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Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL 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

Delegations will find attached document COM(2023) 660 final.

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2023/0379 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

This proposal is part of a package of measures to rationalise reporting requirements. It aims to rationalise authorisation and registration and alleviate the burden on EU companies, in particular small and medium-sized enterprises ('SMEs', namely smaller benchmark administrators and benchmark users). The regulatory framework that applies to these companies is layered. Different rules and reporting requirements apply depending on the type of benchmark they provide. Regulation (EU) 2016/1011 ('the Benchmark Regulation' or 'the BMR') aims to address concerns about the accuracy and integrity of benchmarks regardless of the size and systemic nature of such benchmarks. The question is whether some of the BMR's requirements are proportionate, especially for administrators offering benchmarks whose reference value in instruments, contracts or funds is low or who provide indices only to a limited number of benchmark users in accordance with bilateral contracts (bespoke indices). Market participants have called for revising the BMR framework and making the regulatory requirements dependent on the systemic relevance of a benchmark or the significance of the role that a benchmark plays for the operation of markets in a Member State or across the EU.

In its Communication 'Long-term competitiveness of the EU: *looking beyond 2030*' ([1]), the Commission stressed the importance of a regulatory system that ensures that objectives are reached at minimum costs. It has therefore committed to a fresh push to rationalise and simplify reporting requirements, with the ultimate aim of reducing the administrative burdens by 25%, without undermining the related policy objectives.

Reporting requirements play a key role in ensuring proper monitoring and correct enforcement of legislation. Their costs are largely offset by the benefit they bring, in particular in monitoring and ensuring compliance with key policy measures. However, it is important to streamline those requirements, in order to ensure that they fulfil the purpose for which they were intended and to limit the administrative burden. Reporting requirements can impose disproportionate burdens on stakeholders, including SMEs and micro companies, also given organisational and technological developments that call for original reporting requirements to be adjusted.

Streamlining reporting obligations and reducing the administrative burdens is therefore a priority.

This legislative proposal seeks to review the scope of the BMR and address its shortcomings, as well as bring targeted improvements to how the BMR functions.

• Political and legal context

A benchmark is an index ([2]) that is used as a reference to determine the price of a financial instrument or financial contract or to measure the performance of an investment fund. A wide range of benchmarks is currently produced, including interest rate benchmarks, such as EURIBOR, equity benchmarks, such as the CAC 40, the DAX or the S&P 500 indices and

[1] COM(2023)168.

[2] An index is a statistical measure, typically of a price or quantity, calculated or determined from a representative set of underlying data.

commodity benchmarks, e.g., energy benchmarks, such as West Texas Intermediate or Brent. The BMR covers several distinct underlying asset classes that comprise equities (and equity-like instruments, such as exchange-traded funds), fixed income instruments, interest, credit or foreign exchange rates as well as various commodities.

Tables 1-3 illustrate how the current BMR has organised the main benchmark types covering the main asset classes around three dimensions: (1) amount of assets referencing a benchmark; (2) underlying asset class and (3) types of input data used to calculate the benchmark.

Table 1: Existing legislation: distinguishing benchmarks based on the extent of use in the EU

Category	Quantitative threshold[3]	Intervention needed to be classified as such	Legal consequences	Current population
Critical benchmarks	- EUR 500 billion, or - EUR 400 billion + 2 qualitative criteria in Art. 20(1)(c), or - The benchmark is based on submissions by contributors the majority of which are located in one Member State and is recognised as being critical in that Member State	The Commission adopts implementing acts in accordance with Article 20(1) BMR (Commission implementing act[4])	Additional rules (Art. 20-23) apply, including mandatory administration (the competent authority has the power to compel the administrator to continue publishing the benchmark) and mandatory contribution (in case the administrator notified the competent authority of the intention of a contributor to cease contributing input data the competent authority has the power to require the contributor to contribute contributing input data).	EURIBOR, WIBOR, STIBOR, NIBOR
Significant benchmarks	- The benchmark is not a critical benchmark And meets either of the following criteria: - EUR 50 billion, or - The benchmark has no or very few appropriate market-led substitutes and, in the event that the benchmark ceases to be provided or is provided on the basis of input data no longer fully representative of the underlying market or economic reality or unreliable input data, there would be a significant and adverse impact on market integrity, financial stability, consumers, the real economy or the financing of households or businesses in one or more Member States.	The competent authority responsible for the supervision of the administrator decides to classify a benchmark as significant or non-significant.	- Targeted alleviations of requirements in BMR title II on a comply-or-explain basis (see Art. 25 BMR) - Entities already under supervision require only registration to administer significant benchmarks	As of September 2022, an estimated 50 significant benchmarks offered by 6 administrators were in scope of the BMR.[5]
Non-significant benchmarks[6]	A benchmark which does not qualify as critical or significant		- Further-reaching alleviations of requirements in BMR title II on a comply-or-explain basis (see Art. 26 BMR) - Administering a non-significant benchmark requires only registration.	All other benchmarks

Table 2: Existing legislation: distinguishing benchmarks based on the underlying asset class

Underlying asset class	Definition	Intervention needed to be classified as such	Legal consequences

3 Calculation based on the total value of financial instruments, financial contracts or investment funds in the Union for which the benchmark is used as a reference determined by the benchmark administrator.

4 Commission implementing regulation (EU) 2016/1368, as amended.

5 This excludes an unknown number of significant benchmarks offered by non-EU administrators who had at that time not obtained recognition or endorsement.

6 The shaded area corresponds to benchmarks for which the administrator would no longer be required to be registered; See below.

Interest rate benchmarks	'a benchmark which […] is determined on the basis of the rate at which banks may lend to, or borrow from, other banks, or agents other than banks, in the money market'	No intervention needed. The competent authority responsible for the supervision of the administrator decides to classify a benchmark according to the asset class it measures.	Interest rate benchmarks are subject to a specific regime set out in Annex I to the BMR
Commodity benchmarks	'a benchmark where the underlying asset […] is a commodity […], excluding emission allowances […].'		Commodity benchmarks, with the exception of: - Commodity benchmarks with a majority of supervised entities contributing input data; - Commodity benchmarks which are also regulated data benchmarks; - Critical commodity benchmarks with gold, silver or platinum as the underlying are subject to a specific regime set out in Annex II to the BMR.
Other (includes: equity, fixed income, debt, exchange rate …)	[any other benchmark]		Subject to the general regime of the BMR

Table 3: Existing legislation: distinguishing benchmarks based on the type of input data

Type of input data	**Definition**	**Intervention needed to be classified as such**	**Legal consequences**
Regulated-data benchmark	A benchmark determined by the application of a formula from: (a) input data contributed entirely from: (i) a trading venue […] or a trading venue in a third country for which the Commission has adopted an [equivalence decision][…]; (ii) an approved publication arrangement (APA) […] or a consolidated tape provider […]; (iii) an approved reporting mechanism (ARM) […]; (iv) an electricity exchange […]; (v) a natural gas exchange[…]; (vi) an auction platform; (vii) a service provider to which the benchmark administrator has outsourced the data collection […], provided that the service provider receives the data entirely from an entity referred to in points (i) to (vi) of this point; (b) net asset values of investment funds	No intervention needed. The competent authority responsible for the supervision of the administrator decides to classify a benchmark according to the type of input data used.	Regulated-data benchmarks benefit from significant alleviations of requirements regarding controls on input data, reporting of infringements and contribution of input data (see Art. 17). Regulated-data benchmarks cannot be designated as critical benchmarks, even if they exceed the quantitative thresholds set in Art. 20.
Any other benchmark	Any input data that does not qualify as regulated data		Subject to the general regime of the BMR

Financial markets are global markets, and benchmarks are produced and used internationally. European banks, investment funds and other benchmark users ([7]) reference EU and non-EU benchmarks for a variety of purposes from hedging their own risks, including interest, credit, and foreign exchange risks, and offering products to hedge the risk of their clients, to establishing an investment portfolio using the benchmark either as an investment template or as a performance benchmark for an investment portfolio. The BMR sets out the list of use cases captured by the Regulation as follows:

(a) issuance of a financial instrument that references an index or a combination of indices;

(b) determination of the amount payable under a financial instrument or a financial contract by referencing an index or a combination of indices;

(c) being a party to a financial contract which references an index or a combination of indices;

(d) providing a borrowing rate […] calculated as a spread or mark-up over an index or a combination of indices […];

(e) measuring the performance of an investment fund through an index or a combination of indices […].

The BMR also regulates the use of a benchmark within the EU ([8]). The BMR's objective is therefore to ensure the proper functioning of the EU's markets and a high degree of consumer and investor protection with regard to benchmarks at EU level as underlined in Recital 6 of the BMR. Accordingly, Article 29 of the BMR regulates the uses of benchmarks in the Union.

