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EUROPEAN
COMMISSION

Brussels, XXX
[…](2025) XXX draft

COMMISSION DELEGATED REGULATION (EU) …/...

of XXX

amending Delegated Regulation (EU) 2022/805 as regards fees for the supervision by the European Securities and Markets Authority of benchmark administrators endorsing third country benchmarks

(Text with EEA relevance)

This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the Commission.

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Since 1 January 2022 the European Securities and Markets Authority (ESMA) has been responsible for the supervision of the administrators of certain critical benchmarks and of recognised third country benchmark administrators. Currently, ESMA supervises the European Money Markets Institute, the administrator of the critical benchmark EURIBOR, and ten recognised third-country benchmark administrators. Article 48l(3) of Regulation (EU) 2016/1011 of the European Parliament and of the Council[1] empowers the Commission to adopt a delegated act to set the fees related to ESMA's direct supervision of those benchmark administrators. The Commission acted on this mandate by adopting Commission Delegated Regulation (EU) 2022/805[2].

Regulation (EU) 2025/914 of the European Parliament and of the Council[3] amended the scope of Regulation (EU) 2016/1011 and tasked ESMA with the supervision of EU benchmark administrators that endorse third country benchmarks. This comes in addition to recognised third country benchmark administrators, which ESMA has supervised since 2022. As this is a new category of administrators that will be supervised by ESMA, it is necessary to establish the applicable supervisory fees.

As regards the amended scope of Regulation (EU) 2016/1011, there is now a distinction between benchmarks that are in scope as a result of their economic significance, either because they are referenced by a total volume of financial contracts and financial instruments in excess of a quantitative threshold set at EUR 50 bn or because they have been designated as significant by a competent authority or ESMA, and benchmarks that are in scope automatically regardless of their economic significance. That latter category is relevant to EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks and to commodity benchmarks subject to Annex II to Regulation (EU) 2016/1011.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

On [XX XX 2025], the Commission consulted the Expert Group of the European Securities Committee (EGESC) on the content of this draft delegated regulation.

The draft delegated regulation was published on the Better Regulation portal for a four-week feedback period from [YY YY 2025 to ZZ ZZ 2025], in accordance with the principles laid

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1 Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L 171, 29.6.2016, p. 1, ELI: http://data.europa.eu/eli/reg/2016/1011/OJ).

2 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, ELI: http://data.europa.eu/eli/reg_del/2022/805/OJ).

3 Regulation (EU) 2025/914 of the European Parliament and of the Council of 7 May 2025 amending Regulation (EU) 2016/1011 as regards the scope of the rules for benchmarks, the use in the Union of benchmarks provided by an administrator located in a third country, and certain reporting requirements (OJ L, 2025/914, 19.5.2025, ELI: http://data.europa.eu/eli/reg/2025/914/OJ).

down in the Interinstitutional Agreement on Better Law-Making[4]. [X] comments were received on the draft delegated regulation.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

This draft delegated act updates Delegated Regulation (EU) 2022/805 to include supervisory fees for the new category of benchmark administrators under the supervision of ESMA, i.e. EU administrators that endorse third country benchmarks.

Article 3 is amended to specify application fees for EU administrators that endorse third country benchmarks.

Article 4 is amended to specify annual supervisory fees for EU administrators that endorse third country benchmarks and aligns those fees with the fees for recognised third country administrators. The amendment further differentiates between benchmark administrators that offer or endorse significant benchmarks and those that do not offer or endorse significant benchmarks, with the latter category paying a fixed fee as opposed to a turnover-based fee.

Finally, Article is amended to specify that the relevant turnover on which the calculation of supervisory fees is based is the turnover generated in relation to the provision of benchmarks which fall within the scope of Regulation (EU) 2016/1011 to supervised entities in the Union. To avoid any attempt at circumvention, the article also specifies that such turnover should be taken into account regardless of whether it is generated by the legal entity under supervision or by any other entity belonging to the same group.

[4] Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ L 123, 12.5.2016, p. 1, ELI: http://data.europa.eu/eli/agree_interinstit/2016/512/OJ).

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amending Delegated Regulation (EU) 2022/805 as regards fees for the supervision by the European Securities and Markets Authority of benchmark administrators endorsing third country benchmarks

(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[5], and in particular Article 48l(3) thereof,

Whereas:

(1) Article 40(1) of Regulation (EU) 2016/1011 was amended by Regulation (EU) 2025/914 of the European Parliament and of the Council[6] to transfer from the national competent authorities to ESMA the competences in relation to the authorisation or registration of benchmark administrators that endorse third country benchmarks. Pursuant to Article 48l of Regulation (EU) 2016/1011, ESMA is to charge supervisory fees for all benchmark administrators referred to in Article 40(1) of that Regulation. Those include benchmark administrators that endorse third country benchmarks. It follows that fees should be laid down for the initial registration or authorisation as well as for the ongoing supervision of those benchmark administrators.

