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INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2016/1011 on low carbon benchmarks and positive carbon impact benchmarks - Outcome of the European Parliament's first reading, (Strasbourg, 25 to 28 March 2019)

I. INTRODUCTION

The rapporteur, Neena GILL (S&D, UK), presented a report consisting of one amendment (amendment 2) to the proposal for a Regulation, on behalf of the Committee on Economic and Monetary Affairs.

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure [1], a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

[1] OJ C 145, 30.6.2007, p.5

In this context, a compromise amendment was tabled (amendment 2). This amendment had been agreed during the informal contacts referred to above. No other amendments were tabled.

II. VOTE

When it voted on 26 March 2019, the plenary adopted the compromise amendment (amendment 2) to the proposal for a Regulation.

The Commission proposal as thus amended and the legislative resolution constitute the European Parliament's position at first reading[2]. It reflects what had been previously agreed between the institutions. Consequently, once the legal-linguistic experts have scrutinised the text, the Council should be in a position to approve the position of the European Parliament.

The act would then be adopted in the wording which corresponds to the Parliament's position.

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[2] The text of the amendments adopted and the European Parliament's legislative resolution are set out in the Annex. The amendments are presented in the form of a consolidated text, where changes to the Commission's proposal are highlighted in bold and italics. The symbol " ▌ " indicates deleted text.

Low carbon benchmarks and positive carbon impact benchmarks ***I

European Parliament legislative resolution of 26 March 2019 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) 2016/1011 on low carbon benchmarks and positive carbon impact benchmarks (COM(2018)0355 – C8-0209/2018 – 2018/0180(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2018)0355),

– having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0209/2018),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to the opinion of the European Economic and Social Committee of 17 October 2018[3],

– having regard to the opinion of the Committee of the Regions of 5 December 2018[4],

– having regard to the provisional agreement approved by the committee responsible under Rule 69f(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 13 March 2019 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

– having regard to Rule 59 of its Rules of Procedure,

– having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on the Environment, Public Health and Food Safety (A8-0483/2018),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;

3. Instructs its President to forward its position to the Council, the Commission and the national

[3] OJ C 62, 15.2.2019, p. 103
[4] OJ C 86, 7.3.2019, p. 24

parliaments.

P8_TC1-COD(2018)0180

Position of the European Parliament adopted at first reading on 26 March 2019 with a view to the adoption of Regulation (EU) 2019/… of the European Parliament and of the Council amending Regulation (EU) 2016/1011 *as regards EU Climate Transition Benchmarks* and *EU Paris-aligned Benchmarks*[*]

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[5],

Having regard to the opinion of the Committee of the Regions[6],

Acting in accordance with the ordinary legislative procedure[7],

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[*] TEXT HAS NOT YET UNDERGONE LEGAL-LINGUISTIC FINALISATION

[5] OJ C 62, 15.2.2019, p. 103.

[6] OJ C 86, 7.3.2019, p. 24

[7] Position of the European Parliament of 26 March 2019.

Whereas:

(1) On 25 September 2015, the UN General Assembly adopted a new global sustainable development framework: the 2030 Agenda for Sustainable Development, having at its core the Sustainable Development Goals (SDGs). The Commission's Communication of 2016 on the next steps for a sustainable European future links the SDGs to the Union policy framework to ensure that all Union actions and policy initiatives, within the Union and globally, take the SDGs on board at the outset. The European Council conclusions of 20 June 2017 confirmed the commitment of the Union and the Member States to the implementation of the 2030 Agenda in a full, coherent, comprehensive, integrated and effective manner and in close cooperation with partners and other stakeholders.

(2) In 2015, the Union concluded the Paris Climate Agreement[8]. Article 2(c) of that Agreement sets the objective to strengthen the response to climate change, among other means by making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.

(3) In 2018, the Intergovernmental Panel on Climate Change (IPCC) published the Special Report on Global Warming of 1,5°C which stated that limiting global warming to 1,5°C would require rapid far-reaching and unprecedented changes in all aspects of society and that limiting global warming to 1,5°C compared to 2°C could go hand in hand with ensuring a more sustainable and equitable society.

(4) Sustainability and the transition to a low-carbon***,*** climate resilient, more resource-efficient and circular economy are ***crucial*** in ensuring long-term competitiveness of the ▌economy ***of the Union***. Sustainability has long been ***central to*** the Union project and the ▌Treaties give recognition to its social and environmental dimensions. ***There is a limited window to transform the culture in the financial sector towards sustainability to ensure that the global average temperature rise stays well below 2ºC. It is therefore essential that new infrastructure investments be sustainable in the long term.***

[8] OJ L 282, 19.10.2016, p. 4.