The BMR entered into application on 1 January 2018, with a transitional period for existing benchmarks and non-EU benchmarks until 31 December 2019. The deadline for non-EU benchmarks was later postponed twice; in July 2023 the Commission has adopted a draft delegated regulation under the BMR to extend the transition period once more to 31 December 2025 for third-country benchmarks used by EU supervised entities ([9]).

The BMR draws from the Principles for Financial Benchmarks of the International Organization of Securities Commissions (IOSCO principles) and the Principles for Oil Price Reporting Agencies of the International Organization of Securities Commissions (IOSCO PRA Principles). These two sets of principles were developed at the international level in 2012-2013 in response to various revelations about benchmark manipulation and are an important focal point for benchmark regulations worldwide. They are adhered to by most professional benchmark administrators, mostly on a self-certification basis.

- **Overview of the proposal**

In line with the twofold objective of streamlining reporting and overall regulatory burden and responding to a mandate to review the BMR in terms of its scope and its rules for the use of non-EU benchmarks, this proposal aims to remedy the following two shortcomings:

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7 Supervised entities are defined in Art. 3(1)(17) of the BMR.

8 Article 2(1) BMR. The BMR regulates use of a benchmark by EU supervised entities, which we refer to as 'benchmark users'. The clients of these supervised entities, investors and businesses seeking exposure to benchmarks through one of the use cases listed above will be referred to as 'end users' of benchmarks.

9 See https://webgate.ec.europa.eu/regdel/#/delegatedActs/2036?lang=en

(1) Insufficient proportionality in the current BMR, notably as administrators of non-significant benchmarks are subject to a registration requirement as of the first use of a benchmark they offer;

(2) Potential dissuasive effects of the requirement to obtain recognition or endorsement on willingness of third-country administrators to offer benchmarks in the EU. Non-EU benchmark administrators, often not under supervision in their home jurisdiction, face significant additional compliance burden in seeking access to the EU market via recognition or endorsement. This presents a risk of reducing the number and variety of benchmarks available to EU benchmark users.

The policy objectives of the BMR should still be achieved if it focuses on critical benchmarks, significant benchmarks, EU Climate Transition Benchmarks and EU Paris-Aligned Benchmarks. Therefore, under this proposal only administrators of those categories of benchmarks should continue to be subject to the requirement of registration or authorisation and to the majority of the substantive requirements.

Benefits of rationalisation

This proposal recalibrates the scope of the BMR. While the substantive rules remain the same, they will be applicable to lesser number of market participants following an approach based on the systemic importance of benchmarks. Moreover, the proposal entails incremental improvements of procedural rules, clarifying certain aspects that were in practice conducive to legal uncertainty, in particular on the part of the benchmark users.

This proposal will reduce the burden associated with the registration and related supervision of administrators of non-significant benchmarks. These administrators make up the large majority (around 90 %) of the total number of administrators, yet their benchmarks' use is less economically significant.

The BMR's track record further shows that in four years of application, only one fine has been imposed by a national competent authority. This fine was imposed by BaFin, the German Financial Services Supervisory Authority in 2021, in respect of a supervised entity's controls regarding its contribution to a critical benchmark ([10]). Under this proposal, the activity of contributing to a critical benchmark will continue to be subject to the same supervisory scrutiny.

For EU supervised entities using benchmarks, this proposal would remove the usage restrictions contained in the third country chapter of the current BMR, that were identified as an impediment to the use of the majority of non-EU benchmarks ([11]).This proposal also aims to streamline the current compliance burdens for EU benchmarks users, such as the need to individually verify the regulatory status of indices they wish to use as benchmarks by consulting websites and public registers. Currently, this burden reduction stems from the fact that benchmarks by default need to be approved for use. Under the proposal, it should suffice to consult the Art. 36 register to verify that a benchmark is not subject to a public notice prohibiting its use. To enable full transparency, all relevant decisions by supervisory authorities should be made public and gathered in the Art. 36 register as well as in the database under the European Single Access Point Regulation ('ESAP'). Moreover, where a competent authority or ESMA concludes that a benchmark administrator has not complied

[10] See ESMA's 2021 report on sanctions imposed under the Benchmark Regulation https://www.esma.europa.eu/document/report-sanctions-imposed-under-benchmarks-regulation-in-2021.

[11] COM(2023) 455 final

with its obligations, a public notice would warn EU benchmark users that a particular benchmark is not fit for use in the Union and further use of that benchmark would be prohibited.

Other policy options considered

Alternative policy options could have included a recalibration of the scope only for non-EU benchmarks, or a reduction of the substantive requirements on all administrators without amending the scope of the regulation. The former was discarded on the basis that it would have skewed the playing field to the detriment of EU-based administrators; the latter might have reduced the burden on EU administrators but would not have properly addressed the excessive administrative burden on EU administrators of non-significant benchmarks and the risk the third country rules pose for EU users' access to non-EU benchmarks, and it could have put at risk the policy objective of ensuring safe and high quality benchmarks.

Finally, in the absence of changes to the current regulatory framework, BMR would continue to apply to all benchmarks used by EU financial market participants, including third-country benchmarks. As described in the Commission's report published on 14 July 2023 ([12]), the rules for the use of third-country benchmarks would continue to act as a disincentive to offering benchmarks to EU customers from third countries, which could lead to limited availability of appropriate benchmarks, and potentially increased costs, for EU end users. As a result, EU benchmark users such as banks and investment firms would risk losing access to a large part of the world's indices they use as benchmarks for financial instruments or as reference rates in financial contracts. This would mean that they would no longer be able to offer investment or hedging products that reference even very mainstream non-EU indices. EU investors and companies would then have to turn to non-EU intermediaries for these basic services and risk paying a premium. The lesser availability of third country benchmarks in the EU could then result in limited competition and potential systemic risk.

[12] Ibid

Table 4 - Summary of the proposed reform

<table>
<tr><td colspan="2">Types of significant benchmarks</td></tr>
<tr><td>Significant benchmarks by law - benchmarks where the administrator has concluded that the index is referenced by financial instruments and contracts, or used as a performance benchmark, by more than a total of EUR 50 billion in reference assets.</td><td>Significant benchmarks by designation - benchmarks that have not reached the EUR 50 billion threshold but that play a significant role in the operation of one or several national (retail) markets ([13]).</td></tr>
<tr><td colspan="2">Who designates?</td></tr>
<tr><td>Such benchmarks are automatically considered as significant (no need for a designation). Administrators have to notify their national competent authority when they reach the threshold.

ESMA and national competent authorities can issue a statement indicating that a benchmark has surpassed the above threshold but its administrator has failed to notify its competent authority.</td><td>EU benchmarks: the national competent authority

ESMA is consulted before designation and issues an advice on the competent authority’s intended designation to ensure consistency of national designations.

Non-EU benchmarks: ESMA, on request of a national competent authority (Article 24 BMR)</td></tr>
<tr><td colspan="2">Regulatory obligations</td></tr>
<tr><td colspan="2">• for administrators located in the EU: authorisation or registration in accordance Article 34 BMR;

• for third-country administrators: recognition under Article 32 BMR with ESMA or endorsement under Article 33 BMR, except if an equivalence decision with the third country has been adopted.</td></tr>
<tr><td colspan="2">Transparency for benchmark users</td></tr>
<tr><td>Who publishes the designation?

There is no formal designation.

National competent authorities and ESMA issue a public statement where an administrator notifies its benchmark as significant, or where that competent authority or ESMA has clear and demonstrable grounds to consider a benchmark significant.

In the ESMA register, the names of benchmarks subject to both types of statements are published, along with a link to that statement.</td><td>Who publishes the designation?

The designation decision by a national competent authority is published according to that authority’s national laws. ESMA is notified of that designation and publishes that benchmark’s name and a link to the designation decision in the Art. 36 register.

The designation decision by ESMA is published on the ESMA website. The benchmark’s name and a link to the designation decision is included in the Art. 36 register.</td></tr>
<tr><td colspan="2">Information on the regulatory status on administrators of significant benchmarks

The register kept by ESMA in accordance with Art. 36 ([14]) lists:

- administrators authorised or registered in the EU;
- non-EU administrators recognized or endorsed in the EU;
- benchmarks subject to a public statement by a competent authority or ESMA forbidding their use in the EU, along with links to such statements;
- a list of EU Climate Transition Benchmarks and EU Paris-Aligned Benchmarks available for use in the EU.</td></tr>
</table>

13 An example of a relevant retail market could be mortgages or very popular investment funds.

14 All information included in the Art. 36 register will also be accessible via the European Single Access Point (ESAP).

Under the proposal, the regulation would focus on critical benchmarks, significant benchmarks, PABs and CTBs, whether the administrator is in the Union or in a third country ([15]).

The significance of a benchmark depends in first instance on its economic significance for the EU market, for which the most relevant proxy is that benchmark's aggregate use. The threshold for determining significance should in all cases be calculated based on a benchmark's use 'within the Union', without distinction between EU- and non-EU benchmarks ([16]). That threshold should continue to be set at EUR 50 billion, the same threshold distinguishing between non-significant and significant benchmarks under the current BMR.

