



Council of the
European Union

Brussels, 15 December 2023
(OR. en)

16780/23

LIMITE

EF 404
ECOFIN 1376
CODEC 2498

Interinstitutional File:
2023/0379 (COD)

'I' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 2)
No. Cion doc.:	COM(2023) 660 final
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 administrator located in a third country, and certain reporting requirements <i>- Mandate for negotiations with the European Parliament</i>

I. BACKGROUND/INTRODUCTION

1. On 17 October 2023, the Commission submitted to the Council and the European Parliament a 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 administrator located in a third country, and certain reporting requirements¹ ("Benchmarks Regulation"), which aims to a) reduce the regulatory burden on administrators of benchmarks that are not economically significant in the EU by taking them out of scope and significantly reducing the scope of benchmark administrators subject to its requirements; and b) provide a simplified approach to third country benchmarks in the EU.
2. The draft Regulation is based on Article 114 of the Treaty on the Functioning of the European Union (TFEU) (ordinary legislative procedure).

¹ 12345/21.

3. The opinion of the European Economic and Social Committee was requested on 7 December 2023 and the opinion of the European Central Bank on 13 December 2023 (both are pending).
4. No impact assessment was prepared for this proposal. 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 Benchmarks Regulation 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 the lines which already exist in the Benchmarks Regulation 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 2020² and by a Commission report presented to the co-legislators in 2023³, including two public consultations⁴. 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 2023⁵.

II. MAIN ELEMENTS

5. The Working Party on Financial Services and the Banking Union (Benchmarks) discussed the proposal at its meetings on 8 November and 6 December 2023.
6. Following the working party meeting on 8 November 2023, the Presidency proposed a set of compromise amendments which were further revised following the meeting on 6 December, with a view to reaching a negotiating mandate on the amending Regulation. The Presidency compromise text amends the Commission proposal on certain aspects, in particular by adding a transition period of six months to allow Member States to express their intention to designate as significant certain benchmarks that are currently non-significant; introducing an ESG diligence requirement, both for the user and the provider of supervised benchmarks; establishing a “comply or explain” regime for national competent authorities when considering the opinion of ESMA in case of designation of a

² SWD(2020) 147 final.

³ COM(2023) 455 final.

⁴ 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.

⁵ 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.

benchmark outside of the scope of the Regulation as significant; and automatic in-scoping of commodity benchmarks subject to Annex II of the Regulation.

7. The Presidency's compromise text, as contained in document ST 16782/23 gathers the required support of delegations.
8. In the European Parliament, the Committee on Economic and Monetary Affairs (ECON) has the lead responsibility. Mr Jonás FERNÁNDEZ was appointed rapporteur.

III. CONCLUSION

9. The Permanent Representatives Committee is therefore invited to confirm agreement on the text of the mandate for negotiations with the European Parliament, as set out in document ST 16782/23, to enable the Presidency to conduct those negotiations.
10. In accordance with the approach to legislative transparency endorsed by Coreper on 14 July 2020⁶, and in full consistency with Regulation (EC) 1049/2001 and the Council's Rules of Procedure, the text of the mandate thus agreed will be made public unless the Permanent Representatives Committee objects.

⁶ 9493/20.