



2023/2222

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COMMISSION DELEGATED REGULATION (EU) 2023/2222

of 14 July 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)

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 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.
- (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) 2016/1011, 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.

⁽¹⁾ OJ L 171 29.6.2016, p. 1.

- (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 July 2023.

For the Commission
The President
Ursula VON DER LEYEN
