Council of the European Union

Brussels, 12 March 2025
(OR. en)

5123/25

Interinstitutional File:
2023/0379(COD)

EF 7
ECOFIN 44
CODEC 9

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject:	Position of the Council at first reading with a view to the adoption of 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

REGULATION (EU) …/…
OF THE EUROEAN PARLIAMENT AND OF THE COUNCIL

of …

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,

After consulting the European Central Bank,

Having regard to the opinion of the European Economic and Social Committee[1],

Acting in accordance with the ordinary legislative procedure[2],

[1] Opinion of 14 February 2024 (not yet published in the Official Journal).

[2] Position of the European Parliament of 22 April 2024 [(OJ …)/(not yet published in the Official Journal)] and position of the Council at first reading of … [(OJ …)/(not yet published in the Official Journal)]. Position of the European Parliament of … [(OJ …)/(not yet published in the Official Journal)].

Whereas:

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

(2) Under Regulation (EU) 2016/1011 of the European Parliament and of the Council[3], all administrators of benchmarks, regardless of the systemic relevance of those benchmarks or the amount of financial instruments or contracts that use those benchmarks as reference rates or as performance benchmarks, are to comply with very detailed requirements, including requirements on their organisation, on governance and conflicts of interest, on oversight functions, on input data, on codes of conduct, on reporting of infringements, and on disclosures related to the methodology used and the benchmark statement. Those requirements have put a disproportionate regulatory burden on administrators of smaller benchmarks in the Union considering the aims of Regulation (EU) 2016/1011, i.e. to safeguard 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 that have 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, V and VI of Regulation (EU) 2016/1011 should be reduced to those specific benchmarks. However, the specific provisions in Articles 23a, 23b and 23c serve the purpose of ensuring legal certainty and economic stability where a benchmark is being wound down and should therefore remain applicable to all benchmarks.

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[3] 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, ELI: http://data.europa.eu/eli/reg/2016/1011/oj).

(3) Administrators that would be excluded from the scope of application of Regulation (EU) 2016/1011 following the amendments introduced by this amending Regulation and that wish to opt into the regime should be allowed to make a reasoned request to their competent authority to designate one or more of the benchmarks that they offer as significant. That request should provide the competent authority with sufficient information to assess whether the benchmark meets the requirements for designation as significant under the opt-in regime. Where the information provided in the request is inaccurate or misleading, the authority should refuse to designate the benchmark concerned. Administrators of benchmarks that have been authorised to opt in should comply with all the requirements applicable to administrators of significant benchmarks set out in Regulation (EU) 2016/1011.

(4) Regulation (EU) 2016/1011 empowers the Commission to exempt, under specific conditions, spot foreign exchange benchmarks. To ensure that Union benchmark users have access to hedging instruments based on spot foreign exchange benchmarks where currency controls apply, it is necessary to provide that the Commission should designate foreign exchange benchmarks as exempted where they reference spot exchange rates of a third-country currency to which such currency controls apply. Currency controls typically include rules of legal or regulatory nature that prohibit, limit or restrict the free conversion of a given currency into any other currency. They vary as to the specific restrictions they impose and continuously evolve over time. Therefore, it is necessary to take into account the diversity and evolution of currency controls when demonstrating the fulfilment of the relevant criterion to ensure that it can be applied in practice. To ensure the uniform application of the conditions under which a spot foreign exchange benchmark should be exempted from Regulation (EU) 2016/1011, the Commission should be empowered to adopt implementing acts to establish and maintain a list of exempted benchmarks.

(5) 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. As this provision has proven difficult to enforce, it is appropriate to delete it. However, its deletion should not be understood as a reduction of the Union's commitment to the objectives of the climate transition and of the Paris agreement. Therefore, in order to promote the use of common standards for climate-related benchmarks and to ensure their appropriate supply in the Union, benchmark administrators are encouraged to provide such benchmarks in the Union.

(6) Benchmark administrators should monitor the use in the Union of the benchmarks they provide and notify the competent authority concerned or the European Supervisory Authority (European Securities and Markets Authority) (ESMA) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council[4], depending on where that administrator is located, where the aggregate use of one of their benchmarks has reached the threshold of EUR 50 billion laid down in Article 24(1), point (a), of Regulation (EU) 2016/1011. Benchmark administrators frequently offer different variants of the benchmark to cater for the specific needs of benchmark users, including maturities or tenors, currencies and return calculation variants. Where such variants exist, their usage should be aggregated.

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[4] 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, ELI: http://data.europa.eu/eli/reg/2010/1095/oj).

(7) 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 as from 60 working days from the date they submitted such a notification. In addition, benchmark administrators should, upon the request of the competent authority concerned or ESMA, provide that authority or ESMA with all the information necessary to assess the benchmark's aggregate use in the Union.

(8) Where a benchmark administrator fails to notify the competent authority concerned or ESMA, as applicable, that the use of one of its benchmarks has reached the threshold laid down in Article 24(1), point (a), of Regulation (EU) 2016/1011, and where the competent authority concerned or ESMA has clear and demonstrable grounds to consider that that threshold has been reached, the competent authority concerned or ESMA should be able to declare that the threshold has been reached, having first given the administrator the opportunity to be heard. Such declaration should trigger the same obligations for the benchmark administrator as a notification made by the benchmark administrator. This should be without prejudice to the ability of competent authorities or ESMA to impose administrative sanctions on administrators that fail to notify that one of their benchmarks has reached the threshold.

(9) 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 that, 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 have an impact similar to that of a benchmark the usage of which reached that threshold. Consequently, for benchmarks that are provided by an administrator located in the Union, the competent authority of that Member State should be able to designate such a benchmark as significant on the basis of a set of qualitative criteria. For benchmarks provided by an administrator located outside the Union, it should be ESMA that, upon request of a competent authority, or on its own initiative, designates such a benchmark as significant.

