



Commission de Surveillance
du Secteur Financier

Circular CSSF 22/796

APPLICATION OF THE
GUIDELINES OF THE
EUROPEAN SECURITIES AND
MARKET AUTHORITY ON
METHODOLOGY, OVERSIGHT
FUNCTION AND RECORD
KEEPING UNDER THE
BENCHMARKS REGULATION

Circular CSSF 22/796

Re: Application of the Guidelines of the European Securities and Market Authority on methodology, oversight function and record keeping under the Benchmarks Regulation

Luxembourg, 31 January 2022

Ladies and Gentlemen,

To Benchmark Administrators

Subject:

Application of the Guidelines of the European Securities and Market Authority (“ESMA”) on methodology, oversight function and record keeping under the Benchmarks Regulation¹ (Ref. ESMA81-393-288).

Purpose of the Circular

The purpose of this circular is to inform you that the CSSF, in its capacity as competent authority, applies the Guidelines of ESMA on methodology, oversight function and record keeping under the Benchmarks Regulation (Ref. ESMA81-393-288) (the “Guidelines”) published on 7 December 2021. Consequently, the CSSF has integrated the Guidelines into its administrative practice and regulatory approach with a view to promoting supervisory convergence in this field at European level.

All persons or entities which are administrators as defined in Article 3(1)(6) of the Benchmarks Regulation (the “Benchmark Administrators”) must duly comply with them.

The Guidelines

The guidelines set out in Section 5 of the Guidelines are issued by ESMA in accordance with Article 16(1) of the ESMA Regulation².

The guidelines set out in Section 6 of the Guidelines are issued by ESMA in accordance with Articles 5(6) and 13(4) of the Benchmarks Regulation.

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

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/EC3

The Guidelines apply in relation to the application of:

- any methodology to be used to determine a critical or significant benchmark in exceptional circumstances in accordance with Article 13(1)(a) of the Benchmarks Regulation and Article 2(1)(l) of the Methodology Delegated Regulation³;
- material changes to the methodology used to determine a critical or significant benchmark pursuant to Article 13(1)(c) and (2) of the Benchmarks Regulation and Article 4(1)(c) of the Methodology Delegated Regulation;
- the oversight function for critical and significant benchmarks pursuant to Article 5 of the Benchmarks Regulation and Article 1(3) of the Oversight Function Delegated Regulation⁴;
- the record-keeping requirements pursuant to Article 8(1)(e) of the Benchmarks Regulation;
- the guidelines on non-significant benchmarks (Ref. ESMA70-145-1209), published on 20 December 2018 (the “Guidelines on non-significant benchmarks”).

The Guidelines apply as from 31 May 2022.

The Guidelines set out a transparent framework for administrators of critical and significant benchmarks when consulting on material changes to the methodology or using an alternative methodology in exceptional circumstances, together with an adequate oversight function. Furthermore, the Guidelines aim at ensuring the common and consistent application of the record-keeping requirements related to the use of an alternative methodology for all Benchmark Administrators.

Furthermore, they amend the Guidelines on non-significant benchmarks, in line with the new guidelines introduced for administrators of critical and significant benchmarks, with regard to the oversight function and the use of an alternative methodology in exceptional circumstances.

The Guidelines are attached to this circular and are available on ESMA's website <http://www.esma.europa.eu>.

³ 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

⁴ 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



Commission de Surveillance
du Secteur Financier

Scope of application

This circular applies to Benchmark Administrators.

Date of application

This circular applies as from 31 May 2022.

Claude WAMPACH
Director

Marco ZWICK
Director

Jean-Pierre FABER
Director

Françoise KAUTHEN
Director

Claude MARX
Director General

Attachment: Guidelines on methodology, oversight function and record keeping under the Benchmarks Regulation



