

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) - 24/04/2024 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 530 votes to 36, with 14 abstentions, a legislative resolution on the 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.

The European Parliament's position adopted at first reading under the ordinary legislative procedure amends the proposal as follows:

EU Climate Transition Benchmarks or EU Paris-aligned Benchmarks

It is specified that administrators that are not included in the ESMA register should not provide or endorse EU Climate Transition Benchmarks or EU Paris-aligned Benchmarks. Administrators should include the term "EU CTB" in the name of the EU Climate Transition Benchmarks and the term "EU PAB" in the name of the EU Paris Aligned Benchmarks.

Administrators which are located in the Union and provide significant benchmarks determined on the basis of the value of one or more underlying assets or prices should endeavour to provide one or more EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks.'

Significant benchmarks

The text stipulated that a benchmark which is not a critical benchmark should be significant where 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 characteristics of the benchmark, including:

- the range of maturities or tenors of the benchmark, where applicable, over a period of six months;
- all the currencies or other units of measurement of the benchmark, where applicable, over a period of six months; and
- all the return calculation methodologies, where applicable, over a period of six months.

An administrator should immediately notify ESMA and, if located in an EU Member State the competent authority of that Member State, where one or several of that administrator's benchmarks exceed the threshold referred to above.

Administrators of benchmarks which do not meet the requirements to be considered as critical, significant, commodity benchmarks subject to Annex II, EU Climate Transition Benchmarks or EU Paris-aligned Benchmarks may voluntarily apply to access to the register either by means of authorisation, registration, recognition or endorsement.

Benchmarks from a third country

An administrator located in the Union and authorised or registered in accordance with the Regulation, 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 certain conditions are fulfilled. Within 90 working days of receipt of the application for endorsement, ESMA should examine the application and adopt a decision either to authorise the endorsement or to refuse it.

Public register

ESMA should establish and maintain a public register containing information such as, when available, the Legal Entity Identifier (LEI) of the administrators authorised or registered and the competent authorities responsible for the supervision.

Review

It is appropriate that by 31 December 2028, the Commission presents a report, on the basis of input from ESMA, assessing the availability of ESG benchmarks in European and global markets and their market uptake, analysing whether they would be considered significant benchmarks, and studying the costs and effects on market availability and the evolving nature of the sustainable indicators and the methods used to measure them.

Furthermore, it should assess the need to regulate benchmarks making ESG-related claims, with the aim to maintain an adequate level of protection of users of those benchmarks as well as a high level of transparency, reduce the risk of greenwashing and ensure coherence with other EU legislation on sustainable disclosure requirements. That report should be accompanied by an impact assessment and, where appropriate, a legislative proposal.

Transitional provisions

To ensure a seamless transition to the application of the rules introduced under this Regulation administrators previously supervised under Regulation (EU) 2019/2089 should keep existing registrations, authorisations, recognitions or endorsements for nine months after the entry into application of this amending Regulation. That period is intended to give competent authorities and ESMA sufficient time to decide whether any of the previously supervised administrators should be designated in accordance with this amending Regulation. If designated, administrators previously authorised, registered, endorsed or recognised or administrators who voluntarily opt-in to this Regulation, should be allowed to retain their previous status without the need to re-apply. Administrators of significant benchmarks should, in any case, be allowed to retain their status as authorised, registered, endorsed or recognised benchmark administrators.