(10) 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 do not agree on which of them should designate and supervise a benchmark, ESMA should settle that disagreement in accordance with Article 19 of Regulation (EU) No 1095/2010. It is always possible for the competent authority of the Member State where the administrator is located to reach cooperation agreements on delegation of tasks under Regulation (EU) 2016/1011 either with the designating competent authority or with ESMA.

(11) In order 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 the designation.

(12) For the designation of a benchmark as significant to be as transparent as possible, competent authorities or ESMA should issue a designation decision setting out 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, or on its own initiative, ESMA should publish the designation decision on its website and should notify the requesting competent authority thereof.

(13) The Commission should be empowered to adopt, after consulting ESMA, a delegated act to further specify the calculation method to determine the threshold referred to in Article 24(1), point (a), of Regulation (EU) 2016/1011, the criteria to assess whether the use of the benchmark reached that threshold, the information to be provided to ESMA within the designation process of a benchmark that does not reach that threshold, and the criteria to assess the impact of the cessation of the provision of a benchmark. Considering future price and regulatory developments, the Commission should assess the adequacy of the threshold by three years from the date of application of this amending Regulation and present a report thereon to the European Parliament and to the Council. In cases where ESMA becomes aware of any issues regarding the threshold before or after the date of that report, it is expected to inform the Commission accordingly.

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

(15) The regulatory treatment of commodity benchmarks should be tailored to their specific characteristics. Commodity benchmarks that are subject to the general rules for financial benchmarks should be treated identically to other financial benchmarks and should be covered by Regulation (EU) 2016/1011 only if they are significant or critical benchmarks and have not been exempted from the scope of that Regulation. Commodity benchmarks that are based on readily available data do not share the specificities of commodity benchmarks based in majority on contributions from non-regulated entities, and should therefore be subject to the general rules for financial benchmarks. Commodity benchmarks based on input data contributed in majority by non-supervised entities should be within the scope of Regulation (EU) 2016/1011 whenever their reference value reaches a *de minimis* threshold in order to ensure the robustness and reliability of their assessments.

(16) To ensure a timely start to the supervision of significant benchmarks, administrators of benchmarks that have become significant should seek, within 60 working days thereof, authorisation or registration or, in the case of benchmarks provided by an administrator located in a third country, endorsement or recognition.

(17) In order 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, in 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, endorsing 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. Where a benchmark that is subject to a warning is used in existing financial instruments, financial contracts or to measure the performance of an investment fund, benchmark users should replace that benchmark with an alternative within a limited amount of time. 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 not be able to add new references to an EU Climate Transition Benchmark or an EU Paris-aligned Benchmark or a combination of such benchmarks in the Union where the administrator of those benchmarks is not included in ESMA's register of administrators and benchmarks.

(18) In order to avoid a potentially excessive market disruption 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 cater for a varying impact of the cessation of the use of such a benchmark, as well as differing degrees of complexity in finding a suitable alternative for it, competent authorities or ESMA should set, for each individual case, the period during which use continues to be allowed, taking into account the specific circumstances, including the degree and type of usage of the 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 in the form of a public notice should identify a suitable alternative for those benchmarks within 6 months of the publication of that public notice, or otherwise ensure that clients are appropriately informed of the lack of an alternative benchmark.

(19) Under Regulation (EU) 2016/1011, the 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. 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.

(20) Benchmark administrators located in third countries that access the Union market under the recognition regime are currently centrally supervised by ESMA. The alignment of supervision under ESMA's competence in both endorsement and recognition regimes would put all administrators from third countries on an equal footing. Furthermore, it would make it possible to establish ESMA as the single relevant counterpart in the Union for benchmark administrators located in third countries, making cross-border cooperation more efficient and effective.

(21) Benchmarks covered by an equivalence decision are considered to be under regulation and supervision that are equivalent to those of 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.

(22) In the interest of transparency and in order to ensure legal certainty, competent authorities that designate a benchmark as significant should specify the potential restrictions on use 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.

(23) 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 because their use in the Union is above the set threshold for significant benchmarks, because they are designated as significant by a national competent authority 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 those benchmarks. To further reduce the burden on users, all such information should also be made readily available on the European Single Access Point (ESAP) established under Regulation (EU) 2023/2859 of the European Parliament and of the Council[5].

[5] Regulation (EU) 2023/2859 of the European Parliament and of the Council of 13 December 2023 establishing a European single access point providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability (OJ L, 2023/2859, 20.12.2023, ELI: http://data.europa.eu/eli/reg/2023/2859/oj).

(24) In order to enhance transparency around the use of benchmarks in the Union, administrators of benchmarks are encouraged, but not required, to obtain a legal entity identifier (LEI), as well as an International Securities Identification Number (ISIN) for the benchmarks they provide. When administrators have obtained the LEI or the ISIN, it should be communicated to the relevant competent authorities and included in the ESMA register. Where identifiers have been communicated by benchmark administrators to competent authorities or to ESMA, ESMA should include them in its register. To promote the access and use of LEI and ISIN, the entities in charge of issuing them are expected to do so on a fair and non-discriminatory basis.

(25) In order to ensure a seamless transition to supervision by ESMA, measures should be taken to allow both the transfer of supervision of administrators endorsing third-country benchmarks that are currently under the supervision of a competent authority of a Member State and the transfer of any applications for endorsement received after such a date as would allow the competent authorities to take a decision on the applications before the date of the transfer of supervision.

(26) In order to make sure that ESMA can effectively exercise its supervisory powers, it is necessary for it to be able to take supervisory measures also in the case of failure to cooperate or comply in an investigation or with an inspection. Therefore, ESMA should be able to adopt a decision imposing a fine in those cases.

