Council of the European Union

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DRAFT STATEMENT OF THE COUNCIL'S REASONS

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 – Draft Statement of the Council's reasons

I. INTRODUCTION

1. On 17 October 2023, the European 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 ("Benchmarks Regulation") aiming to streamline and simplify the EU benchmarks framework.

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

3. At the European Parliament, the Committee on Economic and Monetary Affairs (ECON) was designated as the lead committee for this file. The European Parliament voted on the report and adopted its first-reading position on 24 April 2024.

4. 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.

5. 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.

6. Subsequently, two political trilogues were held on 28 November and 12 December 2024 resulting in an overall provisional agreement between the Council and the European Parliament. On 20 December 2024, the Permanent Representatives Committee confirmed the compromise text as agreed at the trilogue of 12 December 2024.

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7. The European Parliament's ECON Committee voted in favour of the same compromise text on 16 January 2025. Subsequently, the Chair of the ECON Committee addressed a letter dated 17 January 2025 to the Chair of the Permanent Representatives Committee stating that, if the Council adopted its position at first reading in accordance with the agreed overall provisional agreement, she would recommend to the Plenary that the Council's position be accepted without amendment at Parliament's second reading, subject to legal-linguistic verification.

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II. OBJECTIVE

8. The overall objective of the proposal is to ease the regulatory burden on administrators of benchmarks that are not economically significant in the EU by exempting them from the scope of the Benchmarks Regulation and substantially reducing the number of benchmark administrators subject to its requirements. Additionally, it seeks to establish a simplified framework for third-country benchmarks in the EU.

III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

9. The Council's position at first reading contains the following main elements, on which an agreement between the co-legislators has been found:

10. Supervision of third country benchmark administrators in the EU: Co-legislators have agreed to grant the European Securities and Markets Authority (ESMA) supervisory powers over third-country benchmark administrators in the EU. Third-country benchmark administrators accessing the EU market via the recognition regime are already supervised by ESMA. Aligning ESMA's oversight across both recognition and endorsement regimes ensures a level playing field for all third-country administrators. Additionally, it establishes ESMA as the sole supervisor over such administrators, improving cross-border cooperation, regulatory efficiency and simplification.

11. Voluntary opt-in regime: Co-legislators have agreed to allow administrators that would be excluded from the scope of the Regulation to voluntarily choose to apply the rules (opt-in) under certain conditions. A competent authority may designate a benchmark as significant, provided that the administrator submits a written request clearly stating the reasons for the designation and that the benchmark is used within a combination of benchmarks in the EU as a reference for financial instruments, financial contracts, or investment funds with a total average value of at least EUR 20 billion. This ensures that administrators who wish to retain their regulated status and provide benchmarks within a supervised framework can do so provided that they fulfil the criteria of the opt-in.

12. ESG-related benchmarks: Co-legislators have agreed to introduce a requirement for administrators of EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks to be registered, authorized, recognized, or endorsed, ensuring regulatory oversight and preventing misleading ESG claims. The draft agreement also sets forth a requirement for EU Climate Transition Benchmarks to include the acronym "CTB" and EU Paris-aligned Benchmarks to include "PAB" in their names. This requirement ensures clarity and prevents misleading labeling. Co-legislators also included a provision for the European Commission to assess by June 30, 2029, the appropriateness of current ESG disclosure requirements and their alignment with other sustainability-related regulations. This forward-looking approach ensures that ESG disclosures remain relevant and effective.

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13. Spot foreign exchange benchmarks: The Council's position at first reading introduces certain changes regarding the exemption for spot foreign exchange benchmarks. The co-legislators agreed to reinstate this exemption to ensure that benchmark users in the EU have access to hedging instruments where currency controls apply. The Commission is now empowered to designate certain foreign exchange benchmarks as exempted through implementing acts, ensuring flexibility as currency controls evolve over time.

14. Significant benchmarks: The co-legislators have agreed to introduce certain modifications related to the designation, monitoring, and regulatory treatment of significant benchmarks. Additional qualitative criteria to the classification methodology for significant benchmarks were introduced. Now in the calculation of the €50 billion threshold, the assessment also considers the range of maturities or tenors, currencies and return calculation variants. These additions aim to provide a more comprehensive evaluation of a benchmark's significance by considering its diverse applications and the potential impact of its cessation or unreliability. The draft agreement also introduces a delegated act empowering the Commission to specify the methodology for calculating the EUR 50 billion threshold and to set clear criteria for assessing benchmark usage. Additionally, the European Commission is required to review the adequacy of this threshold within three years and report its findings to the European Parliament and the Council.

15. Use of benchmarks: The Council's position at first reading introduces a specific mechanism allowing the continued use of a benchmark in cases where it is subject to a public notice. ESMA or the competent authority may extend the use of such a benchmark for 6 to 24 months after the publication of the public notice. This change is designed to prevent serious market disruptions by ensuring a gradual transition. The assessment by ESMA or the competent authority is based on specific criteria introduced in the amending Regulation, ensuring that any extension is justified and limited to cases where it is truly necessary.

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16. Commodity benchmarks: The co-legislators have agreed to introduce changes to the regulatory treatment of commodity benchmarks to better reflect their specific characteristics and ensure proportionate regulatory burden. A specific exemption was introduced for commodity benchmarks based on contributions from non-supervised entities, where the total average notional value of financial instruments referencing the benchmark does not exceed EUR 200 million over 12 months. This exception introduces a *de minimis* threshold, ensuring that commodity benchmarks based on input data contributed in majority by non-supervised entities are within the scope of the Benchmarks Regulation whenever their reference value reaches this threshold. However, commodity benchmarks based on regulated data or supervised contributors remain subject to general financial benchmark rules.

IV. CONCLUSION

The Council's position underlines the main objective of the European Commission proposal and fully reflects the compromise reached in the informal negotiations between the Council and the European Parliament, with the support of the European Commission.

The Council therefore believes that its position at first reading is a balanced representation of the outcome of the negotiations. Once adopted, the Regulation will be an important contribution to reduce the regulatory burden on administrators of benchmarks that are not economically significant in the EU and to simplify the framework for third-country benchmarks in the EU.

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