assessing how that competent authority applies the relevant requirements of Articles 32 and 33 respectively and the requirements of any relevant delegated act and regulatory or implementing technical standard based on this Regulation.

2 ESMA shall have the power to require the documented evidence from a competent authority for any of the decisions adopted in accordance with the first subparagraph of Article 51(2), Article 24(1) and Article 25(2).

Article 54

Review

1 By 1 January 2020, the Commission shall review and submit a report to the European Parliament and to the Council on this Regulation and in particular on:

- a the functioning and effectiveness of the critical benchmark, mandatory administration and mandatory contribution regime under Articles 20, 21 and 23 and the definition of a critical benchmark in point (25) of Article 3(1);
- b the effectiveness of the authorisation, registration and supervision regime of administrators under Title VI and the colleges under Article 46 and the appropriateness of supervision of certain benchmarks by a Union body;
- c the functioning and effectiveness of Article 19(2), in particular the scope of its application.

2 The Commission shall review the evolution of international principles applicable to benchmarks and of legal frameworks and supervisory practices in third countries concerning the provision of benchmarks and report to the European Parliament and to the Council every five years after 1 January 2018. That report shall assess in particular whether there is a need to amend this Regulation and shall be accompanied by a legislative proposal, if appropriate.

3 The Commission shall be empowered to adopt delegated acts in accordance with Article 49 in order to extend the 42-month period referred to in Article 51(2) by 24 months, if the report referred to in point (b) of paragraph 1 of this Article provides evidence that the transitional registration regime under Article 51(2) is not detrimental to a common European supervisory culture and consistent supervisory practices and approaches among competent authorities.

Article 55

Notification of benchmarks referenced and their administrators

When a benchmark is referenced in a financial instrument covered by Article 4(1) of Regulation (EU) No 596/2014, the notifications under Article 4(1) of that Regulation shall include the name of the benchmark referenced and its administrator.

Article 56

Amendments to Regulation (EU) No 596/2014

Regulation (EU) No 596/2014 is amended as follows:

- (1) Article 19 is amended as follows:
 - (a) the following paragraph is inserted:
 - 1a. The notification obligation referred to in paragraph 1 shall not apply to transactions in financial instruments linked to shares or to debt instruments of the issuer referred to in that paragraph where at the time of the transaction any of the following conditions is met:
 - a the financial instrument is a unit or share in a collective investment undertaking in which the exposure to the issuer's shares or debt instruments does not exceed 20 % of the assets held by the collective investment undertaking;
 - b the financial instrument provides exposure to a portfolio of assets in which the exposure to the issuer's shares or debt instruments does not exceed 20 % of the portfolio's assets;
 - c the financial instrument is a unit or share in a collective investment undertaking or provides exposure to a portfolio of assets and the person discharging managerial responsibilities or person closely

associated with such a person does not know, and could not know, the investment composition or exposure of such collective investment undertaking or portfolio of assets in relation to the issuer's shares or debt instruments, and furthermore there is no reason for that person to believe that the issuer's shares or debt instruments exceed the thresholds in point (a) or (b).

If information regarding the investment composition of the collective investment undertaking or exposure to the portfolio of assets is available, then the person discharging managerial responsibility or person closely associated with such a person shall make all reasonable efforts to avail themselves of that information.;

- (b) in paragraph 7, the following subparagraph is inserted after the second subparagraph:

For the purposes of point (b), transactions executed in shares or debt instruments of an issuer or derivatives or other financial instruments linked thereto by managers of a collective investment undertaking in which the person discharging managerial responsibilities or a person closely associated with them has invested do not need to be notified where the manager of the collective investment undertaking operates with full discretion, which excludes the manager receiving any instructions or suggestions on portfolio composition directly or indirectly from investors in that collective investment undertaking..

- (2) Article 35 is amended as follows:

- (a) in paragraphs (2) and (3), the phrase ‘and Article 19(13) and (14)’ is replaced by ‘, Article 19(13) and (14) and Article 38’;
- (b) paragraph (5) is replaced by the following:

5. A delegated act adopted pursuant to Article 6(5) or (6), Article 12(5), the third subparagraph of Article 17(2), Article 17(3), Article 19(13) or (14) or Article 38, shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council..

- (3) In Article 38, the following paragraphs are added:

By 3 July 2019, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on the level of the thresholds set out in Article 19(1a)(a) and (b) in relation to managers' transactions where the issuer's shares or debt instruments form part of a collective investment undertaking or provide exposure to a portfolio of assets, with a view to assessing whether that level is appropriate or should be adjusted.

The Commission shall be empowered to adopt delegated acts in accordance with Article 35 adjusting the thresholds in Article 19(1a)(a) and (b), if it determines in that report that those thresholds should be adjusted..

Article 57

Amendments to Directive 2008/48/EC

Directive 2008/48/EC is amended as follows:

- (1) In Article 5(1), the following subparagraph is inserted after the second subparagraph:

Where the credit agreement references a benchmark as defined in point 3 of Article 3(1) of Regulation (EU) 2016/1011 of the European Parliament and of the Council⁽¹⁾, the name of the benchmark and of its administrator and the potential implications on the consumer shall be provided by the creditor, or where applicable, by the credit intermediary, to the consumer in a separate document, which may be annexed to the Standard European Consumer Credit Information form..
- (2) In Article 27(1), the following subparagraph is inserted after the second subparagraph:

By 1 July 2018 Member States shall adopt and publish the provisions necessary to comply with the third subparagraph of Article 5(1) and shall communicate them to the Commission. They shall apply those provisions from 1 July 2018..

Article 58

Amendments to Directive 2014/17/EU

Directive 2014/17/EU is amended as follows:

- (1) In the second subparagraph of Article 13(1), the following point is inserted:
 - (ea) where contracts that reference a benchmark as defined in point (3) of Article 3(1) of Regulation (EU) 2016/1011 of the European Parliament and of the Council⁽²⁾ are available, the names of the benchmarks and of their administrators and the potential implications on the consumer;;
- (2) In Article 42(2), the following subparagraph is inserted after the first subparagraph:

By 1 July 2018, Member States shall adopt and publish the provisions necessary to comply with point (ea) of the second subparagraph of Article 13(1) and shall communicate them to the Commission. They shall apply those provisions from 1 July 2018.;
- (3) In Article 43(1), the following subparagraph is added:

Point (ea) of the second subparagraph of Article 13(1) shall not apply to credit agreements existing before 1 July 2018..

Article 59

Entry into force

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

It shall apply from 1 January 2018.

Status: This is the original version (as it was originally adopted).

Notwithstanding the second paragraph of this Article, Articles 3(2), 5(5), 11(5), 13(3), 15(6), 16(5), Article 20 (excluding point (b) of paragraph (6)), Articles 21 and 23, Articles 25(8), 25(9), 26(5), 27(3), 30(5), 32(9), 33(7), 34(8), Article 46, and Articles 47(3) and 51(6) shall apply from 30 June 2016.

Notwithstanding the second paragraph of this Article, Article 56 shall apply from 3 July 2016.

- (1) Regulation (EU) 2016/1011, of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 ([OJ L 171, 29.6.2016, p. 1](#)).².
- (2) Regulation (EU) 2016/1011, of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 ([OJ L 171, 29.6.2016, p. 1](#)).²;