(27) Regulation (EU) 2019/2089 of the European Parliament and of the Council[6] has subjected all benchmarks other than interest rate and foreign exchange benchmarks to transparency rules as regards whether and how benchmarks take environmental, social or governance (ESG) factors into consideration and has introduced two categories of ESG-related benchmarks that are subject to compliance with further minimum standards laid down in Union law, namely EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks. In order to maintain a high level of transparency surrounding ESG-related claims and an adequate level of protection for users, it is appropriate that administrators of benchmarks that are within the scope of Regulation (EU) 2016/1011, for each benchmark or family of benchmarks they administer that makes ESG-related claims in legal or marketing documentation, continue to disclose the necessary information. In order to avoid circumvention of the obligation on ESG disclosures for benchmark administrators that are within the scope of Regulation (EU) 2016/1011, all administrators providing benchmarks within the same group should be subject to those disclosure requirements.
By 30 June 2029, the Commission, after consulting ESMA, should prepare a report to assess whether the current scope of benchmarks with ESG-related claims that are subject to disclosure requirements under Regulation (EU) 2016/1011 is appropriate and allows the users of those benchmarks to adequately comply with their own sustainability-related disclosure requirements. To ensure consistency in sustainability-related disclosures, that report should also assess whether the ESG disclosures under Regulation (EU) 2016/1011 are consistent with sustainability-related disclosures under Regulation (EU) 2019/2088 of the European Parliament and of the Council[7] and with relevant ESMA guidelines. That report should, where appropriate, be accompanied by a legislative proposal.

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6 Regulation (EU) 2019/2089 of the European Parliament and of the Council of 27 November 2019 amending Regulation (EU) 2016/1011 as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks (OJ L 317, 9.12.2019, p. 17, ELI: http://data.europa.eu/eli/reg/2019/2089/oj).

7 Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability- related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1, ELI: http://data.europa.eu/eli/reg/2019/2088/oj).

(28) In order to ensure a seamless transition to the application of the rules introduced under this amending Regulation, existing registrations, authorisations, recognitions or endorsements of administrators currently supervised under Regulation (EU) 2016/1011 should remain valid for 9 months from the date of application of this amending Regulation. That period is intended to give competent authorities and ESMA sufficient time to decide whether any of the currently supervised administrators should be considered to be an administrator of benchmarks designated in accordance with this amending Regulation. If that is the case, administrators previously authorised, registered, endorsing or recognised, or administrators of benchmarks that are designated upon request, should be allowed to retain their previous status without the need to reapply. Administrators of significant benchmarks should, in any case, be allowed to retain their status as authorised, registered, endorsing or recognised benchmark administrators. If not designated, existing authorisation, registration, recognition or endorsement holders should have the legal certainty that the designation period has lapsed and that their names can safely be removed from the ESMA register, while supervised entities will be able to continue to use these indices. Non-designation within this 9-month designation period also implies that a competent authority is no longer obliged to maintain an existing authorisation, registration, recognition or endorsement.

(29) In order to allow the use of spot foreign exchange benchmarks to continue until such time as the Commission has conducted the required public consultation and has adopted an implementing act to exempt certain benchmarks where necessary, the application of any usage restrictions should be deferred for spot foreign exchange benchmarks provided by administrators located outside the Union.

(30) Regulation (EU) 2016/1011 should therefore be amended accordingly.

(31) 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 provided for under this amending Regulation, the date of application of this amending Regulation should be deferred,

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 paragraphs are inserted:

‘1a. Titles II, III, with the exception of Articles 23a, 23b and 23c, IV, V and VI apply only in respect of critical benchmarks, significant benchmarks, EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks.

1b. By way of derogation from paragraph 1a of this Article, Article 13(1), point (d), and Article 27(2aa) apply to all benchmarks used in the Union provided by administrators that:

(a) are included in the register referred to in Article 36; or

(b) belong to a group with at least one administrator included in the register referred to in Article 36.

1c. By way of derogation from paragraph 1a of this Article, Article 19 applies to any commodity benchmark based on contributed input data, unless any of the following conditions is fulfilled:

(a) it is a regulated-data benchmark;

(b) it is a benchmark based on submissions by contributors the majority of which are supervised entities;

(c) it is a critical benchmark and the underlying asset is gold, silver or platinum.';

(b) in paragraph 2, point (g) is replaced by the following:

'(g) a commodity benchmark based on submissions from contributors the majority of which are non-supervised entities and in respect of which the total average notional value of financial instruments referencing the benchmark does not exceed EUR 200 million over a period of 12 months;';

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

(a) in point (17), point (m) is replaced by the following:

'(m) an administrator authorised or registered pursuant to Article 34;';

(b) in point (24), point (a), points (ii) and (iii) are replaced by the following:

‘(ii) an approved publication arrangement as defined in Article 2(1), point (34), of Regulation (EU) No 600/2014 or a consolidated tape provider as defined in Article 2(1), point (35), of Regulation (EU) No 600/2014, in accordance with mandatory post-trade transparency requirements, but only with reference to transaction data concerning financial instruments that are traded on a trading venue;

(iii) an approved reporting mechanism as defined in Article 2(1), point (36), of Regulation (EU) No 600/2014, but only with reference to transaction data concerning financial instruments that are traded on a trading venue and that must be disclosed in accordance with mandatory post-trade transparency requirements;’;

(c) 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 1, first subparagraph, point (d) is replaced by the following:

‘(d) where a benchmark or family of benchmarks includes in its legal or marketing documentation any reference to the consideration of ESG factors, an explanation for each of those benchmarks or family of benchmarks, with the exception of interest rate and foreign exchange benchmarks, of how the key elements of the methodology reflect ESG factors;’;

(b) in paragraph 1, the second subparagraph is deleted;

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

(d) 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 Article 18, the second paragraph is replaced by the following:

‘Article 25 shall not apply to the provision of, and contribution to, interest rate benchmarks.’;

(8) Article 18a is replaced by the following:

‘*Article 18a*
Spot foreign exchange benchmarks

1. The Commission shall designate as exempted a spot foreign exchange benchmark that is administered by administrators located outside the Union where both of the following criteria are fulfilled:

   (a) the spot foreign exchange benchmark references a spot exchange rate of a third-country currency to which currency controls apply; and

   (b) the spot foreign exchange benchmark:

      (i) is used on a frequent, systematic and regular basis to hedge against adverse foreign exchange rate movements; or

      (ii) does not have an equivalent alternative benchmark provided by an administrator located in the Union.

