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'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 *- Confirmation of the final compromise text with a view to agreement*

I. 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 requirements[1] ("Benchmarks Regulation"), which aims to 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 provide a simplified approach to third country benchmarks in the EU.

[1] 12345/21.

2. The draft Regulation is based on Article 114 of the Treaty on the Functioning of the European Union (TFEU) (ordinary legislative procedure).

3. The European Economic and Social Committee delivered its opinion on 14 February 2024 and the European Central Bank decided not to deliver an opinion on the proposal.

4. The Working Party on Financial Services and the Banking Union discussed the proposal at its meetings on 8 November and 6 December 2023. Permanent Representatives Committee approved the negotiating mandate on 20 December 2023 and granted the Presidency a mandate to enter into negotiations with the European Parliament.

5. In the European Parliament, the Committee on Economic and Monetary Affairs (ECON) has the lead responsibility. The European Parliament adopted its first reading position on 24 April 2024.

6. On 12 December 2024, a provisional political agreement was reached between co-legislators, resulting in the final compromise text as set out in the annex to this note.

III. CONCLUSION

9. The Permanent Representatives Committee is invited to confirm agreement on the final compromise text as set out in the annex to this note with a view to reaching an agreement at second reading with the European Parliament;

10. In accordance with the approach to legislative transparency endorsed by Coreper on 14 July 2020[2], and in full consistency with Regulation (EC) 1049/2001 and the Council's Rules of Procedure, the final compromise text annexed to this document will be made public unless the Permanent Representatives Committee objects.

[2] 9493/20.

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)

PUBLIC

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[2],

Acting in accordance with the ordinary legislative procedure[3],

[2] OJ C , , p. .
[3] OJ C , , p. .

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[4], 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 ***disclosures related to the methodology and the*** benchmark statement ▌. 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 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.

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4 ***[1]*** Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) ***No 596/2014*** (OJ L 171, 29.6.2016, p. 1).

(2a) ***Administrators wishing to opt into the regime should be allowed to make a reasoned request to their competent authority to designate one or more benchmarks they offer. That request should provide the competent authority with sufficient information to assess whether the benchmark or benchmarks meet the requirements for designation. Administrators of benchmarks which have been authorised to opt in should comply with all the requirements applicable to administrators of benchmarks set out in Regulation (EU) 2016/1011. Where the information provided in the request is inaccurate or misleading, the authority should refuse to designate the benchmark concerned.***

(3) ▌ Regulation (EU) 2016/1011 ***empowers*** the Commission ***to*** exempt***, under specific conditions, spot foreign exchange benchmarks. To ensure that EU benchmark users have access to hedging instruments based on*** spot foreign exchange benchmarks ***where currency controls apply, it is necessary to specify that the Commission should designate*** foreign exchange benchmarks ***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 also 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.***

PUBLIC

(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 ▌ . As this ***provision has proven difficult to enforce***, it is appropriate to delete ***it. However, its deletion should not be understood as reduced commitment of the EU 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 should be encouraged to provide such benchmarks in the EU.***

(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 ***should*** monitor the use in the Union of the benchmarks they provide ***and*** 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. ▌ 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. The Commission should be empowered to adopt, after consulting ESMA, a delegated act to further specify the calculation method, the use of*** the threshold ***referred to*** in Article 24(1), point (a), of Regulation (EU) 2016/1011, ***the information provided to ESMA in case of designation, and the criteria to assess the impact of the cessation of the benchmark. Considering future price and regulatory developments, the Commission*** should ***assess the adequacy of*** the threshold ***by three years from the date of application. In case ESMA becomes aware of any issues regarding the*** threshold ***before the date of the report, or at any moment after that report, it should inform the Commission accordingly***.

(6-a) 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 such LEI or ISIN, they 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 their register. To promote the access and use of ISIN and LEI, the entities in charge of issuing those LEIs and ISINs are expected to do so on a fair and non-discriminatory basis.

(6a) 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 day they 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.

(6b) Where a benchmark administrator fails to notify the competent authorities that the use of one of its benchmarks has exceeded the threshold laid down in Article 24(1), point (a), of Regulation (EU) 2016/1011, and where the 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 competent authorities or ESMA to impose administrative sanctions on administrators that fail to notify that one of their benchmarks has exceeded the applicable threshold.