(5) In March 2018, the Commission published its Action Plan 'Financing Sustainable Growth'[9], ***launching*** an ambitious and comprehensive strategy on sustainable finance. One of the objectives of that Action Plan is to reorient capital flows towards sustainable investment to achieve sustainable and inclusive growth. ***Greater focus on limiting the impact of climate change is critical as disasters triggered by unpredictability of weather conditions have increased dramatically.***

(6) Decision No. 1386/2013/EU of the European Parliament and of the Council[10] called for an increase in private sector funding for environmental and climate-related expenditure, notably through ***creating*** incentives and methodologies that stimulate companies to measure the environmental costs of their business and profits derived from using environmental service.

(7) Achieving SDG objectives in the Union requires the channelling of capital flows towards sustainable investments. It is important to exploit fully the potential of the internal market for the achievement of those goals. In that context, it is crucial to remove obstacles to the efficient movement of capital into sustainable investments in the internal market and to prevent such expected obstacles from emerging.

(8) In order to reach the long-term global warming targets of the Paris Agreement and significantly reduce the risks and impacts of climate change, the global objective should be to hold the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels.

(9) Regulation (EU) 2016/1011 of the European Parliament and of the Council[11] establishes uniform rules for benchmarks in the Union and caters for different types of benchmark. An increasing number of investors pursue low-carbon investment strategies and take recourse to low-carbon benchmarks to reference or measure the performance of investment

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9 COM(2018)0097 final.

10 Decision No. 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020 'Living well, within the limits of our planet' (OJ L 354, 28.12.2013, p. 171).

11 Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L 171, 29.6.2016, p. 1).

portfolios. ***The establishment of EU Climate Transition and EU Paris-aligned Benchmarks, underpinned by a methodology linked to commitments regarding carbon emission of the Paris Climate Agreement, would contribute to better transparency and help prevent greenwashing.***

(10) A wide variety of indices is currently grouped together as low-carbon indices. Those low carbon indices are used as benchmarks for investment portfolios and products that are sold across borders. The quality and integrity of low-carbon benchmarks affect the effective functioning of the internal market in a wide variety of individual and collective investment portfolios. Many low carbon indices used as performance measures for investment portfolios, in particular for segregated investment accounts and collective investment schemes, are provided in one Member State but used by portfolio and asset managers in other Member States. In addition, portfolio and asset managers often hedge their carbon exposure risks by using benchmarks produced in other Member States.

(11) Different categories of low-carbon indices with various degrees of ambition have emerged in the ***market***. While some benchmarks aim to lower the carbon footprint of a standard investment portfolio, others aim to select only components that contribute to attaining the 2°C degree objective set out in the Paris Climate Agreement. Despite differences in objectives and strategies, ***many*** of these benchmarks are commonly promoted as low-carbon benchmarks. ***Minimum standards and a common methodology for EU Climate Transition and EU Paris-aligned Benchmarks would help to avoid greenwashing.***

(12) Divergent approaches to benchmark methodologies result in fragmentation of the internal market because users of benchmarks do not have clarity on whether a particular low-carbon index is a benchmark aligned to the 2 °C objective or merely a benchmark that aims to lower the carbon footprint of a standard investment portfolio. To address potentially illegitimate claims by administrators about the low-carbon nature of their benchmarks, Member States are likely to adopt different rules to avoid ▌ confusion ***among investors*** and ambiguity ***for investors*** about the aims and level of ambition underpinning different categories of so called low-carbon indices used as benchmarks for ▌ low-carbon investment ***portfolios***.

(13) In the absence of a harmonised framework to ensure the accuracy and integrity of the main categories of low-carbon benchmarks used in individual or collective investment

portfolios, it is likely that differences in Member States' approaches will create obstacles to the smooth functioning of the internal market.

(14) ***In order*** to maintain the proper functioning of the internal market ***for the benefit of the end investor***, to further improve the conditions of its functioning, and to ensure a high level of consumer and investor protection, it is ***therefore*** appropriate to ***amend*** Regulation (EU) 2016/1011 ***by introducing*** a regulatory framework ***which lays down minimum requirements*** for ***EU Climate Transition and EU Paris-aligned Benchmarks*** at Union level. ***In that regard, it is of particular importance that such benchmarks should not significantly harm other environmental, social and governance (ESG) objectives.***

(15) ***Introducing*** a clear distinction between ***EU Climate Transition*** and ***EU Paris-aligned Benchmarks and developing minimum standards for each of them would contribute to consistency among those*** benchmarks. ***The EU Paris-aligned Benchmark should, at index level, be in line with the long-term global warming target of the Paris Climate Agreement.***

(16) In order to ensure that the labels 'EU Climate Transition Benchmark' and 'EU Paris-aligned Benchmark'' are reliable and easily recognisable for investors across the Union, only administrators that comply with the requirements laid down in this Regulation should be eligible to use the labels when marketing those benchmarks in the Union.