2. The Commission shall conduct a public consultation to identify spot foreign exchange benchmarks that fulfil the criteria laid down in paragraph 1.

3. Following the conclusion of the public consultation, the Commission shall adopt an implementing act to create a list of spot foreign exchange benchmarks that fulfil the criteria laid down in paragraph 1 by … [12 months from the date of entry into force of this amending Regulation]. The Commission shall update that list as appropriate.';

(9) in Title III, Chapter 3 is replaced by the following:

'**Chapter 3**

Commodity benchmarks based on contributed input data

Article 19

Commodity benchmarks based on contributed input data

Commodity benchmarks based on contributed input data shall comply with Article 10, Titles IV, V and VI, and the specific requirements set out in Annex II.';

(10) in Article 19a, the following paragraphs are added:

'4. Administrators that are not included in the register referred to in Article 36 shall not:

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

(b) indicate or suggest, in the name of the benchmarks they make available for 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.

5. Administrators shall include the acronym “CTB” in the name of the EU Climate Transition Benchmarks and the acronym “PAB” in the name of the EU Paris-aligned Benchmarks.’;

(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 fulfilled:

(a) it 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 investment funds that have a total average value of at least EUR 50 billion on the basis of the following characteristics of the benchmark, over a period of 6 months:

(i) the range of maturities or tenors of the benchmark, where applicable;

(ii) all the currencies or other units of measurement of the benchmark, where applicable; and

(iii) all the return calculation methodologies, where applicable;

(b) the benchmark has been designated as significant in accordance with the procedure laid down in paragraphs 3, 4 and 5, the procedure laid down in paragraph 6, or the procedure laid down in paragraph 7.

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, when one or several of that administrator's benchmarks reach the threshold referred to in paragraph 1, point (a). Following receipt of that notification, the competent authority or ESMA, as applicable, shall publish a statement on its website stating that that benchmark is significant.

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

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

3. A competent authority may, after having consulted ESMA in accordance with paragraph 4 and having taken into account its advice, designate a benchmark provided by an administrator located in the Union that does not reach the threshold referred to in paragraph 1, point (a), as significant where that benchmark fulfils 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 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 that competent authority’s Member State; and

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

Where a competent authority concludes that a benchmark fulfils the conditions 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, where relevant, to the competent authority of the Member State where the administrator is located. The designating competent authority shall also consult ESMA on the draft decision.

The administrator and, where applicable, the competent authority of the Member State where the administrator is located shall have 15 working days from the date of notification of the draft decision of the designating competent authority to provide observations and comments in writing. The designating competent authority 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 final decision and shall publish the decision, including the reasons therefor and the legal obligations on the administrator arising therefrom, on its website without undue delay. Where a competent authority designates a benchmark as significant contrary to the advice issued by ESMA under paragraph 4, it shall immediately publish on its website a notice fully explaining its reasons for doing so.

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 of that consultation, issue advice taking 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 fulfilled;

(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 Member States other than the Member State of the consulting competent authority.

For the purposes of point (b) of this paragraph, ESMA shall take into account any information provided by the consulting competent authority pursuant to paragraph 3, third subparagraph.

5. Where ESMA finds that a benchmark fulfils the conditions laid down in paragraph 3, first subparagraph, in more than one Member State, it shall inform the competent authorities of the Member States concerned thereof. The competent authorities of the Member States concerned shall agree on which of them is to designate the benchmark as significant. Where the competent authorities do not reach such an agreement, they shall refer the matter to ESMA, which 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, or on its own initiative, designate a benchmark provided by an administrator located in a third country that does not reach the threshold referred to in paragraph 1, point (a), as significant where that benchmark fulfils the following conditions:

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

   (b) 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 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 third country where the administrator is located to provide any relevant information for the purposes of the assessment related to the designation of the benchmark as significant.

ESMA shall provide reasons for any designation decision, taking into account whether there is sufficient evidence that the conditions referred to in the first subparagraph are fulfilled 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 of it without undue delay.

7. A competent authority may designate a benchmark provided by an administrator located in the Union that does not fulfil the condition laid down in paragraph 1, point (a), as significant where that benchmark fulfils the following conditions:

(a) its administrator has submitted a written request to that competent authority for that benchmark to be designated as significant, clearly setting out the reasons for such request; and

(b) 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 investment funds that have a total average value of at least EUR 20 billion over the last 6 months.

The competent authority shall refuse to designate a benchmark as significant where it has grounds to consider that the request to do so was inaccurate or misleading.

The designating competent authority shall notify ESMA of any decision to designate a benchmark as significant, and publish the decision, including the reasons therefor and the legal obligations on the administrator arising therefrom, on its website without undue delay.

8. Where the administrator of a benchmark designated in accordance with paragraph 7 wishes to have that designation lifted, it shall address a written request to that effect to its competent authority at the earliest 4 years from the date when that benchmark was designated.

The competent authority shall revoke the designation unless the condition laid down in paragraph 1, point (a), or the conditions laid down in paragraph 3 are fulfilled.

The decision to revoke the designation shall be taken at the latest 3 months from the date of the request.

The competent authority shall publish the decision revoking the designation on its website. The decision shall set out the date on which it is to have effect, which shall be no later than 12 months from its publication.

9. The Commission shall be empowered, after consulting ESMA, to supplement this Regulation by adopting delegated acts in accordance with Article 49 to specify:

(a) the calculation method, including potential data sources, to be used to determine the threshold referred to in paragraph 1, point (a), of this Article;

(b) the criteria to assess when a benchmark reached the threshold referred to in paragraph 1, point (a), of this Article;

(c) the information that competent authorities are obliged to provide when consulting ESMA as required pursuant to paragraph 3 of this Article;

(d) the criteria referred to in paragraph 4, point (b), of this Article, taking into consideration any data which help assess whether the impact of the cessation or unreliability of the benchmark on market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in one or more Member States is significant and adverse.

