



European Securities and
Markets Authority

Consultation Paper

**Review of the RTS on the information to be provided in an application
for authorisation and registration 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:

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

ESMA will consider all comments received by **31 January 2023**.

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 administrators of benchmarks.



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Executive Summary

Reasons for publication

Under Delegated Regulation (EU) 2018/1646¹, an application for authorisation or registration of an administrator located in the Union needs to include information on (i) the applicant and (ii) the benchmarks provided by the applicant. The related regulatory technical standards on authorisation and registration (the 'RTS') specifies this information and was published in 2018. The RTS needs to change to reflect the changes made to the RTS on the recognition² regime introduced in the final report on the review of the RTS on recognition³ to ensure an equal treatment of EU based vs third country-based administrators. ESMA is suggesting requesting additional information or further specifying some of the information already requested in the existing RTS in order to allow National Competent Authorities (NCAs) and ESMA to properly assess whether the applicant has established all the necessary arrangements to meet the requirements of Regulation (EU) 2016/1011 (the 'Benchmarks Regulation', 'BMR').

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 the 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 together with a consolidated version 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 Q1 2023.

¹ https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2018.274.01.0043.01.ENG&toc=OJ%3AL%3A2018%3A274%3ATOC

² 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

³ https://www.esma.europa.eu/sites/default/files/library/esma81-393-599_final_report_on_review_of_rts_on_recognition.pdf

1 Introduction

1. Article 34(8) of the BMR states that ESMA shall develop regulatory technical standards to specify further the information to be provided in the application for authorisation and in the application for registration, taking into account that authorisation and registration are distinct processes where authorisation requires a more extensive assessment of the administrator's application, the principle of proportionality, the nature of the supervised entities applying for registration and the costs to the applicants and competent authorities. On 30 March 2017, ESMA published the aforementioned RTS on the application for authorisation and registration. The corresponding Delegated Regulation was published in the Official Journal in 2018.
2. The RTS on authorisation and registration specifies the information required from an applicant located in the Union, who applies to be authorised or registered as a benchmark administrator.
3. As outlined in the Consultation Paper on the review of the RTS on recognition⁴, ESMA took the opportunity of the review to address the shortcomings identified in the meantime based on three full years of NCAs' experience in recognising and supervising third country administrators as well as ESMA's own experience since it started its supervisory mandate in January 2022, specifically related to missing information of an application for recognition. Further, the information required from an applicant located in the Union should be consistent with the one required from an applicant located outside the Union applying for recognition under the BMR, in order to avoid a disparity of treatment between third-country and EU benchmark administrators and to ensure a level playing field. Therefore, in this consultation ESMA is aligning the RTS on authorisation and registration with the final report on the RTS on recognition.

2 Content of the amended RTS

2.1 Amendments to the enacting terms of the RTS

4. The content of the application for authorisation and registration should cover all information necessary to the competent authority to conclude whether the necessary arrangements for meeting the relevant regulatory requirements have been put in place.
5. 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 information needed when submitting an application for authorisation and registration in order to accelerate and streamline the application process.
6. One amendment is the addition of Article 3 on the format of the application that should be submitted electronically to the competent authority unless specified otherwise in the relevant national law. This amendment is for efficiency reasons as electronic means are now the preferred option being secured and widely used especially following the pandemic.

Q1: Do you agree on the proposed addition of Article 3? Do you have any other suggestions?

⁴ https://www.esma.europa.eu/sites/default/files/library/esma81-393-494_cp_on_review_of_rts_on_recognition.pdf

2.2 Other amendments to the Annex to the RTS

7. The Annexes to the RTS includes the list of information that an administrator shall provide when applying for authorisation (Annex I) or registration (Annex II).
8. Regarding the general information, in line with the amendments introduced to the RTS on recognition, ESMA suggests expanding the scope of the self-declaration of good repute of the administrator to the adverse findings in civil proceedings in connection with the provision of financial services, misconduct or fraud. This is to enhance the knowledge of the competent authority on the relevant proceedings beyond those relating to disciplinary nature. This additional information will allow the relevant competent authority to have a complete overview of the entity and its good repute.
9. Moreover, the annual financial reports of the administrator are added as information to be provided to the relevant competent authority in line with the amendments to the RTS on the recognition regime. 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.
10. Also, to be noted that this request is consistent with the delegated regulation on the benchmark's fees⁵ that requires the audited figures confirming the revenues accrued in relation to the use of the administrator's benchmarks in the Union.

Q2: Do you agree with the amendments to the RTS as regards the general information that an applicant should provide to its relevant competent authority?

11. As concerns the organisational structure and governance (point 2 of Annex I), in line with the amended RTS on recognition, ESMA added the information relating to (i) the total number of employees (temporary and permanent including a distinction relating to the number of years of relevant experience) (ii) the number of employees in the different functions / departments. This additional information will allow the competent authority to have a holistic view of the organisation of the administrator and the employees working in the different functions of the benchmarks business activities.
12. 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 the competent authority and the applicants that know in advance the information that competent authority is expecting.
13. Moreover, pursuant to Article 4(7)(a) of the BMR, the administrators 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 and in line with the amendments to the RTS on recognition, ESMA proposes to add the curriculum vitae of the members of the management body of the entity, the employees responsible for the oversight function or members performing the oversight function (in case the oversight

⁵ 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

function is carried out by a separate committee) and other officers responsible for the control framework and internal function.

