

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) - 27/03/2025 - Council position

The Council adopted its **position 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 on benchmarks, the use in the Union of benchmarks provided by an administrator located in a third country and certain reporting requirements.

The overall objective of the proposed regulation is to reduce the regulatory and administrative burden on EU businesses and investors on those benchmarks with the greatest economic impact and to ensure that EU benchmark users continue to have access to the broadest possible set of benchmarks, including third-country benchmarks. In addition, the proposal aims to establish a simplified framework for third-country benchmarks in the EU.

The Council's position at first reading includes the following main elements:

Supervision of third-country benchmark administrators in the EU

The Council's position extends ESMA's supervisory powers over third-country benchmark administrators active in the EU. 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.

Voluntary opt-in regime

Administrators that would be excluded from the scope of the Regulation would be allowed 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.

Benchmarks related to environmental, social and governance (ESG) claims

The Council's position requires administrators of EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks to be registered, authorised, recognised or endorsed. It also provides:

- 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;
- 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.

Furthermore, the European Commission will assess, by 30 June 2029, the appropriateness of current ESG disclosure requirements and their alignment with other sustainability-related regulations.

Spot foreign exchange benchmarks

The Council's position introduces certain changes regarding the exemption for spot foreign exchange benchmarks. This exemption is intended to be reinstated 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.

Significant benchmarks

Certain modifications are introduced regarding the designation, monitoring, and regulatory treatment significant benchmarks. 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.

Furthermore, the Council's position 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 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. 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 Council's position introduces 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.