Scope of rules for benchmarks, use in the Union of benchmarks provided by an administrator located in a third country, and certain reporting requirements

2023/0379(COD) - 17/10/2023 - Legislative proposal

PURPOSE: to streamline the rules for benchmarks and certain reporting requirements.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: this proposal is part of a package of measures to rationalise reporting requirements. It aims to rationalise authorisation and registration and alleviate the burden on EU companies, in particular small and medium-sized enterprises (SMEs). The regulatory framework that applies to these companies is layered. Different rules and reporting requirements apply depending on the type of benchmark they provide.

Regulation (EU) 2016/1011 (the Benchmark Regulation or the BMR) aims to address concerns about the accuracy and integrity of benchmarks regardless of the size and systemic nature of such benchmarks. Under that Regulation, 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 methodological and benchmark statement disclosures. 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.

CONTENT: this proposal seeks to review the scope of the Benchmark Regulation and address its shortcomings, as well as bring targeted improvements to how it functions.

Main amendments to the Benchmark Regulation

The proposal defines the type of benchmarks to which specific Titles in Regulation (EU) 2016/1011 apply. These are critical benchmarks, significant benchmarks, EU Paris-aligned Benchmarks and EU Climate Transition Benchmarks. Administrators of benchmarks that are not considered critical. Non-significant benchmarks are therefore no longer required to apply the requirements under Titles II (Benchmark integrity and reliability), III (Requirement for different types of benchmarks), IV (Transparency and consumer protection) and VI (Authorisation, Registration and Supervision of Administrators).

The definition of what constitutes a significant benchmark is amended.

EU Paris-aligned Benchmarks and EU Climate Transition Benchmarks

A new paragraph is added to safeguard the integrity of the label and provide for effective supervision. The administrators of EU Paris-aligned Benchmark or EU Climate Transition Benchmarks remain in scope of the BMR, irrespective of their significance, subject to them obtaining authorisation or registration in the EU.

Significant benchmarks

The proposal lays down measures concerning the determination of whether a benchmark is significant on the basis of a simple numerical threshold: whether such benchmarks are used as a reference for assets whose cumulative value exceeds EUR 50 billion.

It also sets out the obligation, incumbent on all administrators of benchmarks used by supervised entities in the EU, to notify the Commission when one or several of the benchmarks they administer exceeds a usage threshold of EUR 50 billion. This obligation applies to an administrator located in the Union and to an administrator located in a third country.

A national competent authority may also issue a decision stating that a benchmark, whose usage within the EU does not exceed EUR 50 billion meets the qualitative conditions for significance, with respect to its Member State. Such designations should remain limited and should be motivated in a **reasoned decision** from the competent authority, setting out in clear terms the reasons why a benchmark is significant.

The competent authorities should publish designation decisions, and ESMA should compile all designation decisions issued by them. This allows users to easily verify the designation status of benchmarks they intend to use. Supervised entities should be obliged to regularly consult these sources to check the designation status of any benchmarks they intend to use.

A **parallel system for the designation of non-EU benchmarks as significant** in accordance with qualitative criteria is laid down. The responsibility is conferred in this case to ESMA, acting upon the request of one or more competent authorities. The qualitative criteria are similar to those for the designation of EU benchmarks, as are the measures to ensure the transparency of designations.