14. 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, and in line with the amendments introduced to the RTS on the recognition, 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 the relevant competent authority to assess the suitability of the senior managers of the applicant.

Q3: Do you agree with the amendments to the RTS as regards the organisational structure and governance that an applicant should provide to its relevant competent authority?

Q4: 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?

15. For clarity purposes, ESMA added a reference to the level 1 requirement and, where relevant, to the related delegated regulation or guidelines has been added with regard to the information already requested in the previous version of the RTS, specifically:

- a. Annex I 2(a) on the organisational structure;
- b. Annex I 3(a)(i) on the conflicts of interest;
- c. Annex I 4(a)(iii) on the guidelines for the oversight function;
- d. Annex I 4(c) on the reporting of infringements;
- e. Annex I 5(h) referring to the RTS on compliance statement;
- f. Annex I 6(a) on the input data requirements;
- g. Annex I 6(b)(ii) and (iii) on the transparency of the methodology.

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

Q5: Do you agree with the amendments to the RTS as regards the link to the level 1, level 2 and level 3 requirements?

16. ESMA also added new information, including the regulatory reference, related to BMR provisions that were not explicitly captured yet by the RTS in order to ensure completeness of the information provided in the application :
- h. Annex I 3(a)(iii) refers to the BMR requirement relating to the operational separation of the benchmark activity;
 - i. Annex I 4(a)(vi) regarding the record keeping requirement;
 - j. Annex I 4(a)(vii) relating to the complaints mechanism;



- k. Annex I 5(a) 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;
- l. Annex I 5(g) refers to the benchmark statement;
- m. Annex I 6(b)(iii) on the requirements related to the methodology.

17. In line with the amendments introduced on the RTS on recognition, 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 4(a)(vi) and 4(a)(vii)) in order to limit the burden on administrators.

Q6: Do you agree with the amendments to the RTS as regards the reference to the BMR requirement for completeness?

18. Further specifying the information to be provided, such as in Annex I 4(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 I 7(c), the identification, monitoring and management of the outsourcing risks is added and Annex I 7(d) now includes any report on the outsourced functions to enable the relevant competent authority to have a comprehensive assessment of the outsourced activities.

Q7: Do you agree with the amendments to the RTS as regards the further specification of the information technology systems and the outsourcing?

19. Finally, ESMA has amended Annex II of the RTS regarding the information to be provided in an application for registration in order to ensure consistency with the changes to the Annex I, when applicable.

Q8: Do you agree with the amendments to the Annex II of the RTS? Do you have any other suggestions?

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 addition of Article 3? Do you have any other suggestions?

Q2: Do you agree with the amendments to the RTS as regards the general information that an applicant should provide to its relevant competent authority?

Q3: Do you agree with the amendments to the RTS as regards the organisational structure and governance that an applicant should provide to its relevant competent authority?

Q4: 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?

Q5: Do you agree with the amendments to the RTS as regards the link to the level 1, level 2 and level 3 requirements?

Q6: Do you agree with the amendments to the RTS as regards the reference to the BMR requirement for completeness?

Q7: Do you agree with the amendments to the RTS as regards the further specification of the information technology systems and the outsourcing?

Q8: Do you agree with the amendments to the Annex II of the RTS? Do you have any other suggestions?

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



3.2 Annex II - Legislative mandate to develop technical standards

Article 34

1. A natural or legal person located in the Union that intends to act as an administrator shall apply to the competent authority designated under Article 40 of the Member State in which that person is located in order to receive:

(a) authorisation if it provides or intends to provide indices which are used or intended to be used as benchmarks within the meaning of this Regulation;

(b) registration if it is a supervised entity, other than an administrator, that provides or intends to provide indices which are used or intended to be used as benchmarks within the meaning of this Regulation, on condition that the activity of provision of a benchmark is not prevented by the sectoral discipline applying to the supervised entity and that none of the indices provided would qualify as a critical benchmark; or

(c) registration if it provides or intends to provide only indices which would qualify as non-significant benchmarks.

1a. Where one or more of the indices provided by the person referred to in paragraph 1 would qualify as critical benchmarks as referred to in points (a) and (c) of Article 20(1), the application shall be addressed to ESMA.

[...]

8. ESMA shall develop draft regulatory technical standards to specify further the information to be provided in the application for authorisation and in the application for registration, taking into account that authorisation and registration are distinct processes where authorisation requires a more extensive assessment of the administrator's application, the principle of proportionality, the nature of the supervised entities applying for registration under point (b) of paragraph 1 and the costs to the applicants and competent authorities.

ESMA shall submit those draft regulatory technical standards to the Commission by 1 April 2017.

Power is delegated to 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 authorisation and registration. A more detailed CBA will be published together with the final ESMA proposal.