By way of derogation to the general rule, to account for specific situations, competent authorities (for EU benchmarks) and ESMA (for non-EU benchmarks) should be able to designate benchmarks below the quantitative threshold where they meet certain qualitative criteria that demonstrate their impact in the Union.

15 In order to safeguard the integrity and reputation of the associated 'EU labels', EU Paris-aligned Benchmarks and EU Climate Transition Benchmarks would remain in scope and can only be provided by administrators authorised or registered in the Union.

16 In line with the definition of 'use of a benchmark' in Article 2(1) BMR.

To ensure the coherence of national designation but maintain adequate flexibility, this proposal provides for a system of coordination between designations by national authorities and ESMA. Its main principles are the following:

- A competent authority can only designate a benchmark as significant where no other competent authority has designated it before.
- Prior to designation, a competent authority should invite the administrator, and, in case of cross-border designations, the national competent authority of the Member State of the administrator to provide any useful information.
- Prior to designation, a competent authority should consult ESMA.
- ESMA should advise on the correct application of the criteria for national designation and examine whether the benchmark might qualify as significant in other Member States.
- Where more than one authority could designate a benchmark, they should come to an agreement which authority will do so.
- Where no agreement is reached, ESMA is empowered to settle the disagreement.

Finally, this proposal takes into account the specificities of EU Climate Transition Benchmarks (EU CTBs) and EU Paris-Aligned Benchmarks (EU PABs). Benchmark providers can voluntarily choose to label benchmarks as EU CTBs or EU PABs, but doing so comes with specific requirements under the BMR. Therefore, EU CTBs and EU PABs can only be provided by EU-based benchmark administrators that are authorised or registered. Furthermore, the provision of EU CTBs and EU PABs, irrespective of their size, should be regulated identically to the provision of significant benchmarks under the BMR.

- **Impacts of rationalisation**

The proposed amendments seek to rationalise the BMR based on the premise that currently regulatory burden is evenly spread over all administrators subject to the BMR, irrespective of their economic significance. By contrast, the subset of administrators that provide the benchmarks which are economically most significant is limited. Notably, benchmark administrators are obliged to apply for registration as of the moment a single benchmark is used in a financial instrument or contract.

The proposal would remove the requirement of authorisation or registration (EU administrators) or endorsement or recognition (third-country administrators) for administrators of only non-significant benchmarks. The reference asset volumes of non-significant benchmarks are low, so that these types of benchmarks do not present any systemic risk. As a result, the mandatory compliance with organisational requirements, on (i) governance and conflicts of interest, (ii) oversight function and a hierarchy and monitoring of input data; (iii) setting up of codes of conduct as regards input data; (iv) reporting of infringements, and (v) methodological and benchmark statement disclosures would no longer apply to administrators of non-significant benchmarks. It should be recalled, however, that the requirements provided for in Regulation (EU) No 596/2014 ('the Market Abuse Regulation' or 'MAR') would continue to apply ([17]). Finally, it should also be recognised that there is a firmly established market practice for benchmark administrators to operate in accordance with the relevant IOSCO Principles.

Box 1

Significant vs non-significant benchmarks

The ESMA register currently lists 73 EU benchmark administrators. Of the benchmarks currently in use in the EU, only one (EURIBOR) has been designated as a critical benchmark under ESMA supervision ([18]). Three - the Stockholm Interbank Offered Rate (STIBOR), the Norway Interbank Offered Rate (NIBOR) and the Warsaw Interbank Offered Rate (WIBOR) are critical benchmarks under national supervision ([19]). All these critical benchmarks are interest rate benchmarks, and each of them is administered by a different EU administrator.

17 The Market Abuse Regulation applies to the behaviour in relation to benchmarks pursuant to Article 2. Article 12 of MAR provides that market manipulation also comprises the activity of transmitting false or misleading information or providing false or misleading inputs in relation to a benchmark where the person who made the transmission or provided the input knew or ought to have known that it was false or misleading, or any other behaviour which manipulates the calculation of a benchmark. In the legislative proposal "Listing Act", the Commission proposed to amend the Market Abuse Regulation to bring benchmark administrators and contributors into the scope of administrative sanctioning regime by amending Article 30(2) letter (e) to (g). The proposed amendments to Article 23 also enhance the power of competent authorities regarding benchmark administrators.

18 Article 20(1)(a) BMR, which requires that a benchmark is referenced by a total amount of financial contracts and financial instruments of at least EUR 500 billion.

19 Article 20(1)(b) BMR.

An informal survey of national supervisors by ESMA revealed that in September 2022, 6 benchmark administrators under European supervision (three EU and three non-EU ([20])) offer either one or several significant benchmarks ([21]). The remaining 66 administrators provide only non-significant benchmarks.

This rationalisation will result in better targeting of supervisory efforts on the relevant categories of critical or significant benchmarks, defined as benchmarks referencing financial instruments and financial contracts or investment funds for a total amount more than EUR 500 billion (critical) or EUR 50 billion (significant) or, benchmarks that, based on a national or EU-wide assessment, play a significant role in a (retail) market in a particular Member States or in a market across several Member States.

The proposal is expected to reduce the number of EU entities falling within the scope of the BMR. Of the 73 EU administrators currently under supervision, 66 administrators would fall outside the scope, unless specifically designated as significant. This corresponds to a reduction of the population subject to mandatory compliance by up to 90%. For cost implications, please see the section on REFIT below.

- **Implications for third country administrators**

Ensuring equal treatment of administrators regardless of their location is a guiding principle of this proposal. Therefore, the scope of application of the BMR as regards EU administrators should be identical with that applicable to third-country administrators.

We estimate that there are around 273 third-country benchmark administrators ([22]). Under the current rules, as of 1 January 2026, they would all have to secure access to the EU market via equivalence, recognition or endorsement in order for their benchmarks to remain available for use by EU supervised entities. Currently, out of this number, two are covered by an equivalence decision ([23]), two more are recognised by an EU supervised entity ([24]) and ten are recognised by ESMA ([25]). The remaining 259 administrators can until 1 January 2026 offer their benchmarks without restriction in the EU in accordance with the transitional period under Article 51(5) of the BMR. This means that only around 5% of third country administrators have successfully used one of the three available 'access routes' to the EU market.

As regards significant benchmarks, it is estimated that at least six non-EU administrators provide at least one benchmark surpassing the EUR 50 billion usage threshold in the EU. Of these six, three have currently obtained recognition or endorsement in the EU. In view of the

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20 Having obtained access to the EU market via recognition or endorsement. This is in addition to an unknown number of non-EU administrators offering significant benchmarks in the EU under the transitional provisions.

21 Benchmarks referenced by a total amount of financial contracts and financial instruments in excess of EUR 50 billion, or [which have] no or very few appropriate market-led substitutes and [could cause] a significant and adverse impact on market integrity, financial stability, consumers, the real economy or the financing of households or businesses in one or more Member States.

22 All data in this section was reported by ESMA, including on the basis of a commercial database (www.rimes.com).

23 ABS Benchmarks Administration CO PTE. LTD. (Singapore) and ASX Benchmarks Limited (Australia).

24 S&P Dow Jones Indices, LLC (USA) and SIX Index AG (Switzerland).

25 Hedge Fund Research, Inc. (USA), ICAP information Services Limited (UK), Invesco Indexing LLC (USA), JPX Market Innovation & Research, Inc. (Japan), Leonteq Securities AG (Switzerland), LPX AG (Switzerland), Nikkei Inc. (Japan), Scientific Infra Pte Ltd (Singapore), STOXX Ltd. (Switzerland), WisdomTree, Inc. (USA).

fact that this proposal provides for the possibility of ESMA designating additional non-EU benchmarks as significant, these six non-EU administrators of significant benchmarks should be seen as the minimum population that will still be subject to the third country regime.

- **Consistency with existing policy provisions in the policy area**

This proposal is part of a package of measures to rationalise reporting requirements. This is a step in a continuous process looking closely at existing reporting requirements, with a view to assessing their continued relevance and to making them more efficient.

This proposal aims to significantly reduce the number of benchmarks in scope of EU law and consequently also the regulatory burden for the majority of benchmark administrators and on users. At the same time, the increased focus of compliance and supervisory efforts on those benchmarks that are economically the most significant will ensure achieving the policy objectives that underpin the BMR.

In addition, this reform of the BMR will contribute to the general objectives of the EU's financial services policies which aim at safeguarding financial stability. The proposal will also contribute to the objectives of the Capital Markets Union action plan which aims at deepening the EU capital markets and making the European economy and European companies more competitive.