European Securities and
Markets Authority

Guidelines

**on methodology, oversight function and record keeping under the
Benchmarks Regulation**

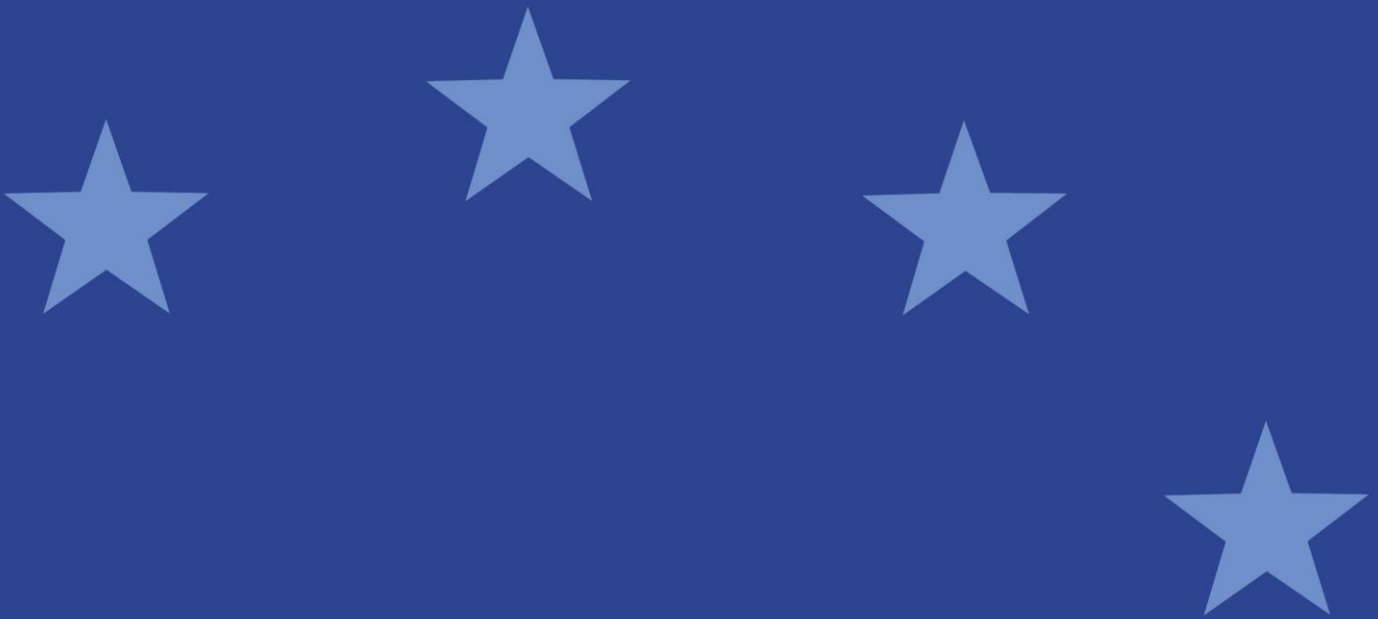




Table of Contents

| | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|
| 1. Scope | 2 |
| 2. Legislative references | 3 |
| 3. Purpose | 4 |
| 4. Compliance and reporting obligations | 5 |
| 5. Guidelines on methodology, oversight function and record keeping | 6 |
| 5.1 Guidelines on the details of any methodology to be used to determine a critical or significant benchmark in exceptional circumstances pursuant to Article 13(1)(a) of the Benchmarks Regulation and Article 2(1)(l) of the Methodology Delegated Regulation ... | 6 |
| 5.2 Guidelines on material changes to the methodology used to determine a critical or significant benchmark pursuant to Article 13(1)(c) and (2) of the Benchmarks Regulation and Article 4(1)(c) of the Methodology Delegated Regulation | 6 |
| 5.3 Guidelines on the oversight function for critical and significant benchmarks pursuant to Article 5 of the Benchmarks Regulation and Article 1(3) of the Oversight Function Delegated Regulation | 7 |
| 5.4 Guidelines on the record keeping requirements pursuant to Article 8(1)(e) of the Benchmarks Regulation | 7 |
| 6. Amendments to Guidelines on non-significant benchmarks | 8 |



1. Scope

Who?

1. These guidelines apply to the competent authorities designated under Article 40(2) and (3) of the Benchmarks Regulation and administrators as defined in Article 3(1)(6) of the Benchmarks Regulation.

What?