This CBA is linked to the changes to the information to be provided in an application for authorisation and in an application for registration as envisaged in Article 34 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 the relevant competent authority to demonstrate compliance with the requirements of Regulation (EU) No 2016/1011. The specification of all pieces of information to be provided in the application for authorisation and registration would accelerate and streamline the process envisaged by Article 34 of the Regulation (EU) 2016/1011 and ensure its efficiency. The amendments to the existing RTS aim at first addressing the shortcomings identified based on three full years of NCAs' experience in authorising, registering and supervising EU administrators, specifically related to missing information. Second, these amendments are also meant to align the EU regime for authorisation and registration with the Third country regime for recognition applications. Without such further amendments, the RTS would not be consistent with the information required in an application for recognition and the information required in an application for authorisation and registration would not be comprehensive. As a consequence of the adoption of the amended RTS, the authorisation and registration process will be conducted more easily and more rapidly and with less uncertainty about comprehensiveness of received information. EU 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 authorisation or registration in the EU.
<i>Costs</i>	The amended draft RTS are aimed at detailing the content of an application for authorisation or registration, on the basis of the requirements already provided for in the Level 1. The 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 authorisation or the registration in accordance with Article 34 of the Regulation (EU) 2016/1011, but following a cumbersome exchange of information between the relevant competent authority and the applicant.

	<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 administrators, and for administrators that produce a large number of benchmarks, because during the application process, 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 34 of the Regulation (EU) 2016/1011.</p>
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3.4 Annex III – Draft amendments to the RTS on Authorisation and Registration

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

of XXX

amending the regulatory technical standards laid down in Delegated Regulation (EU) 2018/1646 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council as regards the information to be provided in an application for authorisation and in an application for registration

(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 596/2014⁶, and in particular the third subparagraph of Article 34(8) thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2018/1646⁷ aims to ensure that the competent authorities receive uniform and consistent information from benchmark administrators located in the Union that apply for authorisation or registration. It specifies the information to be provided to the relevant competent authority in an application for authorisation and registration, 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 the relevant competent authority 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 the relevant competent authority to have a full overview of the different

⁶ OJ L 171, 29.6.2016, p. 1.

⁷ 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*

departments composing the structure of an applicant and the different employees (permanent and temporary).

- (2) Furthermore, Delegated Regulation (EU) 2018/1646 relates to information on the governance of the applicant including a self declaration of good repute of the applicant. The self declaration allows the relevant competent authority 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 the relevant competent authority to have an overview of all the possible proceedings and not only those of a disciplinary nature. Further, it is important to also provide this self declaration at the level of the management body and the members of the oversight function of the applicant to ensure that they are suitable, guarantee an effective management and safeguard confidence in the integrity of benchmarks. Finally, the curriculum vitae will allow the relevant competent authority to assess the skills, knowledge and experience of the relevant employees of the administrator. The financial reports of the applicant will also allow the relevant competent authority to assess the financial soundness of the applicant. As a result the additional information is requested in this Regulation.
- (3) In order to ensure the compliance of the applicant with Regulation (EU) 2016/1011, the information to be provided by the applicant is further clarified. In particular, it is important to provide the relevant competent authority with the necessary information on how the provision of benchmarks is operationally separated from any part of the applicant's business to prevent the occurrence of conflicts of interest relating to the other business activities of the applicant. In addition, the necessary information on the record keeping requirements should also be provided to detect and be able to prove the existence of infringements of Regulation (EU) 2016/1011. Further, the necessary information on the complaints handling mechanism of the applicant will enable the relevant competent authority to assess how stakeholders may notify the applicant of complaints and how the applicant evaluates the merits of any complaint.
- (4) Delegated Regulation (EU) 2018/1646 should therefore be amended accordingly.
- (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) 2018/1646

Delegated Regulation (EU) 2018/1646 is amended as follows:(1) the following Article 1a is added:

'Article 1a

Format of the application

The application for authorisation and the application for registration shall be submitted by electronic means unless specified otherwise in the relevant national law. 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.';

(2) Annex I is amended in accordance with Annex I to this Regulation;

(3) Annex II is replaced by the text in Annex II of 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 I

(I) Annex I to Delegated Regulation (EU) 2018/1646 is amended as follows:

(1) Section 1 is amended as follows:

(a) in point (j), subpoints (i) to (iii) are replaced with the following points (i) to (iv):

- (i) proceedings of a disciplinary nature against it (unless dismissed);
- (ii) refusal of authorisation or registration by a financial authority;
- (iii) withdrawal of authorisation or registration by a financial authority;
- (iv) adverse findings in civil proceedings in connection with the provision of financial services, misconduct or fraud.’;

(b) 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.’;

(2) Section 2 is amended as follows:

(a) in point (a), the introductory wording is replaced by the following:

- ‘(a) Internal organisational structure with respect to the board of directors, senior management committees, oversight function and any other internal body exercising significant management functions involved in the provision of a benchmark as described in Article 4(1) of Regulation (EU) 2016/1011 and further specified in the regulatory technical standards adopted under Article 4(9) of Regulation (EU) 2016/1011¹⁰, including their.’;

(b) 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;

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, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, 9.6.2006, p. 87).

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 (OJ L 291, 13.8.2021, p. 9).