10. By 31 December 2028, the Commission shall, in cooperation with ESMA, present a report to the European Parliament and to the Council on the adequacy of the threshold referred to in paragraph 1, point (a), in light of market, price and regulatory developments. That report shall be accompanied, where appropriate, by a legislative proposal.';

(12) the following article is inserted:

‘*Article 24a*

Requirements for administrators of significant benchmarks

1. Within 60 working days of the notification referred to in Article 24(2), the administrator of a benchmark fulfilling the condition referred to in Article 24(1), point (a), 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 is covered by an equivalence decision adopted pursuant to Article 30, that administrator shall, within 60 working days of 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, in which case the administrator is to select an endorsing administrator in the Union that submits an application to ESMA.

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

3. Within 60 working days of a designation as referred to in Article 24(6), the administrator of the benchmark, unless the benchmark 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, in which case the administrator is to select an endorsing administrator in the Union that submits an application to ESMA.

4. Within 60 working days of a designation as referred to in Article 24(7), the administrator of the benchmark, unless that administrator is already authorised or registered, shall seek authorisation or registration with the designating competent authority in accordance with Article 34.

5. ESMA and the competent authorities shall make use of the supervisory and sanction powers they are entrusted with pursuant to this Regulation to ensure that the administrators comply with their obligations.

6. The competent authority or ESMA, as applicable, shall issue a public notice stating that a significant benchmark provided by an administrator does not comply with this Regulation, and that users are to refrain from using that benchmark, where any of the following conditions is fulfilled:

(a) within 60 working days of the notification referred to in Article 24(2), of the designation referred to in Article 24(3) or of the designation referred to in Article 24(6), the administrator concerned has not initiated procedures to comply with paragraph 1, 2 or 3 of this Article, respectively;

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

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

(d) ESMA has withdrawn or suspended the recognition of the administrator concerned in accordance with Article 32(8);

(e) the endorsement of the administrator concerned has ceased in accordance with Article 33(6);

(f) the competent authority has withdrawn or suspended the authorisation or registration of the administrator concerned in accordance with Article 35.

Competent authorities shall notify ESMA of all issued public notices without undue delay. ESMA shall publish all issued public notices on its website. ESMA and 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 Article 25, the following paragraph is added:

'10. This Article shall not apply to commodity benchmarks.';

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

(15) Article 27 is amended as follows:

(a) paragraph 2a is replaced by the following:

'2a. For significant equity and bond benchmarks, as well as for EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks, benchmark administrators shall disclose in their benchmark statements details on whether, and to what extent, a degree of overall alignment with the target of reducing carbon emissions or the attainment of the objectives of the Paris Agreement is ensured in accordance with the disclosure rules for financial products in Article 9(3) of Regulation (EU) 2019/2088 of the European Parliament and of the Council*.

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* Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability- related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1, ELI: http://data.europa.eu/eli/reg/2019/2088/oj).';

(b) the following paragraph is inserted:

'2aa. Where a benchmark or family of benchmarks includes in its legal or marketing documentation any reference to the consideration of ESG factors, the administrator shall publish, by means that ensure fair and easy access, an explanation of how ESG factors are reflected for each of the elements referred to in paragraph 2.

For a benchmark or family of benchmarks that are subject to the publication of a benchmark statement pursuant to paragraph 1, that explanation shall be included in that benchmark statement.';

(c) paragraph 2b is replaced by the following:

'2b. The Commission is empowered to adopt delegated acts in accordance with Article 49 to supplement this Regulation by further specifying the information to be provided pursuant to paragraphs 2a and 2aa of this Article, as well as the standard format to be used for references to ESG factors to enable market participants to make well-informed choices and to ensure the technical feasibility of compliance with those paragraphs.';

(16) in Article 28, paragraph 2 is replaced by the following:

‘2. Supervised entities other than an administrator as referred to in paragraph 1 that use a benchmark shall produce and maintain robust written plans setting out the actions that they would take in the event that a benchmark materially changes or ceases to be provided. Where feasible and appropriate, such plans shall designate one or several alternative benchmarks that could be referenced to substitute the benchmarks that would no longer be provided, indicating the reasons for the suitability of such alternative benchmarks. The supervised entities shall, upon request and without undue delay, provide the relevant competent authority with those plans and any updates and shall reflect them in fallback provisions applicable to financial contracts, financial instruments and investment funds.’;

(17) Article 29 is amended as follows:

(a) the title is replaced by the following:

‘*Use of critical benchmarks, significant benchmarks, commodity benchmarks subject to Annex II, 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 a competent authority or ESMA in accordance with Article 24a(6). A supervised entity shall not add new references to a critical benchmark, a commodity benchmark subject to Annex II, an EU Climate Transition Benchmark, an EU Paris-aligned Benchmark or a combination that includes any 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 ESAP or the register referred to in Article 36 to verify the regulatory status of the administrators of critical benchmarks, significant benchmarks, commodity benchmarks subject to Annex II, EU Climate Transition Benchmarks or EU Paris-Aligned Benchmarks they intend to use.