2. The guidelines set out in Section 5 apply in relation to Articles 5, 8(1)(e), 13(1)(a), 13(1)(c) and (2) of the Benchmarks Regulation, Articles 2(1)(l) and 4(1)(c) of the Methodology Delegated Regulation and Article 1(3) of the Oversight function Delegated Regulation.
3. The guidelines set out in Section 6 amend paragraphs 12 and 27(i) of the ESMA's guidelines on non-significant benchmarks¹ ('Guidelines on non-significant benchmarks').

When?

4. These guidelines will apply from 31 May 2022.

¹ Guidelines on non-significant benchmarks under the Benchmarks Regulation, published on 20 December 2018, ESMA70-145-1209.



2. Legislative references

| | |
|----------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Benchmarks Regulation</i> | 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 ² |
| <i>ESMA Regulation</i> | 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 ³ |
| <i>Oversight function Delegated Regulation</i> | 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 ⁴ |
| <i>Methodology Delegated Regulation</i> | 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 ⁵ |

² OJ L 171, 29.6.2016, p. 1.

³ OJ L 331, 15.12.2010, p. 84.

⁴ OJ L 274, 5.11.2018, p. 1.

⁵ OJ L 274, 5.11.2018, p. 21.



3. Purpose

5. The guidelines set out in Section 5 are based on Article 16(1) of the ESMA Regulation. The objectives of these guidelines are to establish consistent, efficient and effective supervisory practices within the European System of Financial Supervision (ESFS) and to ensure the common, uniform and consistent application of the requirements related to material changes to the methodology, the use of an alternative methodology in exceptional circumstances and the oversight function. In particular, these guidelines achieve those objectives by setting out a transparent framework for administrators of critical and significant benchmarks when consulting on material changes to the methodology or using an alternative methodology in exceptional circumstances, together with an adequate oversight function. Furthermore, the guidelines aim at ensuring the common and consistent application of the record-keeping requirements related to the use of an alternative methodology for all benchmark administrators.

6. The guidelines set out in Section 6 are based on Articles 5(6) and 13(4) of the Benchmarks Regulation. The purpose of these guidelines is to amend the existing Guidelines on non-significant benchmarks, in line with the new guidelines introduced for administrators of critical and significant benchmarks, with regard to the oversight function and the use of an alternative methodology in exceptional circumstances.



4. Compliance and reporting obligations

Status of the guidelines

7. In accordance with Article 16(3) of the ESMA Regulation, competent authorities and financial market participants must make every effort to comply with these guidelines.
8. Competent authorities to which these guidelines apply should comply by incorporating them into their supervisory frameworks, including where particular guidelines are directed primarily at financial market participants. In this case, competent authorities should ensure through their supervision that financial market participants comply with the guidelines.

Reporting requirements

9. Within two months of the date of publication of the guidelines on ESMA's website in all EU official languages, competent authorities to which these guidelines apply must notify ESMA whether they (i) comply, (ii) do not comply, but intend to comply, or (iii) do not comply and do not intend to comply with the guidelines.
10. In case of non-compliance, competent authorities must also notify ESMA within two months of the date of publication of the guidelines on ESMA's website in all EU official languages of their reasons for not complying with the guidelines.

A template for notifications is available on ESMA's website. Once the template has been filled in, it shall be transmitted to ESMA.

11. Administrators are not required to report whether they comply with these guidelines.

5. Guidelines on methodology, oversight function and record keeping

5.1 Guidelines on the details of any methodology to be used to determine a critical or significant benchmark in exceptional circumstances pursuant to Article 13(1)(a) of the Benchmarks Regulation and Article 2(1)(l) of the Methodology Delegated Regulation

