



Brussels, 14.7.2023
C(2023) 4849 final

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

of 14.7.2023

extending the transitional period laid down for third-country benchmarks in Article 51(5) of Regulation (EU) 2016/1011 of the European Parliament and the Council

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The provision and use of benchmarks is governed by Regulation (EU) 2016/1011 ('Benchmark Regulation'). The Benchmark Regulation entered into application on 1 January 2018, with a transitional period for existing benchmarks and non-EU benchmarks until 1 January 2020. The Climate Benchmarks Regulation¹ pushed back the entry into application deadline for non-EU benchmarks to 1 January 2022, and the 2020 Benchmark Regulation review² extended the transitional period for another two years, until 31 December 2023.

The Benchmark Regulation provides that, as of 1 January 2024, EU supervised entities can use non-EU benchmarks only in three distinct cases: (1) their administrator has been **recognised** by the European Securities and Markets Authority, (2) a benchmark has been **endorsed** by an EU supervised entity that assumes regulatory responsibility, or (3) the Commission has established that the third country regime in which the administrator operates is **equivalent** to the Benchmark Regulation. The ESMA register lists only 13 non-EU administrators and only about 20,000 non-EU benchmarks that can be used in the EU³. However, information received from ESMA shows that, according to a commercial database, there are currently 262 administrators from third countries that are not yet registered in the EU, providing a total of around 3.6 million benchmarks.

Pursuant to Article 54(6) of the Benchmark Regulation, the Commission has adopted a report on the scope of the Benchmark Regulation, in particular with respect to the continued use by supervised entities of third-country benchmarks and on potential shortcomings of the current framework, on the basis of which this Delegated Regulation has been adopted. In order to ensure continued access by market participants in the EU to most of the world's benchmarks that, in the absence of the adoption of this delegated act, could be put at a major global competitive disadvantage and create potential risks for stability in financial markets across the Union, the Commission considers it necessary to extend the transitional period by a further two years.

The power to adopt a delegated act to extend the transitional period is provided for in Article 54(7) of the Benchmark Regulation.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The Commission conducted a targeted consultation on the regime applicable to the use of benchmarks administered in a third country between 20 May and 12 August 2022. The online questionnaire received 64 responses. All responses, including accompanying letters were considered.

A significant number of respondents pointed out that an extension of the transition period relating to the third country regime appears necessary considering the current market situation, including the lack of preparedness of third country administrators for the end of the transitional period on 31 December 2023. Several respondents also mentioned that based on the current timeline, with a Commission report to the European Parliament and Council due by 15 June 2023, the Commission would need to exercise its power to further postpone the entry into application of the third country rules until 1 January 2026.

¹ Regulation (EU) 2019/2089.

² Regulation (EU) 2021/168.

³ ESMA register data and [Rimes Technologies - Data Management for Financial Services](https://www.rimes.com) (www.rimes.com).

The Commission also collected data directly from market participants and held stakeholder meetings to discuss the current situation, concerns, and ideas about how to improve and reform the Benchmark Regulation and, in particular, the third-country chapter.

Market participants' feedback points to the need to postpone the application of the third-country rules for a further two years.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The legal basis is set out in Article 54(7) of the Benchmark Regulation.

This Delegated Regulation covers the following provisions.

Article 1 extends its transitional period to apply the third country rules for two years.

Article 2 sets out its date of application.

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 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 596/2014⁴, and in particular Article 54(7) thereof,

Whereas:

- (1) Regulation (EU) 2016/1011 lays down the rules on the use of third country benchmarks provided by third country benchmark administrators by supervised entities in the Union ('third-country regime'). That Regulation restricts the ability of supervised entities in the Union to use third country benchmarks.
- (2) In accordance with Article 51(5) of Regulation (EU) 2016/1011, the use of a third country benchmark by supervised entities in the Union is to be permitted only for financial instruments, financial contracts and measurements of the performance of an investment fund that already reference that benchmark or which add a reference to such benchmark before 31 December 2023, unless the Commission has adopted an equivalence decision as referred to in Article 30(2) or (3) of that Regulation, an administrator has been recognised pursuant to Article 32 of that Regulation or a benchmark has been endorsed pursuant to Article 33 of that Regulation.
- (3) To evaluate the situation and prepare the report required by Article 54(7) of Regulation (EU) 2016/1011, the Commission sought feedback in a targeted consultation between 20 May 2022 and 12 August 2022 on the use of the third-country regime laid down in Regulation (EU) 2016/1011 after the end of the transitional period laid down in Article 51(5) of Regulation (EU) 2016/1011. Respondents stressed that an extension of the transitional period of that third country regime is necessary as supervised entities in the Union would otherwise no longer be able to use most of the benchmarks provided by third country administrators for financial instruments, financial contracts and measurements of the performance of an investment fund that not yet reference these benchmarks.
- (4) On 14 July 2023, the Commission has submitted a report to the European Parliament and the Council on the scope of Regulation (EU) 2016/1011, in particular with respect to the continued use by supervised entities of third-country benchmarks and on potential shortcomings of the current framework.

⁴ OJ L 171 29.6.2016, p. 1.

- (5) On the basis of that report, the Commission concludes that a majority of third country benchmark administrators have not taken the necessary steps to prepare for the end of the transitional period on 31 December 2023, as laid down in Article 51(5) of Regulation (EU) 2016/2011, and to ensure the continued use of their benchmarks in the Union beyond that date. This failure to prepare raises concerns for Union supervised entities that rely on certain third country benchmarks. An abrupt disruption to the access to third country benchmarks for Union supervised entities could also pose a certain threat to financial stability. Furthermore, the entry into application of the third-country chapter would deprive market participants in the Union of access to the majority of the world's benchmarks. This would put some of the market participants in the Union at a significant disadvantage in global competition.
- (6) It is appropriate to extend the transitional period referred to in Article 51(5) of Regulation (EU) 2016/1011 by two years until 31 December 2025 to allow supervised entities in the Union the use of benchmarks provided by an administrator located in a third country. That extension will allow companies in the Union to continue their business activities.
- (7) In order to ensure that the existing transitional period is extended prior to its expiry, this Regulation should enter into force as a matter of urgency.

HAS ADOPTED THIS REGULATION:

Article 1

The transitional period referred to in Article 51(5) of Regulation (EU) 2016/1011 is extended until 31 December 2025.

Article 2

This Regulation shall enter into force on the third 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, 14.7.2023

For the Commission
The President
Ursula VON DER LEYEN