(2) The level of supervisory fees should not be a factor for a third country benchmark administrator in deciding whether to offer its benchmarks in the Union by way of either recognition or endorsement. It follows that the level of supervisory fees for benchmark administrators that endorse third country benchmarks should be the same as for recognised third country administrators.

(3) Article 4(1) of Delegated Regulation (EU) 2022/805 specifies the annual supervisory fees for administrators of critical benchmarks. Based on experience gathered by ESMA in the supervision and chairing of a supervisory college for the administrator of a critical benchmark, it has become apparent that those fees are no longer sufficient to cover the operational expenditure for supervision. The fixed supervisory fees for administrators of critical benchmarks should therefore be increased.

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5 OJ L 171, 29.6.2016, p. 1, ELI: http://data.europa.eu/eli/reg/2016/1011/OJ.

6 Regulation (EU) 2025/914 of the European Parliament and of the Council of 7 May 2025 amending Regulation (EU) 2016/1011 as regards the scope of the rules for benchmarks, the use in the Union of benchmarks provided by an administrator located in a third country, and certain reporting requirements (OJ L, 2025/914, 19.5.2025, ELI: http://data.europa.eu/eli/reg/2025/914/OJ).

(4) To ensure that supervisory fees do not unduly dissuade third country benchmark administrators from offering their benchmarks in the Union, those fees should be proportionate to the turnover generated by an administrator's activities in the Union.

(5) ESMA will have to supervise both benchmark administrators that administer or endorse significant benchmarks and benchmark administrators that administer or endorse benchmarks which are of limited economic significance, but which are in scope of Regulation (EU) 2016/1011 because they are EU Paris-aligned Benchmarks, EU Climate Transition Benchmarks or commodity benchmarks subject to Annex II to Regulation (EU) 2016/1011. To ensure proportionality between the economic relevance of the benchmarks that are not significant benchmarks and the annual supervisory fee to be paid, and to limit reporting burden on the benchmark administrators concerned, the annual supervisory fees for those benchmark administrators should take the form of a fixed amount and the benchmark administrators administering or endorsing them should not be obliged to submit revenue figures to ESMA.

(6) The turnover upon which the supervisory fee for the subsequent years can be based will normally not be available for benchmark administrators that have only recently established their business in the Union. For that reason, it is appropriate to lay down a fixed supervisory fee for the first two years of operation of those benchmark administrators.

(7) Benchmark administrators that endorse third country benchmarks and the ongoing supervision of which is transferred from national competent authorities to ESMA in accordance with Art. 48n(1a) of Regulation (EU) 2016/1011 do not have to re-apply for authorisation and endorsement or for recognition and endorsement. It follows that they should not have to pay application fees following the transfer of supervisory responsibility.

(8) To avoid legal uncertainty for any applications received by ESMA in the period leading up to the end of the transitional period for the use of third country benchmarks in the Union on 31 December 2025, this Regulation should apply as a matter of urgency.

(9) Delegated Regulation (EU) 2022/805 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) 2022/805

Delegated Regulation (EU) 2022/805 is amended as follows:

(1) Article 1 is replaced by the following:

'*Article 1*

Subject matter and scope

This Regulation lays down rules on fees that ESMA can charge to benchmark administrators in relation to registration, authorisation, recognition, endorsement and supervision.'

(2) in Article 2, the introductory wording is replaced by the following:

'For the purposes of this Regulation, the following definitions apply:'

(3) in Article 2a, point (a) is replaced by the following:

‘(a) all direct and indirect costs relating to the supervision of benchmark administrators by ESMA in accordance with Regulation (EU) 2016/1011, including costs resulting from the recognition, endorsement, registration, authorisation or extension of authorisation;’

(4) Article 3 is amended as follows:

(a) the title is replaced by the following:

‘*Article 3*

Application fees’;

(b) paragraph 1 is replaced by the following:

‘1. A benchmark administrator established in a third country that applies for recognition pursuant to article 32 of Regulation (EU) 2016/1011 shall pay an application fee of EUR 40 000.’;

(c) the following paragraphs 1a and 1b are inserted:

‘1a. A benchmark administrator that applies for either authorisation and endorsement of third country benchmarks, or registration and endorsement of third country benchmarks pursuant to articles 34 and 33 of Regulation (EU) 2016/1011 shall pay an application fee of EUR 40 000. A benchmark administrator already registered or authorised by a national competent authority that applies for endorsement of third country benchmarks in accordance with Article 33 of Regulation (EU) 2016/1011 shall pay an application fee of EUR 20 000.