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

(c) the following points (d) to (g) are added:

- ‘(d) the number of temporary and permanent employees per functions/departments;
- (e) the information regarding the number of employees in points (c) and (d) shall be provided on a full-time equivalent basis calculated as the total hours worked divided by the maximum number of hours subject to compensation within a working year as defined by the relevant national law;
- (f) the curriculum vitae, including employment history with relevant dates, identification of past positions held and a description of the functions occupied, for each of the following:
 - (i) members of the management body;
 - (ii) employees responsible for the oversight function or members performing the oversight function in case the oversight function is carried out by a separate committee;
 - (iii) employees responsible for the functions within the control framework pursuant to Article 6(3) of Regulation (EU) 2016/1011 and for the internal function referred to in Article 7(2) of that Regulation;
- (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.’;

(3) Section 3 is amended as follows:

(a) 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.’;

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

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

(4) Section 4 is amended as follows:

(a) 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) subpoints (iii) to (v) are 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) 2016/1011, including procedures for the appointment, substitution or removal of individuals within the oversight function;

- (iv) the constitution, role and functioning of the control framework, as described in Article 6 of Regulation (EU) 2016/1011;
- (v) the accountability framework as described in Article 7 of Regulation (EU) 2016/1011;’;
- (iii) subpoints (vi) and (vii) are added:
 - ‘(vi) the record keeping obligations as described in Article 8 of Regulation (EU) 2016/1011;
 - (vii) the complaints-handling mechanism as described in Article 9 of Regulation (EU) 2016/1011.’;

(b) 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 technical standards adopted under Article 14(4) of Regulation (EU) 2016/1011¹².’;

(5) Section 5 is amended as follows:

(a) point (a) is replaced by the following:

- ‘(a) A description of a benchmark or family of benchmarks provided or that the applicant intends to provide and the type to which the benchmark belongs including 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, to the best of the knowledge of the applicant and taking into account the provisions of Regulation (EU) 2016/1011 and the Commission Delegated Regulation (EU) 2018/66¹³, along with an indication of the sources used to determine the type of the benchmark.’;

(b) the following points (f) to (h) are added:

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 (see page 1 of this Official Journal).

¹² 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).

¹³ 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).

- (f) 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).
 - (g) 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) 2016/1011¹⁴.
 - (h) 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.’;
- (6) Section 6 is amended as follows:
- (a) in point (a), the introductory wording 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) 2016/1011¹⁷ or in the guidelines issued under Article 11(6) of Regulation (EU) 2016/1011, including those relating to:’;
 - (b) point (b) is amended as follows:
 - (i) subpoints (i) and (ii) are 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

¹⁴ 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).

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) 2018/1638 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).

Regulation (EU) 2016/1011¹⁸ or in the guidelines issued under Article 13(4) of Regulation (EU) 2016/1011 as applicable;’;

- (ii) policies and procedures, including those relating to:
 - the measures taken to provide validation, approval and internal review of the methodology in accordance with Article 13(1)(b) of Regulation (EU) 2016/1011;
 - the consultation process on any proposed material change in the methodology in accordance with Article 13(1)(c) of Regulation (EU) 2016/1011;’;

(ii) 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) 2016/1011¹⁹.’;

(7) Section 7 is amended as follows:

(a) point (c) is replaced with 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;’;

(b) point (d) is added:

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

ANNEX II

ANNEX II

¹⁸ 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).

¹⁹ 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).



Information to be provided in an application for registration under Article 34 of Regulation (EU) 2016/1011

‘A’ means ‘Applicable’

‘N/A’ means ‘Not applicable’

Item in Annex I		Supervised entities providing only non-critical benchmarks	Entities providing only non-significant benchmarks
(1) General information			
1(a)	Full name	A	A
1(b)	Address	A	A
1(c)	Legal status	A	A
1(d)	Website	A	A
1(e)	Contact person	A	A
1(f)	Current authorisation status	A ₍₁₎	A ₍₁₎ to supervised entities N/A to non-supervised entities
1(g)	Operations conducted	A ₍₁₎	A ₍₁₎
1(h)	Constitutional documents	A ₍₁₎	A ₍₁₎
1(i)	Group structure	A ₍₁₎	A ₍₁₎
1(j)	Self-declaration of good repute	A ₍₁₎	A ₍₁₎
1(k)	Number of benchmarks	A	A
1(l)	Financial reports	A	A

(2) Organisational structure and governance			
2(a)	Internal organisational structure	A	A
2(b)	Employees	A	A
2(c)	Human resources	A	N/A
2(d)	Number of employees	A	N/A
2(e)	Full Time Equivalent	A	N/A
2(f)	Curriculum Vitae	A	N/A
2(g)	Self declaration	A	N/A
(3) Conflicts of interest			
3(a)	Policies and procedures	A ⁽²⁾	A ⁽²⁾ in the form of a summary
3(b)	Material conflicts of interest	A	N/A
3(c)	Remuneration structure	A	A
(4) Internal control structure, oversight and accountability framework			
4(a)	Policies and procedures for monitoring the activities of the provision of a benchmark	A	A ⁽³⁾ in the form of a summary
4(b)	Internal arrangements for determining and publishing a benchmark	A	A in the form of a summary
4(c)	Internal reporting of infringements	A	A in the form of a summary
(5) Description of benchmarks provided			