The approach taken in this proposal should be contrasted with that proposed by the Commission in its proposal on the transparency and integrity of Environmental, Social and Governance (ESG) rating activities ([26]). The ESG ratings initiative is principle based and largely based on recommendations published by IOSCO in November 2021. Other jurisdictions that are working on improving the transparency and integrity of ESG ratings are also basing their work on the IOSCO recommendations, which should result in broad alignment globally on the treatment of these providers. On that basis, the ESG ratings proposal does take an encompassing approach to the regulation of ESG rating activities, including a third country regime, but differs significantly from the BMR in that it does not regulate the use of ESG ratings. In addition, the market for ESG ratings is at a less developed stage, and users of ESG ratings are less subject to the market power of specific providers, noting also that users of ESG ratings are mostly institutional investors that may complement the input received with their own analysis, before deciding on a specific investment strategy. For that reason, the ESG ratings regime should not be expected to lead to user detriment in the same way the third country regime in the BMR would have done in the absence of legislative intervention.

- **Consistency with other Union policies**

Under the regulatory fitness and performance programme (REFIT), the Commission ensures that its legislation is fit for purpose, targeted to the needs of stakeholders and minimizes the burdens while achieving its objectives. These proposals are therefore part of the REFIT programme, reducing the complexity of the reporting burdens arising from the EU legal environment.

While certain reporting requirements are essential, they need to be as efficient as possible. They should avoid overlaps, remove unnecessary burdens and use digital and interoperable solutions as much as possible.

[26] COM(2023) 314 final; ESG ratings are 'opinions' from a ratings provider that should not be interpreted as a form of labelling or certification.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

Art. 114 Treaty on the Functioning of the European Union (TFEU).

Regulation (EU) 2016/1011 has removed obstacles to trade on the basis of Art. 114 TFEU. The EU legislature can therefore rely on the same legal basis to now adapt Regulation (EU) 2016/1011. This is in accordance with the Court's reasoning in case C-58/08 Vodafone and Others [2010] I-04999, paragraph 34, where the Court stated: 'Where an act based on Article 95 EC has already removed any obstacle to trade in the area that it harmonises, the Community legislature cannot be denied the possibility of adapting that act to any change in circumstances or development of knowledge having regard to its task of safeguarding the general interests recognised by the Treaty (see, to that effect, British American Tobacco (Investments) and Imperial Tobacco, paragraphs 77 and 78).'

• Subsidiarity (for non-exclusive competence)

This proposal respects the principle of subsidiarity. The designation of benchmarks that are relevant for a market in a Member State is incumbent on the competent authority that is closest to that relevant market. For example, if a particular benchmark is most frequently used by operators in a particular (national) market, it is incumbent on that competent authority to designate the benchmark as significant, irrespective of where the administrator of that benchmark is domiciled. If that benchmark is administered in another Member State, cooperation between competent authorities should ensure seamless supervision of such a benchmark. In light of the financial stability risks and the complexity of the procedures and the losses that could occur amidst financial instability, these costs of supervision are considered proportionate. Further, measures to avoid fragmentation and legal uncertainty include the coordinating and mediating role of ESMA prior to national designations and grandfathering rules concerning benchmark administrators that have already obtained an authorization or are registered with a national competent authority.

• Proportionality

This proposal introduces a more streamlined and proportionate approach to the regulation of benchmarks. The proposal is limited to those changes that are necessary to achieve a framework that works for EU market participants. It does not go beyond what is strictly necessary to achieve its objectives. It is compatible with the proportionality principle, taking into account the right balance between the preservation of financial stability and the integrity of European markets, and the cost-efficiency of the measure.

The proposed regulatory amendments will reduce legal uncertainty for EU supervised entities and ensure that they can make use of the broadest possible range of EU and non-EU benchmarks. Furthermore, there is a clear distribution of competences between relevant national authorities, ESMA and the Commission when it comes to the designation of a benchmark as critical or significant. The proposal also sets out a clear delineation of the legal consequences incumbent on the administrators who provide benchmarks that are designated as critical or significant.

Compared to the existing BMR, this proposal also increases legal certainty as to the regulatory status of benchmarks that are designated as significant – the designating entities (competent authorities) have a mandate to clearly communicate the regulatory status of a

designated benchmark. Moreover, these decisions will be easily available on the ESAP and in the register maintained by ESMA.

- **Choice of the instrument**

The proposal introduces amendments to the existing regulation based on Article 114 TFEU and should therefore also be a regulation.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

This targeted review focuses on:

– ensuring that EU benchmark users can make use of the broadest possible range of EU and non-EU benchmarks and remain competitive in the global capital markets;

– reducing regulatory burden on EU administrators of benchmarks that are of limited economic impact while maintaining adequate supervision of critical and significant benchmarks, EU Climate Transition Benchmarks and EU Paris-Aligned Benchmarks.

The Commission services collected data directly from market participants and held meetings with stakeholders about their current situation, concerns, and ideas about how to improve and reform the BMR and, in particular, on the third-country chapter. It also published a call for evidence for 4 weeks and collected market participants views.

- **Consultation of the Member States**

The Commission services consulted Member States' experts on the future shape of the European benchmark regulation at the meetings of the Expert Group of the European Securities Committee on 22 June 2023 and on 21 September 2023 respectively.

Most Member States agreed that only significant benchmarks should be in the scope of regulation and that benchmarks surpassing a usage threshold of EUR 50 billion should be in scope automatically. At the same time, some Member States argued in favour of the need for national discretion to deem certain indices significant, even if this benchmark is mainly in use in one Member State or if the agreed thresholds for designation as relevant for the EU were not met. In a subsequent discussion on the contours of a national designation scheme, most Member States indicated that they would consider designating a limited number of benchmarks, mainly provided by administrators located in that Member State.

Most Member States consider it appropriate to apply the designation threshold or criteria in the same manner to both benchmarks administered within the EU and those outside of the EU.

Irrespective of the approach chosen for determining the threshold for designating a benchmark as significant, most Member States that expressed a view on the issue wish to retain commodity benchmarks provided by price reporting agencies within the scope of the BMR and apply the rules in Annex II of the BMR to this benchmark category.

- **Stakeholder consultations**

The targeted consultation on 'the regime applicable to the use of benchmarks administered in a third country', was carried out between 20 May and 12 August 2022. 64 responses were

received to the online questionnaire. A detailed summary of the responses received was included in the Commission's report on the use of third country benchmarks in the EU ([27]).

- **Collection and use of expertise**

These proposals have been identified following a process of internal scrutiny of existing reporting obligations and are based on the experience in implementing related legislation. Since this is one step in the process of continuous assessment of reporting requirements arising from EU legislation, the scrutiny of such burdens and of their impact on stakeholders will continue.

- **Impact assessment**

No impact assessment was prepared for this proposal since:

– The proposal responds to two specific policy objectives which, to a large extent, predetermine the policy option presented in this proposal.

– This proposal consists of a targeted recalibration of the scope of the BMR and the enhancement of proportionality features; it does not modify the substantive rules or the mode of supervision. While it maintains the distinction between non-significant benchmarks and other benchmarks, along lines which already exist in the BMR today, it aligns the regulatory framework more closely with benchmark regulation in other jurisdictions, which is generally based on designation of the most economically impactful indices.

– Moreover, this proposal was informed by an impact assessment conducted in 2020 ([28]) and by a Commission report presented to the co-legislators in 2023 ([29]), including two public consultations ([30]). The intention to proceed with this initiative without an impact assessment was announced in a call for evidence published from 1 March to 29 March 2023 ([31]).

- **Regulatory fitness and simplification**

This is a REFIT proposal, aimed at simplifying legislation and reducing the burdens for stakeholders. This legislative proposal is expected to bring cost savings for EU benchmark providers that do not provide significant benchmarks as well as all European benchmark users.

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27 COM(2023) 455 final.
28 SWD(2020) 147 final.
29 COM(2023) 455 final.
30 https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12016-Report-pursuant-to-Article-54-of-the-Benchmark-Regulation/public-consultation_en and https://finance.ec.europa.eu/regulation-and-supervision/consultations/finance-2022-benchmarks-third-country_en.
31 https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13762-Review-of-the-scope-and-third-country-regime-of-the-Benchmark-Regulation_en.

Although it was not possible to produce precise estimates ([32]), this proposal is expected to generate cost savings for benchmark administrators, benchmark users and national competent authorities tasked with supervising benchmark administrators.

– Benchmark administrators will in all instances save on compliance costs, in particular costs generated by reporting requirements. Those administrators providing only non-significant benchmarks will save both on the compliance cost to ensure their organisational setup and that their provision of benchmarks meets the additional detailed requirements of the BMR over and above what is stipulated by the IOSCO Principles ([33]), and on annual supervisory fees ([34]). New entrants will moreover save on the initial registration fee. For administrators providing benchmarks which are significant, critical or EU CTBs or EU PABs, cost savings are unlikely. Still, these administrators may also benefit from savings to the extent they also provide non-significant benchmarks.