1b. By way of derogation from subparagraphs 1 and 1a, where none of the benchmarks it provides or endorses qualify as significant benchmarks pursuant to Article 24 of Regulation (EU) 2016/1011, a benchmark administrator that applies for recognition pursuant to Article 32 of that regulation or for authorisation and endorsement of third country benchmarks or for registration and endorsement of third country benchmarks pursuant to Articles 34 and 33 of that regulation shall pay an application fee of EUR 20 000.’;

(d) paragraph 3 is replaced by the following:

‘3. Application fees shall be paid in full at the time of the submission of the application, within 30 days of the issuance of ESMA’s debit note.’;

(e) the following paragraph 4a is inserted:

‘4a. In the case of applications received by national competent authorities after 1 October 2025 and transferred to ESMA, the relevant application fees shall be paid at the beginning of 2026.’;

(f) paragraph 5 is replaced by the following:

‘5. Application fees shall not be reimbursed.’;’

(5) Articles 4, 5 and 6 are replaced by the following:

Article 4

Annual supervisory fees

1. The administrator of one or more critical benchmarks shall pay an annual supervisory fee:

(a) of EUR 300 000, in cases where ESMA chairs a college of supervisors pursuant to article 46 of Regulation (EU) 2016/1011;

(b) of EUR 250 000, in cases where ESMA does not chair a college of supervisors pursuant to article 46 of Regulation (EU) 2016/1011.

2. A benchmark administrator established in a third country recognised by ESMA or an administrator endorsing third country benchmarks supervised by ESMA that provides or endorses, on 30 September of year n-1, at least one third country benchmark that is significant pursuant to Article 24 of Regulation (EU) 2016/1011 shall pay the following annual supervisory fee:

(a) for the year of registration, authorisation or recognition and the two years thereafter, EUR 150 000.

(b) as from the third year after the year of registration, authorisation or recognition, the annual supervisory fee for a given year (n) shall be the total annual fee for recognised third country administrators and administrators endorsing third country benchmarks that provide or endorse, on 30 September of year n-1, at least one benchmark that is significant pursuant to Article 24 of Regulation (EU) 2016/1011, adjusted by the turnover coefficient;

(c) for the purpose of point (b), the total annual fee for recognised third country administrators and administrators endorsing third country benchmarks that provide or endorse, on 30 September of year n-1, at least one benchmark that is significant pursuant to Article 24 of Regulation (EU) 2016/1011 for a given year (n) shall be equal to the ESMA supervisory budget allocated for the performance of the tasks granted under Regulation (EU) 2016/1011 for that year (n) minus the annual supervisory fees to be paid to ESMA by critical benchmark administrators for year (n) and the annual fees for year (n) to be paid to ESMA by administrators paying a fixed fee in accordance paragraph 3;

(d) for the purpose of point (b), for each recognised third country administrator and each administrator endorsing third country benchmarks that provides or endorses, on 30 September of year n-1, at least one benchmark that is significant pursuant to Article 24 of Regulation (EU) 2016/1011, the turnover coefficient shall be the share of its applicable turnover in the aggregate applicable turnover generated by all recognised third country administrators and all administrators endorsing third country benchmarks that provide or endorse, on 30 September of year n-1, at least one benchmark that is significant pursuant to Article 24 of Regulation (EU) 2016/1011.

(e) the minimum annual supervisory fee for recognised third country administrators and benchmark administrators endorsing third country benchmarks, where such administrators provide or endorse, on 30 September of year n-1, at least one third country benchmark that is significant pursuant to Article 24 of Regulation (EU) 2016/1011, shall be EUR 40 000, including when the applicable turnover of the recognised third country administrator or the administrator endorsing third country benchmarks is equal to zero.

3. A benchmark administrator established in a third country recognised by ESMA or an administrator endorsing third country benchmarks supervised by ESMA that provides or endorses, on 30 September of year n-1, no benchmarks that are significant pursuant to Article 24 of Regulation (EU) 2016/1011, shall pay an annual supervisory fee of EUR 20 000.

4. Benchmark administrators shall pay their relevant annual supervisory fees to ESMA at the latest on 31 March of the calendar year in which they are due. Where information for the previous calendar years is not available, the fees shall be calculated on the basis of the latest available information for annual fees. ESMA shall send the debit note to the benchmark administrator at least 30 days before the payment is due. The annual fees paid shall not be reimbursed.

Article 5

Annual supervisory fees in year of recognition, endorsement or authorisation

By way of derogation from Article 4, the annual supervisory fee in the first year for recognised third-country administrators, administrators endorsing third country benchmarks, and for authorised critical benchmark administrators, with reference to the year in which they have been recognised or authorised, or third country benchmarks were first endorsed, shall be calculated by applying to the fee specified in Article 4 the following coefficient:

$$\text{Coefficient} = \frac{\text{Number of calendar days from the date of registration to 31 December}}{\text{Number of calendar days in year n}}$$

The supervisory fee of the first year shall be paid after ESMA has notified the benchmark administrator that its application has been successful and within 30 days from the date of issuance of ESMA's debit note.