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

ESMA or the competent authority shall determine the duration of the period referred to in the third subparagraph taking into account:

(a) the total value of financial instruments or financial contracts within the Union for which the benchmark serves as a reference and of investment funds within the Union for which it is used to measure the performance;

(b) the availability of alternative benchmarks;

(c) the complexity of replacing the benchmark and the time needed to reduce, hedge or offset existing exposures.';

(c) the following paragraph is inserted:

'1b. A supervised entity that uses a benchmark in existing financial contracts or financial instruments that is subject to a public notice under Article 24a(6) shall replace that benchmark with an appropriate alternative within 6 months of the publication of that notice, or issue and publish a statement on its website providing clients with a reasoned explanation for not being able to do so.';

(d) paragraph 2 is replaced by the following:

‘2. Where the object of a prospectus to be published under Regulation (EU) 2017/1129 of the European Parliament and of the Council* or Directive 2009/65/EC is transferable securities or other investment products that reference a critical benchmark, a significant benchmark, a commodity benchmark subject to Annex II of this Regulation, an EU Climate Transition Benchmark, or an EU Paris-aligned Benchmark, the issuer, offeror, or person asking for admission to trade on a regulated market shall ensure that the prospectus also includes clear and prominent information stating whether the benchmark is provided by an administrator included in the register referred to in Article 36 of this Regulation.

Where the object of a prospectus to be published under Regulation (EU) 2017/1129 or Directive 2009/65/EC is transferable securities or other investment products that reference a critical benchmark, a significant benchmark, a commodity benchmark subject to Annex II of this Regulation, an EU Climate Transition Benchmark, or an EU Paris-aligned Benchmark, the issuer, offeror, or person asking for admission to trade on a regulated market shall ensure that when a public notice pursuant to Article 24a(6) of this Regulation on the benchmark used is included in the register referred to in Article 36 of this Regulation the prospectus also includes, without undue delay following the publication of the public notice, that information in a clear and prominent manner.

* Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12, ELI: http://data.europa.eu/eli/reg/2017/1129/oj).';

(18) Article 32 is amended as follows:

(a) paragraph 1 is deleted;

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

'2. An administrator of a significant benchmark, of an EU Paris-aligned Benchmark, of an EU Climate Transition Benchmark or of a commodity benchmark subject to Annex II located in a third country that intends to obtain recognition shall comply with this Regulation, with the exception of Article 11(4) and Articles 16, 20, 21 and 23. The administrator 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 by an independent external auditor;

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

Where, and to the extent that, an administrator located in a third country is able to demonstrate that a benchmark it provides is a regulated-data benchmark, or a commodity benchmark subject to Annex II, the administrator shall not be obliged to comply with the requirements which, pursuant to Articles 17 and 19, are not applicable to the provision of regulated-data benchmarks and of commodity benchmarks subject to Annex II.

3. An administrator located in a third country intending to obtain recognition shall have a legal representative. The legal representative shall be a 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 be accountable to ESMA. ESMA may impose a supervisory measure in accordance with Article 48e, or a fine in accordance with Article 48f, on the administrator or on the legal representative for an infringement listed in Article 42(1), point (a), or in relation to any failure to cooperate or comply in an investigation or with an inspection or request covered by Section 1 of Chapter 4, as applicable.';

(c) in paragraph 5, the first and second subparagraphs are 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 any of its benchmarks that are significant pursuant to Article 24, that are EU Paris-aligned benchmarks or EU Climate Transition benchmarks, or that are commodity benchmarks subject to Annex II. 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, ESMA shall request the applicant to submit the missing information. Upon the submission by the applicant of the information requested, ESMA shall reassess, within 15 working days of receipt of the additional information, whether the application is complete and shall notify the applicant accordingly.

Within 90 working days of receipt of the complete application, ESMA shall verify that the conditions laid down in paragraphs 2 and 3 are fulfilled.';

(19) Article 33 is amended as follows:

(a) in paragraph 1, first subparagraph, the introductory sentence is replaced by the following:

'1. An administrator located in the Union and authorised or registered in accordance with Article 34, with a clear and well-defined role under the control or accountability framework of an administrator located in a third country, which is able to monitor effectively the provision of a benchmark, may apply to ESMA to endorse a benchmark or a family of benchmarks provided in a third country for their use in the Union, provided that all of the following conditions are fulfilled:';

(b) paragraphs 2 to 7 are replaced by the following:

‘2. An administrator that submits an application for endorsement as referred to in paragraph 1 shall provide all information necessary to satisfy ESMA that, at the time of application, all the conditions referred to in that paragraph are fulfilled.

3. Within 90 working days of receipt of the application for endorsement referred to in paragraph 1, ESMA shall examine the application and adopt a decision either to authorise the endorsement or to refuse it. Where ESMA authorises the endorsement, the competences in relation to the authorisation or registration, as applicable, of the administrator that applied for endorsement shall be transferred to ESMA within 6 months of the authorisation of endorsement.

4. An endorsed benchmark or an endorsed family of benchmarks shall be considered to be a benchmark or family of benchmarks provided by the endorsing administrator. The endorsing administrator shall not use the endorsement with the intention of avoiding the requirements of this Regulation.

5. An administrator that has endorsed a benchmark or a family of benchmarks provided in a third country shall remain fully responsible for such a benchmark or family of benchmarks and for compliance with the obligations under this Regulation.

6. Where ESMA has well-founded reasons to consider that the conditions laid down under paragraph 1 of this Article are no longer fulfilled, it shall have the power to require the endorsing administrator to cease the endorsement. Article 28 shall apply in case of cessation of the endorsement.

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 49 concerning measures to determine the conditions under which ESMA may assess whether there is an objective reason for the provision of a benchmark or family of benchmarks in a third country and their endorsement for their use in the Union. The Commission shall take into account elements such as the specificities of the underlying market or economic reality the benchmark intends to measure, the need for proximity of the provision of the benchmark to such market or economic reality, the need for proximity of the provision of the benchmark to contributors, the material availability of input data due to different time zones, and specific skills required in the provision of the benchmark.';

(20) Article 34 is amended as follows:

(a) paragraphs 1 and 1a are 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 or to ESMA in the cases referred to in paragraph 1a of this Article 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 commodity benchmarks subject to Annex II, 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.