5(a)	Description	A ₍₄₎	A in the form of a summary
5(b)	Underlying market	A ₍₄₎	A in the form of a summary
5(c)	Contributors	A ₍₄₎	A in the form of a summary
5(d)	Corrections	A ₍₄₎	A in the form of a summary
5(e)	Changes to and cessation	A ₍₄₎	A in the form of a summary
5(f)	List of benchmarks	A	A
5(g)	Benchmark statement	A	A
5(h)	Exemptions	A	A
(6) Input data and methodology			
6(a)(i)	Description of input data used	A ₍₄₎	A in the form of a summary
6(a)(ii)	Input data — sufficient, appropriate and verifiable	A ₍₄₎	A ₍₅₎ in the form of a summary
6(a)(iii)	Contributors	A ₍₄₎	A in the form of a summary
6(a)(iv)	Evaluation of contributor's input data and validation of input data	A ₍₆₎	N/A
6(b)(i)	Description of the methodology	A ₍₄₎	A in the form of a summary

6(b)(ii)(1)	Validation/Review	A ₍₄₎	A in the form of a summary
6(b)(ii)(2)	Material change	A ₍₆₎	N/A
6(b)(iii)	Methodology	A ₍₄₎	A in the form of a summary
(7) Outsourcing			
7(a)	Contracts	A ₍₆₎	N/A
7(b)	Outsourced functions	A ₍₆₎	A in the form of a summary
7(c)	Control	A ₍₆₎	A in the form of a summary
7(d)	Report	A ₍₆₎	A in the form of a summary
(8) Others			
8(a)	Additional information	A	A
8(b)	Form	A	A

⁽¹⁾ Unless already supervised by the same competent authority for other activities than the provision of benchmarks

⁽²⁾ An applicant may choose not to provide information relating to point 3(a)(iii) of Annex I, in respect of a significant or non-significant benchmark it provides.

⁽³⁾ An applicant may omit to provide information relating to point 4(a)(iii) of Annex I — with the exception of information on the establishment and maintenance of a permanent oversight function — points 4(a)(iv) and 4(a)(v) of Annex I — for some of the information to be provided on the control and accountability framework — in respect of a non-significant benchmark it provides.

⁽⁴⁾ A supervised entity which provides both significant and non-significant benchmarks may provide such information in the form of a summary with reference to its non-significant benchmarks.

⁽⁵⁾ An applicant may choose not to provide information relating to input data being verifiable in respect of a non-significant benchmark that it provides.



⁽⁶⁾ A supervised entity which provides both significant and non-significant benchmarks may provide such information only for the significant benchmarks it provides.



3.5 Annex IV – Consolidated Draft RTS on authorisation and registration

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)

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 596/2014 ⁽¹⁾, and in particular **the third subparagraph of Article 34(8)** thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2018/1646²⁰ aims to ensure that the competent authorities receive uniform and consistent information from benchmark administrators located in the Union that apply for authorisation or registration. It specifies the information to be provided to the relevant competent authority in an application for authorisation and registration, 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 the relevant competent authority 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 the relevant competent authority to have a full overview of the different departments composing the structure of an applicant and the different employees (permanent and temporary).
- (2) Furthermore, Delegated Regulation (EU) 2018/1646 relates to information on the governance of the applicant including a self declaration of good repute of the applicant. The self declaration allows the relevant competent authority 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 the relevant competent authority to have an overview of all

²⁰ 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*

the possible proceedings and not only those of a disciplinary nature. Further, it is important to also provide this self declaration at the level of the management body and the members of the oversight function of the applicant to ensure that they are suitable, guarantee an effective management and safeguard confidence in the integrity of benchmarks. Finally, the curriculum vitae will allow the relevant competent authority to assess the skills, knowledge and experience of the relevant employees of the administrator. The financial reports of the applicant will also allow the relevant competent authority to assess the financial soundness of the applicant. As a result the additional information is requested in this Regulation.

- (3) The remaining amendments are linked to information that were not explicitly captured in the Delegated Regulation (EU) 2018/1646 and that will allow the relevant competent authority to assess the related requirements and ensure compliance with Regulation (EU) 2016/1011. In particular, it is important to provide the relevant competent authority with the necessary information on how the provision of benchmarks is operationally separated from any part of the applicant's business to prevent the occurrence of conflicts of interest relating to the other business activities of the applicant. In addition, the necessary information on the record keeping requirements should also be provided to detect and be able to prove the existence of infringements of Regulation (EU) 2016/1011. Further, the necessary information on the complaints handling mechanism of the applicant will enable the relevant competent authority to assess how stakeholders may notify the applicant of complaints and how the applicant evaluates the merits of any complaint.
- (4) Delegated Regulation (EU) 2018/1646 should therefore be amended accordingly.
- (5) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority to the Commission.
- (6) The European Securities and Markets Authority 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 Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council ⁽²⁾.

HAS ADOPTED THIS REGULATION:

Article 1

General requirements

1. An application pursuant to Article 34 of Regulation (EU) 2016/1011 shall contain, as appropriate, information that includes the following:
 - (a) items listed in Annex I, when the applicant is a legal person applying for authorisation;
 - (b) items listed in Annex II, when the applicant is a legal person applying for registration;
 - (c) items listed in Annex I, when the applicant is a natural person applying for authorisation, with the exception of the information listed at points (c), (f), (h) and (i) of paragraph 1 of Annex I;

(d) items listed in Annex II, when the applicant is a natural person applying for registration, with the exception of the information listed at points (c), (f), (h) and (i) of paragraph 1 of Annex II.