By way of derogation from the first subparagraph, where a benchmark administrator is recognised, authorised, or starts endorsing third country benchmarks during the month of December, it shall not pay a first-year supervisory fee.

Article 6

Applicable turnover

1. The applicable turnover of a recognised third-country benchmark administrator for a given year n shall be its revenues generated in year n-2 in relation to the use by supervised entities in the Union of its significant benchmarks, Paris-aligned Benchmarks, Climate Transition Benchmarks, or commodity benchmarks that are subject to Annex II to Regulation (EU) 2016/1011 , irrespective of whether those revenues are accrued to that recognised third-country benchmark administrator or any other entity belonging to the same group as that administrator.

2. The applicable turnover of an administrator endorsing third-country benchmarks for a given year n shall be its revenues generated in year n-2 in relation to the use by supervised entities in the Union of the critical benchmarks, significant benchmarks, Paris-aligned Benchmarks, Climate Transition Benchmarks, or commodity benchmarks that are subject to Annex II to Regulation (EU) 2016/1011 it provides or endorses, irrespective of whether those revenues are accrued to an administrator endorsing third-country benchmarks or any other entity belonging to the same group as that administrator.

3. A recognised third-country benchmark administrator providing at least one significant benchmark shall provide ESMA, on an annual basis, with audited figures confirming its revenues generated in relation to the use by supervised entities in the Union of its significant benchmarks, Paris-aligned Benchmarks, Climate Transition Benchmarks, or commodity benchmarks that are subject to Annex II to Regulation (EU) 2016/1011. Those figures shall be certified by an external audit and shall be submitted to ESMA by electronic means by 30 September each year (n-1). A third-country administrator that is recognised after 30 September shall provide those figures immediately upon recognition and by the end of the calendar year of recognition. A recognised third-country benchmark administrator shall provide the documents containing audited figures in a language customary to financial services.

4. An administrator endorsing third country benchmarks and that provides or endorses at least one significant benchmark shall provide ESMA, on an annual basis, with audited figures confirming its revenues generated in relation to the use by supervised entities in the Union of the critical benchmarks, significant benchmarks, Paris-aligned Benchmarks, Climate Transition Benchmarks, or commodity benchmarks that are subject to Annex II to Regulation

(EU) 2016/1011 it provides or endorses. Those figures shall be certified by an external audit and shall be submitted to ESMA by electronic means by 30 September each year (n-1). An administrator that endorses third-country benchmarks after 30 September shall provide those figures immediately upon endorsement and by the end of the calendar year of endorsement. An administrator endorsing third country benchmarks shall provide the documents containing audited figures in a language customary to financial services.

5. Where the recognised third-country benchmark administrator did not operate during the full year (n–2), ESMA shall estimate the applicable turnover by extrapolating, for the recognised third-country benchmark administrator, the value calculated for the number of months during which the recognised third-country benchmark administrator operated in year (n–2) to the whole year (n–2).

6. Where the administrator endorsing third country benchmarks did not operate during the full year (n–2), ESMA shall estimate the applicable turnover by extrapolating, for the administrator endorsing the third country benchmark, the value calculated for the number of months during which the administrator endorsed that third country benchmark operated in year (n–2) to the whole year (n–2).

7. Where no audited figures for year (n–2) are available, ESMA shall use the audited figures of year (n–1).

8. ESMA shall convert revenues reported in a currency other than the euro into euro using the average euro foreign exchange rate applicable to the period during which those revenues were recorded. For that purpose, ESMA shall use the euro foreign exchange reference rate published by the European Central Bank.';

(5) Articles 8 and 9 are deleted;

(6) In Article 10, paragraph 1 is replaced by the following:

'1. In case of a delegation of tasks by ESMA to national competent authorities, only ESMA shall charge the application fee and the fee for the annual supervision of third country administrators, administrators endorsing third-country benchmarks and administrators of critical benchmarks.'

(7) Article 11 is amended as follows:

(a) the following paragraph 1a is inserted:

'1a. Article 3 shall not apply to benchmark administrators endorsing third country benchmarks authorised or registered by national competent authorities on or before 31 December 2025.'

(b) the following paragraph 4 is added:

'4. By derogation from Article 4, a benchmark administrator established in a third country recognised by ESMA on 1 January 2026 or an administrator endorsing third country benchmarks supervised by ESMA on 1 January 2026 that provides or endorses at least one third country benchmark that is significant pursuant to Article 24 of Regulation (EU) 2016/1011 shall pay a fixed annual supervision fee of EUR 150 000 for the years 2026 and 2027. From 2028 onwards, the calculation in Article 4, second paragraph, point (b) applies.'

Article 2

This Regulation shall enter into force on the 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