1a. Where one or more of the indices provided by the person referred to in paragraph 1 would qualify as critical benchmarks as referred to in Article 20(1), points (a) and (c), or if the person at the same time submits an application to ESMA pursuant to Article 33(1) to endorse a benchmark or a family of benchmarks, the application shall be addressed to ESMA.';

(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 in 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.';

(21) in Article 36, paragraph 1 is amended as follows:

(a) points (a) to (d) are replaced by the following:

'(a) the identities, including, where available, the legal entity identifier (LEI), of the administrators authorised or registered pursuant to Article 34 and the competent authorities responsible for the supervision thereof;

(b) the identities, including, where available, the LEI, of administrators that comply with the conditions laid down in Article 30(1), the list of benchmarks, including, where available, their International Securities Identification Numbers (ISINs), referred to in Article 30(1), point (c), and the third country competent authorities responsible for the supervision thereof;

(c) the identities, including, where available, the LEI, of the administrators that acquired recognition in accordance with Article 32, the list of benchmarks, including, where available, their ISINs, provided by those administrators which may be used in the Union and, where applicable, the third country competent authorities responsible for the supervision thereof;

(d) the benchmarks, including, where available, their ISINs, that are endorsed in accordance with the procedure laid down in Article 33, the identities of their administrators, and the identities, including, where available, the LEI, of the endorsing administrators;';

(b) the following points are added:

'(e) the benchmarks, including, where available, their ISINs, subject to a statement published by ESMA or a competent authority pursuant to Article 24(2), and hyperlinks to such statements;

(f) the benchmarks, including, where available, their ISINs, subject to designations by competent authorities notified to ESMA pursuant to Article 24(3) or (7), and hyperlinks to such designations;

(g) the benchmarks, including, where available, their ISINs, subject to designations by ESMA, and hyperlinks to such designations;

(h) the benchmarks, including, where available, their ISINs, subject to public notices issued by ESMA and competent authorities pursuant to Article 24a(6), and the hyperlinks to such public notices;

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

(j) the list of critical benchmarks, including, where available, their ISINs;

(k) the list of commodity benchmarks subject to Annex II available for use in the Union, including, where available, their ISINs.';

(22) in Article 40(1), the following point is added:

'(c) administrators endorsing benchmarks provided in a third country in accordance with Article 33.';

(23) in Article 41(1), the following points are added:

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

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

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

(ii) use the terms EU Climate Transition Benchmarks or EU Paris-aligned Benchmarks in the names of benchmarks it makes available for use in the Union, or in the legal or marketing documentation for those benchmarks;

(iii) suggest compliance with the requirements applicable to the provision of such benchmarks in the name of the benchmarks it makes available for use in the Union, or in the legal or marketing documentation for those benchmarks.’;

(24) Article 42 is amended as follows:

(a) in paragraph 1, point (a), the reference ‘24a’ is inserted between the references ‘24’ and ‘25’;

(b) paragraph 2 is amended as follows:

(i) in point (g) (i), the reference ‘24a’ is inserted between the references ‘24’ and ‘25’;

(ii) in point (h) (i), the reference ‘24a’ is inserted between the references ‘24’ and ‘25’;

(25) in Article 48f(1), the first subparagraph is replaced by the following:

‘Where, in accordance with Article 48i(5), ESMA finds that any person has, intentionally or negligently, committed one or more of the infringements listed in Article 42(1), point (a), or any failure to cooperate or comply in an investigation or with an inspection or request covered by Section 1 of this Chapter, it shall adopt a decision imposing a fine in accordance with paragraph 2 of this Article.’;

(26) Article 48i is amended as follows:

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

‘1. Where, in carrying out its duties under this Regulation, ESMA finds that there are serious indications of the possible existence of facts liable to constitute one or more of the infringements listed in Article 42(1), point (a), or of a failure to cooperate or comply in an investigation or with an inspection or request covered by Section 1 of Chapter 4, ESMA shall appoint an independent investigation officer within ESMA to investigate the matter.’;

(b) paragraph 8 is replaced by the following:

‘8. On the basis of the file containing the investigation officer’s findings and, when requested by the persons concerned, after having heard those persons in accordance with Article 48j, ESMA shall decide if one or more of the infringements listed in Article 42(1), point (a), or a failure to cooperate or comply in an investigation or with an inspection or request covered by Section 1 of Chapter 4, has been committed by the persons subject to the investigation and, in such case, shall take a supervisory measure in accordance with Article 48e and impose a fine in accordance with Article 48f, as applicable.’;

(27) Article 48n is replaced by the following:

‘*Article 48n*
Transition measures related to ESMA

1. All competences and duties related to the supervisory and enforcement activity regarding administrators as referred to in Article 40(1), points (a) and (b), that are conferred on competent authorities as referred to in Article 40(2) shall be terminated on 1 January 2022. Those competences and duties shall be taken up by ESMA on the same date.

1a. All competences and duties related to the supervisory and enforcement activity regarding administrators endorsing benchmarks provided in a third country as referred to in Article 40(1), point (c), that are conferred on competent authorities as referred to in Article 40(2) shall be terminated on 1 January 2026. Those competences and duties shall be taken up by ESMA on the same date.

2. Any files and working documents related to the supervisory and enforcement activity regarding administrators as referred to in Article 40(1), points (a) and (b), including any ongoing examinations and enforcement actions, or certified copies thereof, shall be taken over by ESMA on the date referred to in paragraph 1 of this Article.

However, applications for authorisation by administrators of a critical benchmark referred to in Article 20(1), points (a) and (c), and applications for recognition in accordance with Article 32 that have been received by competent authorities before 1 October 2021 shall not be transferred to ESMA, and the decision to authorise or recognise shall be taken by the relevant competent authority.

2a. Any files and working documents related to the supervisory and enforcement activity regarding administrators endorsing benchmarks provided in a third country as referred to in Article 40(1), point (c), including any ongoing examinations and enforcement actions, or certified copies thereof, shall be taken over by ESMA on the date referred to in paragraph 1a of this Article.