PUBLIC

(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[5]. ***The competent authority of the administrator's home Member State may always reach cooperation agreements on delegation of tasks under this Regulation either with the designating competent authority or with ESMA as laid down in Article 37 of Regulation (EU) 2016/1011.***

[5] 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).

(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 ***related*** disclosures ▌. 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 ***and their administrators, as appropriate,*** to mandatory registration**,** authorisation, ***recognition or endorsement***, and to supervision.

(12a) 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 this 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 in scope of Regulation (EU) 2016/1011 whenever their reference value exceeds a de minimis threshold in order to ensure the robustness and reliability of their assessments.

(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.

(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. ***Where a benchmark 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 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.

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(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 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 modulate the time period during which continued use is allowed, taking into account the specific circumstances, including the degree and type of usage of the benchmark concerned***. 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 ***for*** 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.

(16a) Benchmark administrators located in third countries that access the EU 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, this would allow 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.

PUBLIC

(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).

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(20-a) To ensure a seamless transition to supervision by ESMA, measures should be taken to allow both the transfer of supervision of administrators endorsing non-EU benchmarks that are currently under the supervision of a national competent authority, and the transfer of any applications for endorsement received after such time as would allow for the national competent authority to take a decision before the date of the transfer.

(20a) 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, including by adopting a decision imposing a fine.

(20b) Regulation (EU) 2019/2089 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 set out by 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 in 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 the circumvention of the obligation on ESG disclosures for benchmark administrators that are within the scope of Regulation (EU) 2016/1011, all entities 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 the Regulation, is appropriate and allows the users of those benchmarks to adequately comply with their own sustainability-related disclosure requirements.

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To ensure consistency in sustainability-related disclosures, this report should also assess whether the ESG disclosures under the Regulation are consistent with sustainability-related disclosures under Regulation (EU) 2019/2088 and with relevant ESMA guidelines. That report should, where appropriate, be accompanied by a legislative proposal.

(21) To ensure a seamless transition to ***the application of*** the rules introduced under this Regulation***,*** administrators ***currently supervised under Regulation (EU) 2016/1011*** should ***keep existing registrations, authorisations, recognitions or endorsements for nine months*** from the date of application of this amending Regulation. ***That period is intended to give competent authorities or ESMA sufficient time to decide whether any of the currently supervised administrators should be designated in accordance with this amending Regulation. If designated, administrators previously authorised, registered, endorsed or recognised or administrators who 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 six months designation period also implies that a competent national authority is no longer obliged to maintain an existing authorisation, registration, recognition or endorsement.***

PUBLIC

(21a) In order to allow for the continuous use of spot foreign exchange benchmarks 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.

(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 ▌ is inserted:

‘1a. Titles II, III, ***with the exception of Articles 23a to 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, Article 13(1), point (d), and Article 27(2aa) shall apply to all benchmarks used in the Union provided by administrators:
(a) included in the register referred to in Article 36; or
(b) that 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, Article 19 applies to any commodity benchmark based on contributed input data, unless any of the following conditions is met: (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 of 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';

(a) ▌

(aa) in Article 3(1) point 24, point (a), points (ii) and (iii) are replaced by the following:

'(ii) an approved publication arrangement as defined in point (34) of Article 2(1) of Regulation (EU) 600/2014 or a consolidated tape provider as defined in point (35) of Article 2(1) of Regulation (EU) 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 point (36) Article 2(1) of Regulation (EU) 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';

(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 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, of how the key elements of the methodology reflect ESG factors, with the exception of interest rate and foreign exchange benchmarks';

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

(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) ▌

▌

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(7a) 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:***

'1. The Commission shall designate 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 either:

(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 this 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 of this Article by no later than ... [12 months from the date of entry into force of this amending Regulation]. The Commission shall update that list as appropriate.';

(8a) Article 19 is replaced by the following:

'Commodity benchmarks based on contributed input data

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

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(9) 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 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.;

4a. Administrators shall include the term “CTB” in the name of the EU Climate Transition Benchmarks and the term “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 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 ***the following characteristics*** of the benchmark***:***

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(i) the range of maturities or tenors of the benchmark, where applicable, over a period of six months;

(ii) all the currencies or other units of measurement of the benchmark, where applicable, over a period of six months; and

(iii) all the return calculation methodologies, 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***, the procedure laid down in paragraph 6,*** or the procedure laid down in paragraph ***6a***.

