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2023/0379 (COD)

# COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT

**pursuant to Article 294(6) of the Treaty on the Functioning of the European Union**

**concerning the**

**position of the Council on 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**

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## 1. BACKGROUND

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| Date of transmission of the proposal to the European Parliament and to the Council (document COM(2023) 660 final – 2023/0379 COD): | 17 October 2023 |
| Date of the opinion of the European Economic and Social Committee: | 14 February 2024 |
| Date of the position of the European Parliament, first reading: | 22 April 2024 |
| Date of transmission of the amended proposal: | N/A |
| Date of adoption of the position of the Council: | 24 March 2025 |

## 2. OBJECTIVE OF THE PROPOSAL FROM THE COMMISSION

The Commission proposal pursues two objectives: (i) to reduce regulatory and administrative burden on EU businesses and investors by focusing the scope of Regulation (EU) 2016/1011 on those benchmarks with the greatest economic impact; and (ii) to ensure that EU benchmark users continue to have access to the broadest possible set of benchmarks, including third-country benchmarks.

## 3. COMMENTS ON THE POSITION OF THE COUNCIL

The position of the Council as adopted at first reading fully reflects the political agreement reached between the European Parliament and the Council on 12 December 2024. The Commission supports this agreement, the main points of which are set out below.

– Significant benchmarks: The co-legislators have agreed to introduce certain modifications related to significant benchmarks relative to the Commission's proposal. In addition to the EUR 50 billion threshold, qualitative criteria were introduced to identify significant benchmarks. The calculation of the EUR 50 billion threshold now 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 an empowerment for the Commission to adopt a delegated act to specify the methodology for calculating the EUR 50 billion threshold and to set clear criteria for assessing benchmark usage. Additionally, the Commission is required to review the adequacy of this threshold within three years and report its findings to the European Parliament and the Council.

– Use of benchmarks: The Council's position at first reading introduces a specific mechanism allowing the continued use of a benchmark following the publication of a public notice that would normally prohibit its use. The European Securities and Markets Authority (ESMA) or the competent authority may allow 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 on a possible extension 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.

– 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. Commodity benchmarks based on contributions from non-supervised entities will be subject to the rules of Regulation (EU) 2016/1011 as soon as the total average notional value of financial instruments referencing the benchmark exceeds EUR 200 million over 12 months. However, commodity benchmarks based on regulated data or supervised contributors remain subject to the EUR 50 billion threshold under the general financial benchmark rules.

– 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 maintain this exemption which was deleted by the Commission's proposal to ensure that benchmark users in the EU have access to hedging instruments where currency controls apply. The Commission is now empowered to designate through implementing acts certain foreign exchange benchmarks as exempted, ensuring flexibility as currency controls change over time.

– Voluntary opt-in regime: The 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 if: (i) the administrator submits a written request clearly stating the reasons for the request for designation; and (ii) 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 to provide benchmarks within a supervised framework can do so, if they fulfil the criteria of the opt-in.

– Benchmarks related to environmental, social and governance (ESG) claims: The co-legislators have agreed to introduce a requirement for administrators of EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks to be registered, authorised, recognised or endorsed, ensuring regulatory oversight and preventing misleading ESG claims. The draft agreement also includes a requirement for administrators that are subject to supervision under Regulation (EU) 2016/1011 for at least one of their benchmarks to disclose ESG information for all their benchmarks that pursue ESG objectives. The co-legislators also included a requirement for the

Commission to assess, by 30 June 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.

– Supervision of third-country benchmark administrators in the EU: The co-legislators have agreed to extend ESMA's supervisory powers over third-country benchmark administrators active 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 benchmarks used in the EU. Additionally, it establishes ESMA as their sole supervisor, improving cross-border cooperation, regulatory efficiency and simplification. New tasks entrusted to ESMA for the supervision of endorsing entities would not lead to a need for more staff and financial resources for ESMA (i.e. these new tasks ought to be compensated by a reduction in the existing tasks and fees paid by the newly supervised entities).

## 4. CONCLUSION

The Commission supports the results of the interinstitutional negotiations and can therefore accept the Council's position at first reading.