However, applications for endorsement that have been received by competent authorities before 1 October 2025 shall not be transferred to ESMA, and the decision to authorise or endorse shall be taken by the relevant competent authority.

3. Competent authorities shall ensure that any existing records and working papers, or certified copies thereof regarding administrators as referred to in Article 40(1), points (a) and (b), shall be transferred to ESMA as soon as possible and in any event by 1 January 2022. Those competent authorities shall also render all necessary assistance and advice to ESMA to facilitate effective and efficient transfer and taking-up of supervisory and enforcement activity regarding administrators as referred to in Article 40(1), points (a) and (b).

3a. Competent authorities shall ensure that any existing records and working papers, or certified copies thereof regarding administrators as referred to in Article 40(1), point (c), shall be transferred to ESMA as soon as possible and in any event by 1 January 2026. Those competent authorities shall also render all necessary assistance and advice to ESMA to facilitate effective and efficient transfer and taking-up of supervisory and enforcement activity regarding administrators as referred to in Article 40(1), point (c).

4. ESMA shall act as the legal successor to the competent authorities referred to in paragraphs 1 and 1a in any administrative or judicial proceedings that result from supervisory and enforcement activity pursued by those competent authorities in relation to matters that fall within the scope of this Regulation.

5. Any authorisation of administrators of a critical benchmark as referred to in Article 20(1), points (a) and (c), recognition in accordance with Article 32 and any authorisation or registration of an administrator endorsing or envisaging to endorse benchmarks provided in a third country granted by a competent authority referred to in paragraph 1 of this Article shall remain valid after the transfer of competences to ESMA.';

(28) Article 49 is amended as follows:

(a) paragraph 2 is amended as follows:

(i) in the first sentence, the reference '24(2)' is replaced by '24(9)';

(ii) in the first sentence, the date '10 December 2019' is replaced by '30 June 2024';

(iii) in the second sentence, the date '11 March 2024' is replaced by '31 December 2029';

(b) in paragraph 2b, the terms 'Articles 18a(3) and 54(7)' are replaced by 'Article 54(7)';

(c) in paragraph 3, first sentence, the reference '24(2)' is replaced by '24(9)';

(d) in paragraph 3a, first sentence, the terms 'Articles 18a(3) and 54(7)' are replaced by 'Article 54(7)';

(e) in paragraph 6, first sentence, the reference ‘24(2)’ is replaced by ‘24(9)’;

(f) in paragraph 6a, the terms ‘Article 18a(3) or 54(7)’ are replaced by ‘Article 54(7)’;

(29) Article 51 is amended as follows:

(a) the following paragraph is inserted:

‘4c. Where competent authorities or ESMA intend to designate as significant a benchmark provided by an administrator that was included in the register referred to in Article 36 on 31 December 2025 or where ESMA intends to designate as significant a benchmark that was included in the register referred to in Article 36 on 31 December 2025, the competent authorities or ESMA, as applicable, shall do so by 30 September 2026.

Administrators of benchmarks that on 31 December 2025 were included in the register referred to in Article 36 as authorised, registered or recognised, or as endorsing administrators, shall retain that status until 30 September 2026 and:

(a) where one or more of their benchmarks are significant pursuant to Article 24(1), point (a), those administrators shall not be obliged to re-apply for authorisation, registration, recognition or endorsement pursuant to Article 24a(1);

(b) where one or more of their benchmarks are an EU Paris-aligned Benchmark, an EU Climate Transition Benchmark, or a commodity benchmark subject to Annex II, those administrators shall not be obliged to re-apply for authorisation, registration, recognition or endorsement pursuant to Article 34;

(c) where one or more of their benchmarks are designated as significant pursuant to Article 24(3) or (6) on or before 30 September 2026, those administrators shall not be obliged to re-apply for authorisation, registration, recognition or endorsement pursuant to Article 24a(2) or (3), as applicable;

(d) where none of their benchmarks is significant pursuant to Article 24 as at 30 September 2026, an EU Paris-aligned Benchmark, an EU Climate Transition Benchmark, or a commodity benchmark subject to Annex II, and those administrators request designation of one or more of their benchmarks as significant pursuant to Article 24(7) by 1 January 2027, those administrators shall not be obliged to re-apply for authorisation or registration where that request leads to a designation.

A spot foreign exchange benchmark provided by an administrator located in a third country may be used for existing and new financial instruments and financial contracts, or for measuring the performance of an investment fund until the date of entry into force of the implementing act referred to in Article 18a(3).';

(b) in paragraph 5, the following subparagraph is added:

'Where ESMA has received, by 31 December 2025, an application for recognition pursuant to Article 32(5) from an administrator located in a third country providing an EU Paris-aligned Benchmark, an EU Climate Transition Benchmark or a commodity benchmark subject to Annex II, or an application for endorsement pursuant to Article 33(1) for an EU Paris-aligned Benchmark, an EU Climate Transition Benchmark or a commodity benchmark subject to Annex II provided by an administrator located in a third country, the benchmark concerned may be used for existing and new financial instruments and financial contracts, unless and until its administrator's recognition or its endorsement is refused by ESMA.';

(30) in Article 53, paragraph 1 is deleted;

(31) in Article 54, the following paragraph is added:

‘8. By 30 June 2029, the Commission shall, after consulting ESMA, present a report to the European Parliament and to the Council assessing whether the scope of this Regulation with respect to benchmarks with ESG-related claims, and in particular ESG disclosures by administrators of those benchmarks, is appropriate. In that assessment, the Commission shall take into account the availability in the Union of benchmarks with ESG-related claims and their uptake considering, where possible, the cost of those benchmarks and the evolving nature of ESG indicators and methods used to measure them. The report shall also include an assessment as to whether the content of the disclosures to be made under this Regulation is consistent with sustainability-related disclosures under Regulation (EU) 2019/2088 and with relevant ESMA guidelines. That report shall, where appropriate, be accompanied by a legislative proposal.’.

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 …, …

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