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 ***the first subparagraph of this*** paragraph ▌. 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.

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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 ***that competent authority's*** 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.

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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. ***Where a competent authority designates a benchmark contrary to an opinion adopted 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, 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.

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5. Where ESMA finds that a benchmark meets the conditions under paragraph 3, ***first subparagraph***, points (a) to (c), 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 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, ***and*** 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***, or on its own initiative***, 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.

PUBLIC

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.

6a. A competent authority may 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) Its administrator has submitted a written request to that competent authority for that benchmark to be designated in accordance with paragraph 6a where it clearly sets out the reasons for such request;

(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.

A competent authority shall refuse to designate a benchmark where it has grounds to consider that the request to designate was inaccurate or misleading.

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

PUBLIC

6b. Where the administrator of a benchmark designated in accordance with paragraph 6a wishes to have that designation lifted, it should address a written request to that effect to its competent authority at the earliest four years after that benchmark has been designated.

Where the competent authority determines that neither the condition laid down in paragraph 1, point (a), nor the conditions laid down in paragraph 3 are met, it shall revoke its designation.

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

The competent authority shall publish the decision revoking the designation on its website with the effective date of no later than 12 months after publication.

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

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

(ii) the criteria to assess when a benchmark exceeds the threshold referred to in paragraph 1, point (a), of Article 24;

(iii) the information that competent authorities shall provide when consulting ESMA as required pursuant to Article 24, paragraph 3;

(iv) the criteria referred to in paragraph 4, point (b), of Article 24, taking into consideration any data which helps assess the significant and adverse 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;

PUBLIC

7a. By 31 December 2028, the Commission shall, in cooperation with ESMA, present a report to the European Parliament and the Council on the adequacy of the threshold referred to in point (a) of paragraph 1 of this Article in the 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 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***, in which case it selects an endorsing administrator in the Union that submits an application to ESMA***.

(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 ▌ competent authority ***of the Member State where it is located*** in accordance with Article 34.

PUBLIC

(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***, in which case it selects an endorsing administrator in the Union that submits an application to ESMA***.

3a. Within 60 working days following a designation referred to in Article 24(6a), 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.

(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 ***are to*** 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;

PUBLIC

(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 ***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 to 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 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.';

(12a) In Article 25, a new paragraph is added:

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

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

(13(-a)) in Article 27, paragraphs 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 or not 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.';

PUBLIC

(13(-b)) in Article 27, paragraphs 2aa 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.';

(13c) in Article 27, 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.';

(13d) 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.';

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(14) 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 ESMA or a competent authority in accordance with Article 24a(5). A supervised entity shall not add new references to ***a critical benchmark, a commodity benchmark subject to Annex II, 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 ***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, 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 ***between 6 and 24*** months following the publication of the public notice ▌ where necessary to avoid serious market disruption.

PUBLIC

ESMA or the competent authority shall determine the duration of the period referred to in the second 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) a new paragraph ***1b*** 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(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 ***providing*** clients ***with a reasoned explanation for not being able to do so***.▌';

(ca) Paragraph 2 is replaced by the following:

'2. 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, 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.

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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, 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(5) on the benchmark used is included in the register referred to in Article 36 of this Regulation, without undue delay following the publication of the public notice, the prospectus also includes this information in a clear and prominent manner.';

(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 ***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. ***An*** 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 ▌ 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 on the legal representative and the administrator for one of the infringements listed in point (a) of Article 42(1) 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.'***;

PUBLIC

(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.**’**;

(15a) Article 33 is amended as follows:

‘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 a third country administrator, 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:

PUBLIC

(15b) Article 33, paragraph 2 is amended as follows:

2. An administrator that makes 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.

(15b) Article 33, paragraph 3 is amended as follows:

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 authorisation or registration, as applicable, of the administrator applying for endorsement shall be transferred to ESMA within 6 months after the endorsement.

(15b) Article 33, paragraph 4 is amended as follows:

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.

