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**COMMISSION IMPLEMENTING REGULATION (EU) .../...**

**of 24.3.2022**

**amending the implementing technical standards laid down in Implementing Regulation (EU) 2016/1646 as regards the main indices and recognised exchanges in accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council**

(Text with EEA relevance)

# COMMISSION IMPLEMENTING REGULATION (EU) .../...

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012<sup>1</sup> and in particular Article 197(8) thereof,

Whereas:

- (1) Commission Implementing Regulation (EU) 2016/1646<sup>2</sup> was adopted on the premise that equity indices, to be considered as main indices for the purposes of Regulation (EU) No 575/2013 (and hence allowing institutions to use the equities composing these indices as eligible collateral) should mainly consist of equities that can reasonably be expected to be realisable when an institution needs to liquidate them. It was assumed that that would be the case when at least 90% of the components of an index have a free float of at least EUR 500 000 000 or, in the absence of information about free float, a market capitalisation of at least EUR 1 000 000 000. That assumption remains unchanged.
- (2) Implementing Regulation (EU) 2016/1646 also specifies that institutions should also have the possibility to recognise as eligible collateral instruments included in main indices that do not meet the abovementioned criteria, but whose components are sufficiently traded, and considers new criteria for the identification of those indices. However, experience has demonstrated that those criteria, defined with respect to the market in which an index is based, are difficult to apply against a main index established in a third country, as they require collecting data for all the shares admitted to trading in that market. That difficulty has inhibited the proper achievement of the objective of Regulation (EU) No 575/2013 to ensure a minimum threshold of liquidity of the index components. It is therefore necessary to lay down new criteria that would address the identified shortcomings. Those new criteria should ensure the adequacy of the instruments as eligible collateral and hence, ensure a sufficient liquidity threshold independently from the market on which an index is based, where two conditions related to standard market liquidity indicators are fulfilled. The first condition should require that at least 80% of the components of an index have a free float of at least

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<sup>1</sup> OJ L 176, 27.6.2013, p. 1.

<sup>2</sup> Commission Implementing Regulation (EU) 2016/1646 of 13 September 2016 laying down implementing technical standards with regard to main indices and recognised exchanges in accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms (OJ L 245, 14.9.2016, p. 5).

EUR 25 000 000 or, in the absence of information about free float, a market capitalisation of at least EUR 50 000 000. The second condition should require that all components of the index having a market capitalisation smaller than or equal to EUR 10 000 000 000 have a minimum average daily turnover of EUR 500 000 and all components of the index having a market capitalisation greater than EUR 10 000 000 000 have a minimum average daily turnover of EUR 1 000 000. The average daily turnover should be calculated over the twelve months of the calendar year preceding the assessment, or where applicable, the period of the twelve months of the preceding calendar year during which the financial instrument was available for trading.

- (3) The definition of ‘recognised exchange’, laid down in Article 4(1), point (72), of Regulation (EU) No 575/2013, was most recently amended by Regulation (EU) 2019/2033 of the European Parliament and of the Council<sup>3</sup>. That amendment consisted of the addition, in point (a) of that point (72), of the words “or a third-country market that is considered to be equivalent to a regulated market in accordance with the procedure set out in point (a) of Article 25(4) of Directive 2014/65/EU of the European Parliament and of the Council”. Due to that amendment, ‘recognised exchanges’ are no longer restricted to ‘regulated markets’ only. That amendment should be reflected in Implementing Regulation (EU) 2016/1646 by including in that Regulation those exchanges for which the Commission has adopted an equivalence decision pursuant to Article 25(4), point (a), of Directive 2014/65/EU of the European Parliament and of the Council<sup>4</sup>.
- (4) Following the withdrawal of the United Kingdom from the Union pursuant to Article 50 of the Treaty on European Union, the Treaties have ceased to apply to the United Kingdom from 1 February 2020 and the United Kingdom is now a third country. At present, the Commission has not adopted an equivalence decision in accordance with Article 25(4), point (a), of Directive 2014/65/EU in respect of the United Kingdom. It is therefore necessary to exclude from the list of recognised exchanges those exchanges established in the United Kingdom.
- (5) Certain changes have occurred in the market structure since the entry into force of Implementing Regulation (EU) 2016/1646, particularly as regards the appearance of new exchanges, mergers, name changes or cessation of activities. Those changes should be reflected in Implementing Regulation (EU) 2016/1646.
- (6) Implementing Regulation (EU) 2016/1646 should therefore be amended accordingly.
- (7) This Regulation is based on the draft implementing technical standards submitted to the Commission by the European Securities and Markets Authority (ESMA).
- (8) ESMA has conducted open public consultation on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and has requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>5</sup>.

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<sup>3</sup> Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (OJ L 314, 5.12.2019, p. 1).

<sup>4</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

<sup>5</sup> 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

HAS ADOPTED THIS REGULATION:

*Article 1*

*Amendments to Implementing Regulation (EU) 2016/1646*

Implementing Regulation (EU) No 2016/1646 is amended as follows:

- (1) Annex I to Implementing Regulation (EU) 2016/1646 is replaced by the text set out in Annex I to this Regulation.
- (2) Annex II to Implementing Regulation (EU) 2016/1646 is replaced by the text set out in Annex II to this Regulation.

*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*.

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

Done at Brussels, 24.3.2022

*For the Commission*  
*The President*  
*Ursula VON DER LEYEN*

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Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).