– Benchmark users are expected to benefit from the increased availability of EU and non-EU benchmarks, from a regulatory environment that, through the rationalisation of regulatory requirements, is more open for innovation, and from increased competition in the market for benchmarks. Obviously, the continued availability of non-EU benchmarks could be an important cost saving. One major credit institution provided an estimate that revenue related to providing services using non-EU benchmarks is in the range of EUR 100 - 150 million. This is revenue which would be at risk if some or all non-EU benchmarks would become unavailable for use in the EU.

– Competent authorities in the EU will see a significant reduction in the number of benchmarks and the number of benchmark administrators under their supervision. Although it cannot be assumed that the savings will be linear to the decrease in population under supervision, as the administrators that remain under supervision will be those responsible for more economically impactful benchmarks, there should be a significant cost reduction as well as an opportunity to focus supervisory capacity on critical benchmarks, significant benchmarks, EU CTBs and EU PABs.

• **Fundamental rights**

The proposal upholds fundamental rights and the principles recognised by the EU Charter of Fundamental Rights, in particular the freedom to conduct a business (Article 16). This initiative aims to ensure that EU benchmark users can use the widest possible range of EU and non-EU benchmarks and will create a market environment for EU benchmark users to compete with their non-EU counterparts. It will therefore, help to improve the right to conduct business freely. The proposed amendments to the BMR are not expected to have a negative

[32] The targeted consultation during the summer of 2022 contained questions on costs but yielded only anecdotal information.

[33] One major benchmark administrator estimated the all-in setup cost as an EU-authorised benchmark administrator at EUR 2-3 million, with annual ongoing supervision cost between EUR 1,5 and 2 million.

[34] These fees vary significantly, from flat annual fees of a few hundred EUR charged by certain national authorities to fees based on actual time expenditure on supervision.

impact on consumer protection as the review will keep in scope critical and significant benchmarks that are the most widely used and relevant for consumer and investor protection.

4. BUDGETARY IMPLICATIONS

The initiative is not expected to have any financial impact on the EU budget. Initial indications are that the number of benchmarks and benchmark administrators under the supervision of ESMA would decrease or, depending on the exercise of the designation powers, stay constant. This would imply that ESMA, depending on the exercise of the designation powers, would need less staff for its direct supervision of benchmark administrators.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

An evaluation is envisaged 5 years after the implementation of the measure and in line with the Commission's Better Regulation guidelines. The evaluation aims to assess, among other things, how effective and efficient the Regulation has been in achieving the policy objectives and to decide whether new measures or amendments are needed.

- **Detailed explanation of the specific provisions of the proposal**

Article 1 – Amendments to the Benchmark Regulation

Article 2(1) of the Benchmark Regulation sets out the scope of the regulation. The proposal amends Article 1(1) to reflect the new approach and adds a new paragraph (1a). It also defines the type of benchmarks to which specific Titles in Regulation (EU) 2016/1011 apply. These are critical benchmarks, significant benchmarks, EU Paris-aligned Benchmarks and EU Climate Transition Benchmarks. Administrators of benchmarks that are not considered critical in accordance with Article 20(1) of the Regulation are in scope once they offer one or more benchmarks that are designated as significant in accordance with the new Article 24. Non-significant benchmarks are therefore no longer required to apply the requirements under Titles II (Benchmark integrity and reliability), III (Requirement for different types of benchmarks), IV (Transparency and consumer protection) and VI (Authorisation, Registration and Supervision of Administrators) (new paragraph 3 in Article 2).

In Article 3(1) point 26 the definition of what constitutes a significant benchmark is amended.

To safeguard the integrity of the label and provide for effective supervision, the administrators of EU Paris-aligned Benchmark or EU Climate Transition Benchmarks remain in scope of the BMR, irrespective of their significance, subject to them obtaining authorisation or registration in the EU.

In line with the adapted scope, special 'negative designation' rules for foreign-exchange benchmarks and non-significant benchmarks are redundant and can be repealed.

EU Paris-aligned Benchmarks and EU Climate Transition Benchmarks

In Article 19a, a new paragraph 4 is added to safeguard the integrity of the label and provide for effective supervision. The administrators of EU Paris-aligned Benchmark or EU Climate Transition Benchmarks remain in scope of the BMR, irrespective of their significance, subject to them obtaining authorisation or registration in the EU.

Significant benchmarks

Amendments to Article 24 make up the core of this proposal. Its first paragraph governs the determination of whether a benchmark is significant on the basis of a simple numerical threshold: whether such benchmarks are used as a reference for assets whose cumulative value exceeds EUR 50 billion.

Article 24(2), sets out the obligation, incumbent on all administrators of benchmarks used by supervised entities in the EU, to notify the Commission when one or several of the benchmarks they administer exceeds a usage threshold of EUR 50 billion. This obligation applies to an administrator located in the Union and to an administrator located in a third country. In line with Article 2(1) of the BMR, the usage threshold should be calculated on the use of a benchmark within the EU.

Once the notification is received, such benchmarks are considered as significant and must comply with the requirements applicable to significant benchmarks (Article 24a, paragraph 1).

According to Article 24, a national competent authority may also issue a decision stating that a benchmark, whose usage within the EU does not exceed EUR 50 billion meets the qualitative conditions for significance set out in Article 24, paragraph 1, point (b), with respect to its Member State ('NCA designation'). Such designations should remain limited and should be motivated in a reasoned decision from the competent authority, setting out in clear terms the reasons why a benchmark is significant under point (b) in that Member State.

The competent authorities should publish designation decisions, and ESMA should compile all designation decisions issued by them. This allows users to easily verify the designation status of benchmarks they intend to use. Supervised entities should be obliged to regularly consult these sources to check the designation status of any benchmarks they intend to use.

A parallel system for the designation of non-EU benchmarks as significant in accordance with qualitative criteria is laid down in Art. 24(6). The responsibility is conferred in this case to ESMA, acting upon the request of one or more competent authorities. The qualitative criteria are similar to those for the designation of EU benchmarks, as are the measures to ensure the transparency of designations.

Article 2 provides that entry into force occurs on the twentieth day following that of publication. Application of this act is deferred until 1 January 2026.

2023/0379 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank[35],

Having regard to the opinion of the European Economic and Social Committee[36],

Acting in accordance with the ordinary legislative procedure[37],

Whereas:

(1) Reporting requirements play a key role in ensuring proper monitoring and correct enforcement of legislation. However, it is important to streamline those requirements in order to ensure that they fulfil the purpose for which they were intended and to limit the administrative burden.

(2) Under Regulation (EU) 2016/1011 of the European Parliament and of the Council[38], all administrators of benchmarks, regardless of the systemic relevance of those benchmarks or of the amount of financial instruments or contracts that use those benchmarks as reference rates or as performance benchmarks, are to comply with several very detailed requirements, including requirements on their organisation, on the governance and conflicts of interest, on oversight functions, on input data, on codes of conduct, on reporting of infringements, and on methodological and benchmark statement disclosures. Those very detailed requirements have put a disproportionate regulatory burden on administrators of smaller benchmarks in the Union considering the aims of Regulation (EU) 2016/1011, that is to safeguard

35 OJ C , , p. .

36 OJ C , , p. .

37 OJ C , , p. .

38 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).

financial stability and to avoid negative economic consequences that result from the unreliability of benchmarks. It is therefore necessary to reduce that regulatory burden by focusing on those benchmarks with the greatest economic relevance for the Union market, i.e. significant and critical benchmarks, and on those benchmarks that contribute to the promotion of key Union policies, i.e. EU Climate Transition and EU Paris-aligned Benchmarks. For that reason, the scope of application of Titles II, III, IV and VI of Regulation (EU) 2016/1011 should be reduced to those specific benchmarks.

(3) Under Article 18a of Regulation (EU) 2016/1011, the Commission can exempt certain spot foreign exchange benchmarks from the scope of that Regulation to ensure their continued availability for use in the Union. In view of the need for a revised and narrower focus of Regulation (EU) 2016/1011 on critical benchmarks, significant benchmarks, EU Climate Transition Benchmarks and EU Paris-Aligned Benchmarks, there is no longer a need for the specific exemption regime for spot foreign exchange benchmarks..

(4) Pursuant to Article 19d of Regulation (EU) 2016/1011, administrators of significant benchmarks are required to endeavour to provide an EU Climate Transition Benchmark or an EU Paris-aligned Benchmark by 1 January 2022. As this date has elapsed, it is appropriate to delete this provision.

(5) The criteria for assessing whether a benchmark is a significant benchmark are currently laid down in Article 24 of Regulation (EU) 2016/1011. Benchmarks will be considered to be significant, *inter alia* where they meet the threshold laid down in Article 24(1), point (a), of that Regulation.