2. The application may contain information at the level of a family of benchmarks only where none of the benchmarks within the family is included in the list of critical benchmarks established in accordance with Article 20(1) of Regulation (EU) 2016/1011.
3. Where the applicant has omitted to provide any of the required information the application shall include an explanation as to why that information has not been provided.
4. The applicant shall not be required to provide the information listed under points (f) to (j) of paragraph 1 of Annex I or Annex II, as applicable, to the extent that the applicant is already supervised in the Member State by the same competent authority for other activities than the provision of benchmarks.

Article 1a

Format of the application

The application for authorisation and the application for registration shall be submitted by electronic means unless specified otherwise in the relevant national law. 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 2

Information to be provided for types of benchmarks

1. An applicant may submit for any non-significant benchmark that it provides the information required by paragraph 6 of Annex I or, where applicable, paragraph 6 of Annex II in the form of a summary.
2. Non-supervised entities providing critical and significant benchmarks shall submit the information listed in Annex I.
3. Supervised entities providing only non-critical benchmarks shall submit the information listed in the first column of Annex II.
4. An applicant providing only non-significant benchmarks shall submit the information listed in the second column of Annex II.
5. Without prejudice to paragraphs 1 to 4, an applicant providing only regulated-data benchmarks shall not submit the information listed in points 5(c), 6(a)(iii) and 6(a)(iv) of Annex I and Annex II.
6. An applicant providing only interest rate benchmarks shall submit the information listed in the Annexes of this Regulation and shall specify how the specific requirements set out in Annex I of Regulation (EU) 2016/1011 are implemented where the provisions in Annex I of Regulation



(EU) 2016/1011 apply in addition to, or as a substitute for, the requirements in Title II of Regulation (EU) 2016/1011, pursuant to Article 18 of that Regulation.

7. An applicant providing only commodity benchmarks shall provide the information listed in Annex I of this Regulation if it is a non-supervised entity or if it provides a critical benchmark. If it is a supervised entity and none of the benchmarks it provides is a critical benchmark, it shall provide the information listed in the first column of Annex II. The applicant shall specify how the requirements set out in Annex II of Regulation (EU) 2016/1011 are implemented for any commodity benchmark subject to Annex II instead of Title II of Regulation (EU) 2016/1011 pursuant to Article 19 of Regulation (EU) 2016/1011.

Article 3

Specific information concerning policies and procedures

1. Any policies and procedures provided 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 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. An applicant that is part of a group 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 25 January 2019.

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

Done at Brussels, 13 July 2018.

For the Commission
The President
Jean-Claude JUNCKER

⁽¹⁾ [OJ L 171, 29.6.2016, p. 1.](#)

⁽²⁾ 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](#)).

ANNEX I

Information to be provided in an application for authorisation under Article 34 of Regulation (EU) 2016/1011

1. GENERAL INFORMATION

- (a) Full name of the applicant and its Legal Entity Identifier (LEI).
- (b) Address of the office within the European Union.
- (c) Legal status.
- (d) Website, if any.
- (e) With respect to the contact person for the purpose of the application:
 - (i) name;
 - (ii) title;
 - (iii) address;
 - (iv) email address;
 - (v) telephone number.
- (f) Where the applicant is a supervised entity, information about its current authorisation status, including the activities for which it is authorised and its relevant competent authority in its home Member State.
- (g) A description of the operations of the applicant in the European Union, whether or not subject to financial regulation, that are relevant for the activity of provision of benchmarks, along with a description of where these operations are conducted.
- (h) Any deed of incorporation, articles of association or other constitutional documents.
- (i) 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.
- (j) A self-declaration of good repute including details, if applicable, of any:
 - (i) proceedings of a disciplinary nature against it (unless dismissed);
 - (ii) refusal of authorisation or registration by a financial authority;
 - (iii) withdrawal of authorisation or registration by a financial authority;

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

(k) Number of benchmarks provided.

(l) 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/EC²¹, 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 the relevant competent authority with an interim financial report.

2. 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) 2016/1011²², including their:

- (i) terms of reference or a 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 the Regulation (EU) 2016/1011.

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

- (i) temporary employees;
- (ii) permanent employees with under five years of relevant experience;
- (iii) permanent employees with at least five years of relevant experience.

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

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

²¹ 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

²² 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).

