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COMMISSION DELEGATED REGULATION (EU) 2024/1705

of 11 March 2024

amending Delegated Regulation (EU) 2022/805 as regards harmonisation of certain aspects of fees charged by the European Securities and Markets Authority to certain benchmark administrators

(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 48l(3) thereof,

Whereas:

(1) Commission Delegated Regulation (EU) 2022/805 ([2]) specifies the type of fees, the calculation, and the payment modalities with regard to the fees charged by the European Securities and Markets Authority (ESMA) to certain benchmark administrators.

(2) In 2018, both the Commission's Internal Audit Service's review and the European Court of Auditors' audit ([3]) concluded that ESMA's fee funding system is unnecessarily complex. To simplify the fee collection and reduce risks linked to the incorrect calculation or inefficient allocation of fees, it is necessary to ensure consistency of technical aspects across the different delegated acts on fees charged by ESMA to directly supervised entities.

(3) To fully cover ESMA's expenditures relating to the supervision of certain benchmark administrators, the annual supervisory fees should be determined on the basis of the annual estimate of all direct costs necessary for the supervisory tasks performed by ESMA and a reasonable apportionment of ESMA's fixed and variable overheads.

(4) In line with Commission Delegated Regulation (EU) 2019/715 ([4]), fees charged to benchmark administrators should be set at a level that ensures that the full cost of services provided by ESMA is covered and a deficit is avoided, but at the same time avoids the accumulation of a significant surplus. Where a significant positive or negative budget result becomes recurrent, the level of the fees should be revised.

(5) The initial supervisory fee due by a benchmark administrator in the year of recognition or authorisation, as applicable, should be proportionate to the period of time in that first year during which the benchmark administrator was recognised or authorised.

(6) To ensure consistency among delegated acts on fees to be paid to ESMA, and to enable ESMA to receive in due time audited turnover data for the estimation of fees due by benchmark administrators to ESMA, the reference year of the audited accounts for the determination of the applicable turnover should be 2 years prior to the year for which ESMA charges fees to the benchmark administrator.

([1]) 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]) Court of Auditors, Annual report on EU agencies for the financial year 2018 (OJ C 417, 11.12.2019, p. 29 and 85 ff).
([4]) Commission Delegated Regulation (EU) 2019/715 of 18 December 2018 on the framework financial regulation for the bodies set up under the TFEU and Euratom Treaty and referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council (OJ L 122, 10.5.2019, p. 1, ELI: http://data.europa.eu/eli/reg_del/2019/715/oj).

(7) The applicable turnover of benchmark administrators is calculated in euros. It is therefore necessary to specify a mechanism for the conversion into euro of revenues generated in other currencies.

(8) To ensure consistency among delegated acts on fees to be paid to ESMA, ESMA should calculate the penalty in case of late payments in line with the provisions on default interest set out in Article 99 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ([5]).

(9) In order to avoid legal uncertainty for the currently ongoing fee collection process, this Regulation should apply from 1 January 2025.

(10) 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) the following Article 2a is inserted:

'*Article 2a*

Recovery of supervisory costs in full

The fees charged to benchmark administrators shall cover:

(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, authorisation or extension of authorisation;

(b) all costs for the reimbursement of direct and indirect costs of competent authorities to which ESMA has delegated tasks in accordance with Regulation (EU) 2016/1011.';

(2) in Article 5, the first subparagraph is replaced by the following:

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

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

(3) Article 6 is replaced by the following:

'*Article 6*

Applicable turnover

1. The applicable turnover of a recognised third-country benchmark administrator for a given year n shall be its revenues accrued in relation to the use of its benchmarks by supervised entities in the Union as stated in the audited accounts of year n-2.

([5]) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1, ELI: http://data.europa.eu/eli/reg/2018/1046/oj).

2. A recognised third-country benchmark administrator shall provide ESMA, on an annual basis, with audited figures confirming its revenues accrued in relation to the use of its benchmarks in the Union. The 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 the figures immediately upon recognition and by 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.

3. 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).

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

5. Where the revenues reported are expressed in a currency other than the euro, ESMA shall convert those revenues 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.';

(4) in Article 7, paragraph 2 is replaced by the following:

'2. Any late payments shall incur the default interest laid down in Article 99 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council (*).

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(*) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1, ELI: http://data.europa.eu/eli/reg/2018/1046/oj).'.

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*.

It shall apply from 1 January 2025.

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

Done at Brussels, 11 March 2024.

For the Commission
The President
Ursula VON DER LEYEN