(6) Benchmark administrators are best placed to monitor the use in the Union of the benchmarks they provide. They should therefore notify the competent authority concerned or the European Securities and Markets Authority (ESMA), depending on where that administrator is located, that the aggregate use of one of their benchmarks has exceeded the threshold laid down in Article 24(1), point (a), of Regulation (EU) 2016/1011. To ensure that benchmark administrators have sufficient time to adapt to the requirements that apply to significant benchmarks, they should only be subject to those requirements within 60 working days after having submitted such a notification. In addition, benchmark administrators should provide the competent authorities concerned or ESMA, upon request, with all information necessary to assess that benchmark's aggregate use in the Union. Where a benchmark administrator omits or refuses to notify that the usage of one of its benchmarks has exceeded the threshold laid down in Article 24(1), point (a), of Regulation (EU) 2016/1011, and where competent authorities have clear and demonstrable grounds to consider that the threshold has been exceeded, the competent authorities concerned or ESMA, as appropriate, should be able to declare that the threshold has been exceeded, having first given the administrator the opportunity to be heard. Such declaration should trigger the same obligations for the benchmark administrator as a notification by the benchmark administrator. This should be without prejudice to the ability of ESMA or competent authorities to impose administrative sanctions on those administrators that fail to notify that one of their benchmarks has exceeded the applicable threshold.

(7) Markets, prices and the regulatory environment evolve over time. To take those evolutions into account, the Commission should be empowered to further specify the methodology to be used by administrators and competent authorities to calculate the

total value of financial instruments, financial contracts or investment funds referencing a benchmark.

(8) However, in exceptional cases, there may be benchmarks with an aggregate use below the threshold laid down in Article 24(1), point (a), of Regulation (EU) 2016/1011 which, due to the specific situation in the market of a Member State, are nevertheless of such importance to that Member State that any lack of reliability would be of comparable impact as that of a benchmark the usage of which exceeds that threshold. For that reason, the competent authority of that Member State should be able to designate such a benchmark, where that benchmark is provided by an EU administrator, as significant on the basis of a set of qualitative criteria. For benchmarks provided by a non-EU administrator, it should be ESMA that, on the request of one or more competent authorities, designates such a benchmark as a significant benchmark.

(9) To ensure the consistency and coordination of national designations of benchmarks as significant benchmarks, competent authorities intending to designate a benchmark as significant should consult ESMA. For the same reason, a competent authority of a Member State that intends to designate as significant a benchmark that is provided by an administrator that is located in another Member State should also consult the competent authority of that other Member State. Where competent authorities disagree which among them should designate and supervise a benchmark, ESMA should settle that disagreement in accordance with Article 19 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[39].

(10) To respect the right to be heard, a competent authority or ESMA should, before designating a benchmark as significant, allow the administrator of that benchmark to provide any useful information relevant to its designation.

(11) For the designation as a significant benchmark to be as transparent as possible, competent authorities or ESMA should issue a designation decision containing the reasons why that benchmark is considered significant. Competent authorities should publish the designation decision on their website and should notify that decision to ESMA. For the same reasons, where ESMA designates a benchmark as significant upon a request of a competent authority, ESMA should publish the designation decision on its website and should notify the requesting competent authority thereof.

(12) EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks are specific categories of benchmarks, defined by their compliance with rules governing their methodology and the disclosures their administrator are to make. For that reason, and to prevent claims that could lead users to think that such benchmarks are compliant with the standards attached to those labels, it is necessary to subject those benchmarks to mandatory registration or authorisation, as appropriate, and to supervision.

(13) To ensure the timely start of the supervision of significant benchmarks, administrators of benchmarks that have become significant either by reaching the applicable quantitative threshold or by designation, should be required to seek, within 60 working days, authorisation or registration or, in the case of benchmarks provided by an administrator located in a third-country, endorsement or recognition.

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[39] 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 (OJ L 331, 15.12.2010, p. 84).

(14) To mitigate the risks linked to the use of benchmarks that are potentially not safe for use in the Union, and to warn potential users, competent authorities and ESMA should be able to issue a warning under the form of a public notice that the administrator of a significant benchmark does not comply with the applicable requirements, in particular as regards the compliance with the obligation for the benchmark administrator to be authorised, registered, endorsed or recognised, as applicable. Once such a warning has been issued, supervised entities should no longer be able to add new references to such benchmarks or combination of benchmarks. Similarly, to prevent the risks entailed by the use of benchmarks that claim compliance with the EU Climate Transition and EU Paris-aligned labels without being subject to adequate supervision, supervised entities should neither be able to add new references to an EU Climate Transition Benchmark or an EU Paris-aligned Benchmark or combination of such benchmarks in the Union where the administrator of those benchmarks is not included in ESMA's register of administrators and benchmarks.

(15) To avoid potentially excessive market disruptions following the prohibition of the use of a benchmark, competent authorities or ESMA should be able to allow the temporary continued use of such a benchmark. To ensure a sufficient level of transparency and protection *vis-à-vis* end-investors, users of those benchmarks that are subject to a warning under the form of a public notice should identify a suitable alternative to replace those benchmarks within 6 months following the publication of that public notice, or otherwise ensure that clients are appropriately informed of the lack of an alternative benchmark.

(16) Under Article 32 of Regulation (EU) 2016/1011, recognition of benchmark administrators located in a third country serves as a temporary means of access to the Union market pending the adoption of an equivalence decision by the Commission. However, given the very limited number of third-country benchmarks covered by equivalence decisions, such recognition should become a permanent means of access to the Union market for such benchmark administrators.

(17) Benchmarks covered by an equivalence decision are considered to be equivalently regulated and supervised to Union benchmarks. The obligation to seek endorsement or recognition should therefore not apply to administrators of significant benchmarks located in a third country that benefit from an equivalence decision.

(18) In the interest of transparency and to ensure legal certainty, competent authorities that designate a benchmark as significant should specify the potential use restrictions that arise where the administrator of such a benchmark fails to be authorised or registered or fails to comply with the endorsement or recognition requirements, as applicable.

(19) To mitigate the risks linked to the use of inadequately supervised significant benchmarks, where the administrator of a benchmark that becomes significant does not seek authorisation, registration, recognition or endorsement within the prescribed time limit, or where the authorisation, registration, recognition or endorsement for such benchmark administrator fails, or where an administrator is withdrawn its authorisation, registration, endorsement or recognition, the competent authority or ESMA, as applicable, should issue a public notice stating that the significant benchmarks provided by that administrator are not suitable for use in the Union.

(20) Benchmark users rely on transparency regarding the regulatory status of benchmarks they use or intend to use. For that reason, ESMA should list in the register of administrators and benchmarks those benchmarks that are subject to the most detailed requirements laid down in Regulation (EU) 2016/1011, either because their use in the

Union is above the set threshold for significant benchmarks, because they are designated as significant by a national supervisor or by ESMA, or because they are critical benchmarks. For the same reason, ESMA should also list in that register EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks provided by administrators that are authorised or registered. Finally, ESMA should also list in the register the benchmarks for which a competent authority or ESMA has issued a public notice prohibiting the further use of that benchmark. To further reduce the burden on users, all such information should also be made readily available on the European Single Access Point (ESAP).

(21) To ensure a seamless transition to the rules introduced under this Regulation and to avoid that administrators have to go through a procedure for registration or authorisation more than once, competent authorities and ESMA should provide less burdensome application procedures for administrators that are already authorised, registered, endorsed or recognised and that apply for a new authorisation, registration, endorsement or recognition within two years from the date of application of this amending Regulation.

(22) In order to give competent authorities and ESMA the necessary time to gather information on potential significant benchmarks and to adapt existing infrastructure to the new framework proposed under this amending Regulation, the date of application of this Regulation should be deferred.

(23) Regulation (EU) 2016/1011 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) 2016/1011

Regulation (EU) 2016/1011 is amended as follows:

(1) Article 2 is amended as follows:

(a) the following paragraph 1a is inserted:

‘1a. Titles II, III, IV and VI .apply only in respect of critical benchmarks, significant benchmarks, EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks.’;

(b) in paragraph 2, points (g) and (i) are deleted;

(2) in Article 3, paragraph 1 is amended as follows:

(a) point (22a) is deleted;

(b) point (27) is deleted;

(3) Article 5 is amended as follows:

(a) in paragraph 5, second subparagraph, the last sentence is deleted ;

(b) paragraph 6 is deleted;

(4) Article 11 is amended as follows:

(a) in paragraph 5, first subparagraph, the last sentence is deleted;

(b) paragraph 6 is deleted;

(5) Article 13 is amended as follows:

(a) in paragraph 3, first subparagraph, the last sentence is deleted;

(b) paragraph 4 is deleted;

(6) Article 16 is amended as follows:

(a) in paragraph 5, second subparagraph, the last sentence is deleted;

(b) paragraph 6 is deleted;

(7) in Title III, the title of Chapter 2 is replaced by the following:

'**Interest rate benchmarks**';

(8) Article 18a is deleted;

(9) in Article 19a, the following paragraph 4 is added:

'4. Administrators that are not authorised or registered pursuant to Article 34 shall not :

(a) provide EU Climate Transition Benchmarks or Paris-aligned Benchmarks;

(b) indicate or suggest, in the name of the benchmarks they make available for the use in the Union or in the legal or marketing documentation for those benchmarks, that the benchmarks they make available comply with the requirements applicable to the provision of EU Climate Transition Benchmarks or EU Paris-aligned Benchmarks.';

(10) Article 19d is deleted;

(11) Article 24 is replaced by the following:

'*Article 24*

Significant benchmarks

1. A benchmark which is not a critical benchmark shall be significant where either of the following conditions is met:

(a) the benchmark is used directly or indirectly within a combination of benchmarks within the Union as a reference for financial instruments or financial contracts or for measuring the performance of investments funds, that have a total average value of at least EUR 50 billion on the basis of all the range of maturities or tenors of the benchmark, where applicable, over a period of six months;

(b) the benchmark has been designated as significant in accordance with the procedure laid down in paragraphs 3, 4 and 5 or the procedure laid down in paragraph 6.