(17) This Regulation should only apply to benchmarks using the label 'EU Climate Transition Benchmark' or 'EU Paris aligned Benchmark'.

(18) ***In order to encourage companies to disclose credible objectives of carbon emissions reductions, the administrator of an EU Climate Transition Benchmark when selecting or weighting underlying assets should take into account companies that have an objective to reduce their carbon emissions towards an overall alignment with the long-term global warming target of the Paris Climate Agreement. Such an objective should be public and credible in the sense that it should entail a genuine commitment to decarbonisation and should be sufficiently detailed and technically viable.***

(19) ▌The users of▌ benchmarks do however not always have the necessary information on the extent to which the methodology of▌ benchmark administrators takes into account▌ ESG ***factors***. The existing information is also often scattered***, or non-existent,*** and does not

allow for effective comparison for investment purposes across borders. To enable market ***participants*** to make well-informed choices, ***all*** benchmark administrators ***with the exception of administrators of interest and currency rate benchmarks,*** should be required to disclose ▌ in the benchmark statement***, whether or not their*** benchmarks ▌ or ***families of benchmarks, pursue*** ESG objectives, ***and whether or*** not ***the benchmark administrator offers such benchmarks***.

(20) In order to inform investors on the degree of compliance with the Paris Climate Agreement, for significant equity and bond benchmarks, as well as for EU Climate Transition and EU Paris-aligned Benchmarks, the benchmark administrator should publish detailed information on whether or not and to what extent an overall degree of alignment with the target of reducing carbon emissions, or, attaining the long-term global warming targets of the Paris Climate Agreement, is ensured.

(21) For the same reasons, administrators of ***EU Climate Transition*** and of ***EU Paris-aligned Benchmarks*** should equally publish their methodology used for their calculation. That information should describe how the underlying assets were selected and weighted and which assets were excluded and for what reason. ▌ To assess how the benchmark contributes to environmental objectives, the benchmark administrator should disclose how the carbon ***emissions*** of the underlying assets were measured, their respective values, including the total carbon footprint of the benchmark, and the type and source of data used. To enable asset managers to choose the most appropriate benchmark for their investment strategy, benchmark administrators should explain the rationale behind the parameters of their methodology and explain how the benchmark contributes to environmental objectives ▌. The published information should also include details on the frequency of reviews and the procedure followed.

▌

(22) The methodologies used for the EU Climate Transition and EU Paris-aligned benchmarks should have their foundation in science-based decarbonisation trajectories, or an overall alignment with the long-term global warming targets of the Paris Climate Agreement.

(23) To ensure continued adherence to the selected climate-change mitigation objective, administrators of ***EU Climate Transition and EU Paris-aligned Benchmarks*** should

regularly review their methodologies and inform users of the applicable procedures for any material change. When introducing a material change, benchmark administrators should disclose the reasons for that change and explain how ***that*** change is consistent with the benchmarks' initial objectives.

(24) ***Benchmarks which have no underlying assets that have an impact on climate change, as for example interest and currency rate benchmarks, should be exempted from disclosing in their benchmarks statement whether or not and to what extend an overall degree of alignment with the target of reducing carbon emissions or attaining the goals of the Paris climate agreement is ensured. Moreover, it should be sufficient for those benchmarks or families of benchmarks, which are not pursuing carbon emission goals, to clearly state in the benchmark statement that they do not pursue such objectives.***

(25) In order to enhance transparency and ensure an adequate level of harmonization, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission to specify ▌ the minimum content of the disclosure obligations that benchmark administrators ***of EU Climate Transition and EU Paris-aligned Benchmarks*** should be subject to, and specify the minimum standards for harmonization of the methodology of ***EU Climate Transition and EU Paris-aligned Benchmarks***, including the method for the calculation of carbon emissions ▌ associated with the underlying assets, taking into account the Product and Organisation Environmental Footprint methods as defined in points (a) and (b) of point 2 of Commission Recommendation 2013/179/EU[12] ***and the work of the Technical Expert Group on Sustainable Finance (TEG)***. It is of particular importance that the Commission carry out appropriate ***open and public*** consultations during its preparatory work ***on each of those delegated acts***, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement ***of 13 April 2016*** on Better Law-Making ▌ . In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of

[12] Commission Recommendation 2013/179/EU of 9 April 2013 on the use of common methods to measure and communicate the life cycle environmental performance of products and organisations (OJ L 124, 4.5.2013, p. 1).

delegated acts***, and be provided with the minutes of all meetings of the Commission technical expert group on sustainable finance***.