- (f)) the curriculum vitae, including employment history with relevant dates, identification of past positions held and a description of the functions occupied, for each of the following:
- (i) members of the management body;
 - (ii) employees responsible for the oversight function or members performing the oversight function in case the oversight function is carried out by a separate committee;
 - (iii) employees responsible for the functions within the control framework pursuant to Article 6(3) of Regulation (EU) 2016/1011 and for the internal function referred to Article 7(2) of that Regulation.
- (g)in respect of each member of the applicant’s management body and employees responsible for the oversight function or members performing the oversight function in case the oversight function is carried out by a separate committee:
- (i) a recent criminal-record file from the country of origin of the relevant person, unless the relevant national authorities do not issue such a file;
 - (ii) a self-declaration including details on whether the relevant person falls under any of the following categories:
 - (1) has been convicted of any criminal offence where a criminal-record file is not available;
 - (2) has been subject to or has been notified of any proceedings of a disciplinary nature brought by a regulatory body or of a criminal nature;
 - (3) has been subject to any adverse finding in civil proceedings in connection with the provision of financial services, misconduct, fraud or the management of a legal entity;
 - (4) has been involved with an undertaking whose registration or authorisation was withdrawn by a regulatory body;
 - (5) has been refused the right to carry on activities which require registration or authorisation by a regulatory body or has been investigated or suspended by a regulatory body;
 - (6) has been involved in the management of an undertaking which has gone into insolvency, liquidation or administration while this person was connected to the undertaking or within a year of the person ceasing to be connected to the undertaking;
 - (7) has been involved with an undertaking which was investigated or suspended by a regulatory body and which resulted in an enforcement action;
 - (8) has been disqualified from acting as a director, disqualified from acting in any managerial capacity, dismissed from employment or other appointment in an undertaking as a consequence of allegations of misconduct or malpractice.

3. 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, 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 applicant is a participant in the market or economic reality that the benchmark intends to measure.
 - (iii) **how the provision of benchmarks is operationally separated from any part of the applicant's business that may create an actual or potential conflict of interest pursuant to Article 4(2) of Regulation (EU) 2016/1011, unless the applicant has chosen not to apply this requirement in respect of its significant or non-significant benchmarks.**
- (b) For a benchmark or a family of benchmarks, a list of any **material actual or potential** conflicts of interests identified, along with the respective mitigation measures. ~~For each critical benchmark, an up-to-date inventory of actual and potential conflicts of interest 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.

4. 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) 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) 2016/1011 ⁽¹⁾ **or in the guidelines issued under Article 5(6) of Regulation (EU) 2016/1011**, including procedures for the appointment, substitution or removal of individuals within the oversight function;
 - (iv) the constitution, role and functioning of the control framework, as described in Article 6 of Regulation (EU) 2016/1011, ~~including procedures for the appointment, substitution or removal of individuals responsible for this framework~~;

- (v) the accountability framework as described in Article 7 of Regulation (EU) 2016/1011; ~~including procedures for the appointment, substitution or removal of individuals who are responsible for this framework.~~
 - (vi) the record keeping obligations as described in Article 8 of Regulation (EU) 2016/1011;
 - (vii) the complaints-handling mechanism as described in Article 9 of Regulation (EU) 2016/1011.
- (b) Contingency plans for determining and publishing a benchmark on a temporary basis, including business continuity, and disaster recovery plans.
- (c) Procedures for the internal reporting of infringements of Regulation (EU) 2016/1011 by managers, employees and any other natural persons whose services are placed at the applicant's disposal or under the control of the applicant ~~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) 2016/1011²³.~~

5. DESCRIPTION OF BENCHMARKS OR FAMILIES OF BENCHMARKS PROVIDED

- (a) A description of a benchmark or family of benchmarks provided or that the applicant intends to provide and the type to which the benchmark belongs ~~including 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,~~ to the best of the knowledge of the applicant and taking into account the provisions of Regulation (EU) 2016/1011 and the ~~Commission Delegated Regulation (EU) 2018/66²⁴,~~ along with an indication of the sources used to determine the type of the benchmark.
- (b) A description of the underlying market or economic reality that the benchmark or family of benchmarks is intended to measure, along with an indication of the sources used to provide this description.
- (c) A description of contributors to a benchmark or family of benchmarks, along with the code of conduct as described in Article 15 of the Regulation (EU) 2016/1011 and for critical benchmarks, the name and location of contributors.
- (d) Information on measures to deal with corrections to the determination or publication of a benchmark or family of benchmarks.
- (e) Information on the procedure to be undertaken by the administrator in the event of changes to or the cessation of a benchmark or a family of benchmarks in compliance with Article 28(1) of the Regulation (EU) 2016/1011.

²³ 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).

²⁴ 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).

- (f) 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).
- (g) 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) 2016/1011²⁵.
- (h) 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) 2016/1011²⁶, and may refer as relevant to the criteria further specified in the regulatory technical standards adopted under Article 26(6) of Regulation (EU) 2016/1011²⁷.

6. INPUT DATA AND METHODOLOGY

- (a) For each benchmark or family of benchmarks, policies and procedures with respect to input data 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) 2016/1011²⁸ or in the guidelines issued under Article 11(6) of Regulation (EU) 2016/1011, including those relating to:
 - (i) the type of input data used, their priority of use and any exercise of discretion or expert judgment;
 - (ii) any processes 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:

²⁵ 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).

²⁶ 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).

²⁷ 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).

²⁸ 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).

- (i) a description of the methodology highlighting the key elements of the methodology **to be published** in accordance with Article 13 of the Regulation (EU) 2016/1011 and further specified in the regulatory technical standards adopted under Article 13(3) of Regulation (EU) 2016/1011 ^(?) **or in the guidelines issued under Article 13(4) of Regulation (EU) 2016/1011, as applicable;**
- (ii) Policies and procedures including those relating to:
 - (1) the measures taken to provide validation, **approval**, and **internal** review of the methodology, **in accordance with Article 13(1)(b) of Regulation (EU) 2016/1011 including any trials or back testing performed;**
 - (2) 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) 2016/1011²⁹.