2. An administrator shall immediately notify the competent authority of the Member State where it is located or, if located in a third country, ESMA, where one or several of that administrator's benchmarks exceed the threshold referred to in paragraph 1, point (a). Following receipt of that notification, the competent authority or ESMA, as appropriate, shall publish a statement on its website stating that that benchmark is significant.

An administrator shall, upon request, provide the competent authority of the Member State where it is located or, if located in a third country, ESMA, with information as regards whether the threshold referred to in paragraph 1, point (a) has been effectively exceeded.

Where a competent authority or, in the case of a third-country administrator, ESMA, has clear and demonstrable grounds to consider that a benchmark exceeds the threshold referred to in paragraph 1, point (a), the competent authority or ESMA may issue a notice stating that fact. Such a notice shall trigger the same obligations for the benchmark administrator as a notification as referred to in paragraph 2. At least 10 working days before issuing such notice, the competent authority or ESMA shall inform the administrator of the benchmark concerned of its findings, and invite that administrator to submit any observation.

3. A competent authority may, having consulted ESMA in accordance with paragraph 4 and taking into account its advice, designate a benchmark provided by an administrator located in the Union that does not meet the condition laid down in paragraph 1, point (a), as significant where that benchmark fulfils all of the following conditions:

(a) the benchmark has no, or very few, appropriate market-led substitutes;

(b) in the event that the benchmark ceases to be provided, or is provided on the basis of input data no longer fully representative of the underlying market or economic reality or on the basis of unreliable input data, there would be significant and adverse impacts on market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in its Member State;

(c) the benchmark has not been designated by a competent authority of another Member State.

Where a competent authority concludes that a benchmark fulfils the criteria set out in the first subparagraph, the competent authority shall prepare a draft decision to designate the benchmark as significant and notify that draft decision to the administrator concerned and to the competent authority of the administrator's home Member State where relevant. The competent authority concerned shall also consult ESMA on the draft decision.

The administrators concerned and the competent authority of the administrator's home Member State shall have 15 working days from the date of notification of the draft decision of the designating competent authority concerned to provide observations and comments in writing. The designating competent authority concerned shall inform ESMA of the observations and comments received and shall duly consider those observations and comments before adopting a final decision.

The designating competent authority shall notify ESMA of its decision, and publish the decision, including the reasons for which it was made and the consequences of this designation, on its website without undue delay.';

4. When consulted by a competent authority on the intended designation of a benchmark as significant in accordance with paragraph 3, first subparagraph, ESMA shall, within 3 months, issue an advice that takes into account the following factors, in light of the specific characteristics of the benchmark concerned:

(a) whether the consulting competent authority has sufficiently substantiated its assessment that the conditions referred to in paragraph 3, first subparagraph are met;

(b) whether, in the event that the benchmark ceases to be provided, or is provided on the basis of input data that are no longer fully representative of the underlying market or economic reality or that are unreliable, there would be significant and adverse impacts on market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in in Member States other than the Member State of the consulting competent authority.

For the purposes of point (b), ESMA shall take due account, where relevant, of the information provided by the consulting authority pursuant to the third subparagraph of paragraph 3.

5. Where ESMA finds that a benchmark meets the conditions under paragraph 3, 1st paragraph, points (a) to (c), in more than one Member State, it shall inform the competent authorities of the Member States concerned thereof. They shall agree which among them designates the benchmark concerned as significant benchmark.

Where competent authorities disagree on the matter referred to in the first subparagraph, they shall refer the matter to ESMA, ESMA shall settle that disagreement in accordance with Article 19 of Regulation (EU) No 1095/2010.

6. ESMA may, upon the request of a competent authority, designate a benchmark provided by an administrator located in a third country that does not meet the threshold laid down in paragraph 1, point (a), as significant where that benchmark fulfils all of the following conditions:

(a) the benchmark has no, or very few, appropriate market-led substitutes;

(b) in the event that the benchmark would cease to be provided, or would be provided on the basis of input data that are no longer fully representative of the underlying market or economic reality or that are unreliable, there would be significant and adverse impacts on market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in one or more Member States.

ESMA shall, prior to the designation decision and as soon as possible, inform the administrator of the benchmark of its intention, and invite that administrator to provide ESMA within 15 working days with a reasoned statement containing any relevant information for the purposes of the assessment related to the designation of the benchmark as significant.

Where applicable, ESMA shall invite, as soon as possible, the competent authority of the jurisdiction where the administrator is located to provide any relevant information for the purposes of the assessment related to the designation of the benchmark.

ESMA shall motivate any designation decision, taking into account whether there is sufficient evidence that the conditions referred to in the first subparagraph of this paragraph are met, in light of the specific characteristics of the benchmark concerned.

ESMA shall publish its reasoned decision on its website and shall notify the requesting competent authority or authorities without undue delay.

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 49 to further specify the calculation method to be used to determine the

threshold referred to in paragraph 1, point (a) of this Article in the light of market, price and regulatory developments.

(12) the following Article 24a is inserted:

'*Article 24a*

Requirements for administrators of significant benchmarks

(1) Within 60 working days following the notification referred to in Article 24(2), the administrator of a benchmark satisfying the criterion referred to in paragraph (1), point (a), of that Article, shall seek authorisation or registration with the competent authority of the Member State where it is located. Where that administrator is located in a third country and unless the benchmark concerned is covered by an equivalence decision adopted pursuant to Article 30, that administrator shall, within 60 working days following the notification referred to in Article 24(2), seek either of the following:

(a) recognition with ESMA pursuant to the procedure set out in Article 32;

(b) endorsement pursuant to the procedure set out in Article 33.

(2) Within 60 working days following a designation referred to in Article 24(3), the administrator of the benchmark concerned, unless that administrator is already authorised or registered, shall seek authorisation or registration with the designating competent authority in accordance with Article 34.

(3) Withing 60 working days following a designation referred to in Article 24(6), the administrator of the benchmark concerned, unless the benchmark concerned is covered by an equivalence decision adopted pursuant to Article 30, shall seek either of the following:

(a) recognition with ESMA pursuant to the procedure set out in Article 32;

(b) endorsement pursuant to the procedure set out in Article 33.

(4) ESMA or competent authorities shall make use of the supervisory and sanction powers they are entrusted with under this Regulation to ensure that the relevant administrators comply with their obligations.

(5) The competent authority or ESMA shall issue a public notice stating that a significant benchmark provided by an administrator does not comply with this Regulation and that users should refrain from using that benchmark where any of the following conditions is met:

(a) within 60 working days following the notification referred to in Article 24(2) the designation referred to in Article 24(3) or the designation referred to in Article 24(6), the administrator concerned has not initiated procedures to comply with paragraph 2 of this Article;

(b) the authorisation, registration, recognition or endorsement procedures have failed;

(c) ESMA has withdrawn the registration of the administrator in accordance with Article 31;

(d) ESMA has withdrawn or suspended the recognition of the administrator concerned in accordance with Article 34(6);

(e) the endorsement of the administrator concerned has ceased;

(f) the competent authority has withdrawn or suspended the authorisation or registration of the administrator concerned.

Competent authorities shall notify ESMA of all issued public notices without undue delay. ESMA shall publish all issued public notices on its website. ESMA or the competent authority shall remove the public notice without undue delay as soon as the reason for which it was issued is no longer valid.

(13) in Title III, Chapter 6 is deleted;

(14) Article 29 is amended as follows:

(a) the title is replaced by the following:

'**Use of significant benchmarks, EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks**';

(b) paragraph 1 is replaced by the following:

'1. A supervised entity shall not add new references to a significant benchmark or a combination of such benchmarks in the Union where that benchmark or combination of benchmarks is the object of a public notice issued by ESMA or a competent authority in accordance with Article 24a(5). A supervised entity shall not add new references to an EU Climate Transition Benchmark or an EU Paris-aligned Benchmark or combination of such benchmarks in the Union where the administrator of those benchmarks is not included in the register referred to in Article 36.