(26) Article 51(1) of Regulation (EU) 2016/1011 introduced a transitional period whereby an index provider providing a benchmark on 30 June 2016 shall apply for authorisation by 1 January 2020. The discontinuation of a critical benchmark can impact market integrity, financial stability, consumers, the real economy or the financing of households and businesses in Member States. The discontinuation of a critical benchmark by an administrator could affect the validity of financial contracts or financial instruments. The discontinuation of such a critical benchmark could cause disruption to both investors and consumers, with potentially severe repercussions on financial stability. In addition, should input data to critical benchmarks cease, this could undermine the representative nature of such benchmarks and negatively impact the benchmarks' ability to reflect its underlying market or economic reality. The possibility to mandate the administration of critical benchmarks, as well as the possibility to mandate contributions to such benchmarks, should therefore be ensured for an overall period of 5 years in total. Critical benchmarks are in a process of reform. Switching from an existing critical benchmark to an appropriate successor rate requires a period of transition so that all legal and technical arrangements necessary for such a switch can be completed without disruption. During this transitional period the existing critical benchmark would need to be published alongside its ultimate successor rate. It is therefore necessary to extend the period during which an existing critical benchmark can be published and used without their administrator having applied for authorisation.

(27) Regulation (EU) 2016/1011 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) 2016/1011

Regulation (EU) 2016/1011 is amended as follows:

(1) in Article 3(1), the following points ▌ are inserted:

"(23a) ***'EU Climate Transition Benchmark'*** means a ***benchmark that is labelled as an EU Climate Transition Benchmark where the underlying assets, for the purposes of point 1(b)(ii) of this paragraph, are selected, weighted or excluded in such a manner that the resulting benchmark portfolio is on a decarbonisation trajectory and which is also constructed in accordance with the minimum standards laid down in the delegated acts referred to in Article 19a(2).***

EU Climate Transition Benchmark providers shall select, weight, or exclude underlying assets issued by companies that follow a decarbonisation trajectory by 31 December 2022 in accordance with the following requirements:

(i) companies disclose measurable and time-based carbon emission reduction objectives;

(ii) companies disclose an carbon emission reduction which is disaggregated down to the level of relevant operating subsidiaries;

(iii) companies disclose annual information on progress made towards those objectives;

(iv) the activities of the underlying assets shall not significantly harm other ESG objectives.

(23b) ***'EU Paris-aligned Benchmark' means a benchmark that is labelled as an EU Paris-aligned*** benchmark where the underlying assets, for the purposes of point 1(b)(ii) of this paragraph, are selected ***in such a manner*** that the resulting benchmark ***portfolio's*** carbon emissions ***are aligned with the long-term global warming target of the Paris Climate Agreement*** and which is ***also*** constructed in

accordance with the ***minimum*** standards laid down in the delegated acts referred to in Article 19a(2)**.**

The activities of the underlying assets shall not significantly harm other ESG objectives.

By 1 January 2021, the Commission shall adopt a delegated act in accordance with Article 19a(2) concerning the minimum standards foreseen by point 23b of Article 3(1) identifying sectors to be excluded because they do not have measurable and time-based carbon emission reduction objectives aligned with the long-term global warming target of the Paris Climate Agreement.

The Commission shall take into account, when drawing up the delegated acts referred to in paragraph 1, the work of the Technical Expert Group on Sustainable Finance.

Every three years thereafter the delegated act shall be updated.

(23c) 'decarbonisation trajectory': means a measurable, science-based and time-bound trajectory to reduce scope 1, 2 and 3 and carbon emissions towards the alignment with the long-term global warming target of the Paris Climate Agreement."

(2) Article 13 is amended as follows:

(a) in paragraph 1, the following point ▌ is added:

"(d) an explanation of how the key elements of the methodology laid down in point (a) reflect environmental, social or governance ('ESG') factors for each benchmark or family of benchmarks ***with the exception of currency and interest rate benchmarks***".