7. OUTSOURCING

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

- (a) the relevant outsourcing arrangements, including service-level agreements, which demonstrate compliance with Article 10 of the Regulation (EU) 2016/1011;
- (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.**

8. OTHER INFORMATION

- (a) The applicant may provide any additional information relevant to its application that it considers appropriate.
- (b) The applicant shall provide the requisite information in the manner and form stipulated by the competent authority.

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

⁽¹⁾ 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).

⁽²⁾ 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).

ANNEX II

Information to be provided in an application for registration under Article 34 of Regulation (EU) 2016/1011

‘A’ means ‘Applicable’

‘N/A’ means ‘Not applicable’

Item in Annex I		Supervised entities providing only non-critical benchmarks	Entities providing only non-significant benchmarks
(1) General information			
1(a)	Full name	A	A
1(b)	Address	A	A
1(c)	Legal status	A	A
1(d)	Website	A	A
1(e)	Contact person	A	A
1(f)	Current authorisation status	A ⁽¹⁾	A ⁽¹⁾ to supervised entities N/A to non-supervised entities

1(g)	Operations conducted	A ⁽¹⁾	A ⁽¹⁾
1(h)	Constitutional documents	A ⁽¹⁾	A ⁽¹⁾
1(i)	Group structure	A ⁽¹⁾	A ⁽¹⁾
1(j)	Self-declaration of good repute	A ⁽¹⁾	A ⁽¹⁾
1(k)	Number of benchmarks	A	A
1(l)	Financial reports	A	A
(2) Organisational structure and governance			
2(a)	Internal organisational structure	A	A
2(b)	Employees	A	A
2(c)	Human resources	A	N/A
2(d)	Number of employees	A	N/A
2(e)	Full Time Equivalent	A	N/A
2(f)	Curriculum Vitae	A	N/A
2(g)	Self declaration	A	N/A
(3) Conflicts of interest			
3(a)	Policies and procedures	A ⁽²⁾	A ⁽²⁾ in the form of a summary
3(b)	Material conflicts of interest	A	N/A
3(c)	Remuneration structure	A	A
(4) Internal control structure, oversight and accountability framework			

4(a)	Policies and procedures for monitoring the activities of the provision of a benchmark	A	A ⁽³⁾ in the form of a summary
4(b)	Internal arrangements for determining and publishing a benchmark	A	A in the form of a summary
4(c)	Internal reporting of infringements	A	A in the form of a summary
(5) Description of benchmarks provided			
5(a)	Description	A ⁽⁴⁾	A in the form of a summary
5(b)	Underlying market	A ⁽⁴⁾	A in the form of a summary
5(c)	Contributors	A ⁽⁴⁾	A in the form of a summary
5(d)	Corrections	A ⁽⁴⁾	A in the form of a summary
5(e)	Changes to and cessation	A ⁽⁴⁾	A in the form of a summary
5(f)	List of benchmarks	A	A
5(g)	Benchmark statement	A	A
5(h)	Exemptions	A	A
(6) Input data and methodology			
6(a)(i)	Description of input data used	A ⁽⁴⁾	A in the form of a summary

6(a)(ii)	Input data — sufficient, appropriate and verifiable	A ₍₄₎	A ₍₅₎ in the form of a summary
6(a)(iii)	Contributors	A ₍₄₎	A in the form of a summary
6(a)(iv)	Evaluation of contributor's input data and validation of input data	A ₍₆₎	N/A
6(b)(i)	Description of the methodology	A ₍₄₎	A in the form of a summary
6(b)(ii)(1)	Validation/Review	A ₍₄₎	A in the form of a summary
6(b)(ii)(2)	Material change	A ₍₆₎	N/A
6(b)(iii)	Methodology	A ₍₄₎	A in the form of a summary
(7) Outsourcing			
7(a)	Contracts	A ₍₆₎	N/A
7(b)	Outsourced functions	A ₍₆₎	A in the form of a summary
7(c)	Control	A ₍₆₎	A in the form of a summary
7(d)	Report	A ₍₆₎	A in the form of a summary
(8) Others			
8(a)	Additional information	A	A
8(b)	Form	A	A

- (1) Unless already supervised by the same competent authority for other activities than the provision of benchmarks
- (2) An applicant may choose not to provide information relating to point 3(a)(iii) of Annex I, in respect of a significant or non-significant benchmark it provides.
- (3) An applicant may omit to provide information relating to point 4(a)(iii) of Annex I — with the exception of information on the establishment and maintenance of a permanent oversight function — points 4(a)(iv) and 4(a)(v) of Annex I — for some of the information to be provided on the control and accountability framework — in respect of a non-significant benchmark it provides.
- (4) A supervised entity which provides both significant and non-significant benchmarks may provide such information in the form of a summary with reference to its non-significant benchmarks.
- (5) An applicant may choose not to provide information relating to input data being verifiable in respect of a non-significant benchmark that it provides.
- (6) A supervised entity which provides both significant and non-significant benchmarks may provide such information only for the significant benchmarks it provides.