Supervised entities shall regularly consult the European Single Access Point (ESAP) as referred to in Article 28a, or the ESMA register as referred to in Article 36, to verify the regulatory status of the administrators of significant benchmarks, EU Climate Transition Benchmarks or EU Paris-Aligned Benchmarks they intend to use.

By way of derogation from the first subparagraph, ESMA or the competent authority, as appropriate, may allow the use of a benchmark subject to a public notice issued in accordance with Article 24a(5) for a period of 6 months following the publication of the public notice, renewable once, where necessary to avoid serious market disruption.'

(c) a new paragraph 1a is inserted:

'1a. A supervised entity that uses a benchmark in existing financial contracts or financial instruments that is subject to a public notice under Article 24a(5) shall replace that benchmark with an appropriate alternative within 6 months following the publication of that notice, or issue and publish a statement on its website informing clients of the absence of an appropriate alternative.';

(15) Article 32 is amended as follows:

(a) paragraph 1 is deleted;

(b) paragraphs 2 and 3 are replaced by the following:

'2. An administrator located in a third country that intends to obtain recognition as referred to in Article 24a(1) and (3) shall comply with this Regulation, with the exception of Article 11(4) and Articles 16, 20, 21 and 23. The administrator located in a third country may fulfil that condition by applying

the IOSCO principles for financial benchmarks or the IOSCO principles for PRAs, as applicable, provided that such application is equivalent to compliance with this Regulation, with the exception of Article 11(4), and Articles 16, 20, 21 and 23.

When determining whether the condition referred to in the first subparagraph is fulfilled and assessing the compliance with the IOSCO principles for financial benchmarks or the IOSCO principles for PRAs, as applicable, ESMA may take into account:

(a) an assessment of the administrator located in a third country by an independent external auditor;

(b) a certification provided by the competent authority of the third country where that administrator is located.

Where, and to the extent that, a third country administrator is able to demonstrate that a benchmark it provides is a regulated-data benchmark or a commodity benchmark that is not based on submissions by contributors the majority of which are supervised entities, the administrator shall not be obliged to comply with the requirements which, pursuant to Article 17 and Article 19(1), are not applicable to the provision of regulated-data benchmarks and of commodity benchmarks.

3. An administrator located in a third country intending to obtain recognition shall have a legal representative. The legal representative shall be a natural or legal person located in the Union and expressly appointed by that administrator to act on behalf of that administrator with regard to the administrator's obligations under this Regulation. The legal representative shall, together with the administrator, perform the oversight function relating to the provision of benchmarks performed by the administrator under this Regulation and, in that respect, be accountable to ESMA.';

(c) in paragraph 5, the first subparagraph is replaced by the following:

'An administrator located in a third country intending to obtain recognition as referred to in paragraph 2 shall apply for recognition with ESMA. The applicant administrator shall provide all information necessary to satisfy ESMA that it has established, at the time of recognition, all the necessary arrangements to meet the requirements laid down in paragraph 2 with respect to its benchmark or benchmarks that have been designated in accordance with Article 24. Where applicable, the applicant administrator shall indicate the competent authority in the third country responsible for its supervision.

Within 15 working days of receipt of the application, ESMA shall assess whether the application is complete and shall notify the applicant accordingly. Where the application is incomplete, the applicant shall submit the additional information required by ESMA. The time limit referred to in this subparagraph shall apply from the date on which the applicant has provided such additional information.';

(16) Article 34 is amended as follows,

(a) paragraph 1 is replaced by the following:

‘1. A natural or legal person located in the Union that acts or intends to act as an administrator shall apply to the competent authority designated under Article 40 of the Member State in which that person is located in order to receive:

(a) authorisation where it provides or intends to provide indices which are used or intended to be used as critical benchmarks, as significant benchmarks, as EU Climate Transition Benchmarks or as EU Paris-aligned Benchmarks;

(b) registration where it is a supervised entity, other than an administrator, that provides or intends to provide indices which are used or intended to be used as significant benchmarks, as EU Climate Transition Benchmarks or EU Paris-aligned Benchmarks, provided that the activity of provision of a benchmark is not prevented by the sectoral discipline applying to the supervised entity and that none of the indices provided would qualify as a critical benchmark.’;

(b) paragraph 3 is replaced by the following:

‘3. The application referred to in paragraph 1 shall be made within 30 working days of any agreement entered into by a supervised entity to use an index provided by the applicant as a reference to a financial instrument or financial contract or to measure the performance of an investment fund, or within the time limits set out in Article 24a(2) and (3), as applicable.’;

(17) in Article 36(1), the following points (e) to (j) are added:

‘(e) the benchmarks subject to a statement published by ESMA or a competent authority pursuant to Article 24(2), and the hyperlinks to such statements;

(f) the benchmarks subject to designations by competent authorities notified to ESMA pursuant to Article 24(4), and the hyperlinks to such designations;

(g) the benchmarks subject to designations by ESMA, and the hyperlinks to such designations;

(h) the benchmarks subject to public notices issued by ESMA and competent authorities pursuant to Article 24a(5), and the hyperlinks to such public notices.;

(i) the list of EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks available for use in the Union;

(j) the list of critical benchmarks.’;

(18) in Article 41(1), the following points (k) and (l) are added:

‘(k) designate a benchmark as significant pursuant to Article 24(3);

(l) in case of reasonable grounds to suspect a breach of any of the requirements laid down in Chapter 3A, require that an administrator ceases, for a maximum period of 12 months:

(i) to provide EU Climate Transition Benchmarks or EU Paris-aligned Benchmarks;

(ii) to refer to EU Climate Transition Benchmarks or EU Paris-aligned Benchmarks in the name of the benchmarks they make available for use in the Union, or in the legal or marketing documentation for those benchmarks;

(iii) to refer to compliance with the requirements applicable to the provision of such benchmarks in the name of the benchmarks they make available for use in the Union, or in the legal or marketing documentation for those benchmarks;';

(19) Article 42 is amended as follows:

(a) in paragraph 1, point (a) is replaced by the following:

'(a) any infringement of Articles 4 to 16, of Articles 19a, 19b, 19c and 21, of Articles 23 to 29 or of Article 34 where those Articles apply; and';

(b) paragraph 2 is amended as follows

(i) in point (g), point (i) is replaced by the following:

'(i) for infringements of Articles 4 to 10, of Article 11(1), points (a), (b), (c) and (e), of Article 11(2) and (3), of Articles 12 to 16, of Article 21, of Articles 23 to 29 and of Article 34, EUR 500 000 or in the Member States whose official currency is not the euro, the corresponding value in the national currency on 31 December 2023; or';

(ii) in point (h), point (i) is replaced by the following:

'(i) for infringements of Articles 4 to 10, of Article 11(1), points (a), (b), (c) and (e), of , Article 11(2) and (3), of Articles 12 to 16, of Article 21, of Articles 23 to 29 and of Article 34, either EUR 1 000 000 or, in the Member States whose official currency is not the euro, the corresponding value in the national currency on 31 December 2023, or 10 % of its total annual turnover according to the last available accounts approved by the management body, whichever is the higher; or';

(20) Article 49 is amended as follows:

(a) paragraphs 2 and 3 are replaced by the following:

'2. The power to adopt delegated acts referred to in Articles 3(2), 13(2a), 19a(2), 19c(1), 20(6), 24(7), 27(2b), 33(7), 51(6) and 54(3) shall be conferred on the Commission for a period of five years from 30 June 2024. The Commission shall draw up a report in respect of the delegation of power no later than 31 December 2028. The delegation of power shall be tacitly extended for further periods of identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

'3. The delegation of power referred to in Articles 3(2), 13(2a), 19a(2), 19c(1), 20(6), 24(7), 27(2b), 30(2a), 30(3a), 33(7), 48i(10), 48l(3), 51(6) and 54(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of power specified in that decision. It shall take effect on the day following the publication of the decision in the Official Journal of the European Union or on a later date specified therein. It shall not affect the validity of any delegated acts already in force.';

(b) paragraph 6 is replaced by the following:

'6. A delegated act adopted pursuant to Article 3(2), 13(2a), 19a(2), 19c(1), 20(6), 24(7), 27(2b), 30(2a), 30(3a), 33(7), 48i(10), 48l(3), 51(6) or 54(3) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of three months of notification of that act to the

European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.'.

(21) in Article 51, the following paragraph 4c is inserted:

'4c. Competent authorities and ESMA shall ensure that benchmark administrators that were authorised, registered, endorsed or recognised on [PO please insert the date = date of application of this amending Regulation] can benefit from a simplified procedure where they apply for authorisation registration, recognition, or endorsement pursuant to Article 24a(1), (2), or (3), as applicable, by … [PO please insert the date = date of application of this amending Regulation + two years]';

Article 2

Entry into force and application

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 2026

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

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*