1. An administrator of critical or significant benchmarks or, where applicable, family of benchmarks should specify, as part of the details of any methodology to be used in exceptional circumstances, at least the following elements, insofar as they are relevant to that benchmark or family of benchmarks or to the input data used to determine it:
 - (i) the overarching principles for identifying the exceptional circumstances, if possible complemented by examples of those circumstances. Non-exhaustive examples of exceptional circumstances could be: trading events, such as trading interruptions or unexpected market closures, resulting in unusual market illiquidity or market volatility; changes to currency convertibility that may lead to transaction data sources being insufficient, inaccurate or unreliable; restrictions on capital flows announced by a country, exchange closures, government interventions, a pandemic or a natural catastrophe resulting in exceptional periods of stress;
 - (ii) to the extent possible, the alternative ways to calculate the benchmark in exceptional circumstances or any key element of the methodology which may not be performed in those circumstances;
 - (iii) to the extent possible, the scope of application of any methodology to be used in exceptional circumstances, taking into account the type of underlying assets of the benchmark provided;
 - (iv) to the extent possible, the rationale behind the use of any methodology referred to in point (iii) above, taking into account the scope of application of such methodology;
 - (v) to the extent possible, the time period during which any methodology referred to in point (iii) above is expected to be used to calculate the benchmark;
 - (vi) whether the use of any methodology referred to in point (iii) above is expected to have an impact on the value of the benchmark.

5.2 Guidelines on material changes to the methodology used to determine a critical or significant benchmark pursuant to Article 13(1)(c) and (2) of the Benchmarks Regulation and Article 4(1)(c) of the Methodology Delegated Regulation

2. An administrator of critical or significant benchmarks or, where applicable, family of benchmarks should ensure, to the extent possible, that the shorter time frame in which a

consultation on proposed material changes in the administrator's methodology may take place is nonetheless adequate to enable users and potential users of the benchmark to assess the proposed material changes.

3. For the purposes of determining the adequacy of the shorter time frame referred to in paragraph 2, an administrator should have regard to the complexity and nature of the proposed changes, the impact which they would have on the benchmark and the urgency of their implementation.
4. The procedures for a consultation within a shorter time frame should be set out in a sufficiently clear manner to enable users and potential users of the benchmark to understand what are the steps of the consultation process.

5.3 Guidelines on the oversight function for critical and significant benchmarks pursuant to Article 5 of the Benchmarks Regulation and Article 1(3) of the Oversight Function Delegated Regulation

5. In order to ensure that the oversight function is composed of members who together have the skills and expertise appropriate to the oversight of the provision of a particular benchmark and to the responsibilities that the oversight function is required to fulfil, an administrator of critical and significant benchmarks should ensure that, to the extent possible depending on the governance of the oversight function, the members of the oversight function together have an adequate overview and understanding of the different types of users of the benchmark and its contributors and are able to exercise accordingly the responsibilities of the oversight function.
6. Where the oversight function is carried out by a natural person, paragraph 5 does not apply.

5.4 Guidelines on the record keeping requirements pursuant to Article 8(1)(e) of the Benchmarks Regulation

7. For any deviation from the standard methodology, an administrator of critical, significant and non-significant benchmarks should keep records of:

- (i) the time period of the deviation;
- (ii) the rationale behind the decision to deviate;
- (iii) the approval process of the decision to deviate.

6. Amendments to Guidelines on non-significant benchmarks

8. The Guidelines on non-significant benchmarks are amended as follows:

(1) The following guideline is added:

(27a) For the purposes of point (i) of guideline 27, an administrator of a non-significant benchmark or family of non-significant benchmarks should specify the following, where applicable:

(i) the overarching principles for identifying the exceptional circumstances;

(ii) to the extent possible, a summary of the alternative ways to calculate the benchmark in exceptional circumstances or any key element of the methodology which may not be performed in those circumstances;

(iii) to the extent possible, the scope of application of any methodology to be used in exceptional circumstances, taking into account the underlying assets of the benchmark provided;

(iv) to the extent possible, the rationale behind the use of any methodology referred to in point (iii) above, taking into account the scope of application of such methodology.

(2) Guideline 12 is replaced by the following:

The oversight function should be composed of one or more members who together have the skills and expertise appropriate to the oversight of the provision of a particular benchmark and to the responsibilities the oversight function is required to fulfil. Members of the oversight function should have appropriate knowledge of the underlying market or economic reality that the benchmark seeks to measure and, to the extent possible, also of the different types of users of the benchmark and its contributors.



Commission de Surveillance du Secteur Financier

283, route d'Arlon

L-2991 Luxembourg (+352) 26 25 1-1

direction@cssf.lu

www.cssf.lu