PUBLIC

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.';

(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 ***or ESMA*** 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.;'

PUBLIC

(aa) Article 34, paragraph 1a is amended as follows:

'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 makes an application to ESMA pursuant to Art. 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.***'***;

(16a) in Article 36(1), points (a) to (d), are replaced by the following:

'1. ESMA shall establish and maintain a public register that contains the following information:

(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, when available, their International Securities Identification Numbers (ISINs), referred to in point (c) of Article 30(1) and the third country competent authorities responsible for the supervision thereof;

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(c) the identities, including, where available, the LEI, of the administrators that acquired recognition in accordance with Article 32, the list of benchmarks, including, when available, their ISINs, referred to in Article 32(7) and, where applicable, the third country competent authorities responsible for the supervision thereof;

(d) the benchmarks that are endorsed in accordance with the procedure laid down in Article 33, the identities of their administrators, and the identities of the endorsing administrators or endorsing supervised entities.';

(17) in Article 36(1) ▌ :

(a) points (e) to (k) 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 the 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(4), and the hyperlinks to such designations;

(g) the benchmarks***, including, where available, their ISINs,*** subject to designations by ESMA, and the 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(5), 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.;

(17a) Article 40, paragraph 1 is amended as follows:

'1. For the purposes of this Regulation, ESMA shall be the competent authority for:

(a) administrators of critical benchmarks as referred to in Article 20(1), points (a) and (c);

(b) administrators of the benchmarks referred to in Article 32;

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

(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 ***of Title III***, 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 ***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) to ***imply*** 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;***'***;

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(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’;

PUBLIC

(19b) in Article 48f, paragraph 1 is replaced by the following:

'1. 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 point (a) of Article 42(1), 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.

An infringement shall be considered to have been committed intentionally if ESMA finds objective factors which demonstrate that a person acted deliberately to commit the infringement.;

Article 48n is amended as follows:

(a) paragraphs 1, 2 and 3 are replaced by the following:

'1. All competences and duties related to the supervisory and enforcement activity regarding administrators as referred to in Article 40(1)(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 as referred to in Article 40(1)(d) 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)(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 points (a) and (c) of Article 20(1) 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.

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2a. Any files and working documents related to the supervisory and enforcement activity regarding administrators as referred to in Article 40(1)(d), 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)(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)(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)(d), 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)(d).

4. ESMA shall act as the legal successor to the competent authorities referred to in paragraph 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 this Regulation.';

PUBLIC

(a) Paragraph 5 is amended as follows:

'5. Any authorisation of administrators of a critical benchmark as referred to in points (a) and (c) of Article 20(1), recognition in accordance with Article 32 and authorisation 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.';

(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.';

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(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 ▌ is inserted:

'4c. Competent ***national*** authorities ***intending to designate a*** benchmark ***provided by an administrator that was included in the ESMA register on 31 December 2025 and ESMA intending to designate a benchmark that was included in the ESMA register or the administrator of which was included in the ESMA register on 31 December 2025 shall do so by 30 September 2026.***

Administrators of significant benchmarks that were authorised, registered or recognised on 31 December 2025, as well as administrators of benchmarks endorsed on 31 December 2025, shall retain this status until 30 September 2026. Where one or more of their benchmarks are designated until 30 September 2026, the designated administrators shall not be obliged to re-apply for authorisation registration, recognition, or endorsement pursuant to Article 24a(1), (2), or (3), as applicable.

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Administrators of significant benchmarks that were authorised, registered or recognised on 31 December 2025, as well as administrators of benchmarks endorsed on 31 December 2025 shall not be obliged to re-apply for authorisation registration, recognition, or endorsement pursuant to Article 24a(1) where one or more of their benchmarks are significant pursuant to Art. 24(1)(a).

Administrators of significant benchmarks that were authorised or registered on 31 December 2025, who request designation pursuant to the procedure set out in Article 24(6a) by 1 January 2027, 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 outside the Union may be used for existing and new financial instruments, financial contracts, or for measuring the performance of an investment fund until the date of entry into force of the implementing act.';

(21a) Article 53, paragraph 1 is deleted;'

(19c) in Article 54, a new paragraph is added:

'8. By 30 June 2029, the Commission shall, after consulting ESMA, present a report to the European Parliament and 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 this 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 assess 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.';

PUBLIC

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
The President

For the Council
The President

PUBLIC