(b) the following paragraph ▌ is inserted:

"2a. The Commission ***is*** empowered to adopt delegated acts in accordance with Article 49 to ***further*** specify ▌ the minimum content of the explanation referred to in point (d) of paragraph 1 ***of this Article as well as the standard format to be used***.";

(3) in Title III, the following Chapter ▌ is inserted:

"CHAPTER 3a

EU Climate Transition and EU Paris-aligned Benchmarks

Article 19a

EU Climate Transition and EU Paris-aligned Benchmarks

1. The requirements laid down in Annex III shall apply to the provision of, and contribution to ▌ benchmarks ***labelled as EU Climate Transition and EU Paris-aligned Benchmarks,*** in addition to, or as a substitute for, the requirements of Title II, III and IV.

2. The Commission ***is*** empowered to adopt delegated acts in accordance with Article 49 to specify further the minimum standards for ***benchmarks labelled as EU Climate Transition and EU Paris-aligned Benchmarks to specify***:

   (a) the criteria for the choice of the underlying assets, including, where applicable, ***any*** exclusion criteria for assets;

   (b) the criteria and method for the weighting of the underlying assets in the benchmark;

   (c) ***the determination of*** the ***decarbonisation trajectory*** for the ***EU Climate Transition Benchmarks.***

3. A benchmark administrator which provides an EU Climate Transition or an EU Paris-aligned Benchmark shall comply with the requirements referred to in paragraphs 1, by 30 April 2020;

Article 19b

By 1 January 2022, administrators located in the Union which provide significant benchmarks determined on the basis of the value of one or more underlying assets or prices shall endeavour to market one or more EU Climate Transition Benchmarks.

(4) ***In Article 21(3), the last subparagraph is amended as follows:***

"By the end of that period, the competent authority shall review its decision to compel the administrator to continue to publish the benchmark and may, where necessary, extend the time period by an appropriate period not exceeding a further 12 months. The maximum period of mandatory administration shall not exceed 5 years in total.";

(5) ***In Article 23(6), the last subparagraph is amended as follows:***

"The maximum period of mandatory contribution under points (a) and (b) of the first subparagraph shall not exceed 5 years in total.";

(6) In Article 27, the following paragraphs ▌ are inserted:

"2a. For each requirement in paragraph 2, a benchmark statement shall contain an explanation of how ***ESG*** factors are reflected ***in*** each benchmark or family of benchmarks provided and published***. For those benchmarks or families of benchmarks,*** which ***are not pursuing ESG objectives, it shall be sufficient for benchmark administrators to clearly state in the benchmark statement that they do not*** pursue ***such*** objectives.

Where no benchmark pursuant to points 23a and 23b of Article 3(1) is available in the portfolio of that individual benchmark administrator, or they have no benchmarks that pursue or take into account ESG objectives, this shall be stated in the benchmark statements of all benchmarks provided by the administrator. For its significant equity and bond benchmarks, the benchmark administrator shall disclose a detailed benchmark statement on whether or not and to what extent an overall degree of alignment with the target of reducing carbon emissions or attaining the long-term global warming target of the Paris Climate Agreement, as per the disclosure rules for financial products in Article 5(3) of ...[PO: please insert reference to Regulation on disclosures relating to sustainable investments and sustainability risks], is ensured.

By 31 December 2021, all benchmarks or families of benchmarks, with the exception of currency and interest rate benchmarks, should, in their benchmark statement, include an explanation of how their methodology aligns with the target

of carbon emission reductions or attains the long-term global warming target of the Paris Climate Agreement."

2b. The Commission ***is*** empowered to adopt delegated acts in accordance with Article 49 to ▌ further ***specify*** the information referred to in paragraph 2a ***of this Article, as well as the standard format to be used for references to ESG factors, to enabling market participants to make well-informed choices and to ensure the technical feasibility of compliance with that paragraph.***"

(7) Article 49 is replaced by the following:

"1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 3(2), 13(2a), 19(2a), 20(6), 24(2), 27(2), 33(7), 51(6) and 54(3) shall be conferred on the Commission for a period of five years from ... [PO date of entry into force of the amending act]. The Commission shall draw up a report in respect of the delegation of power no later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for further periods of identical duration, unless the European Parliament of the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Articles 3(2), 13(2a), 19(2a), 20(6), 24(2), 27(2b), 33(7), 51(6) and 54 (3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of power specified in that decision. It shall take effect on the day following the publication of the decision in the Official Journal of the European Union or on a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Articles 3(2), 13(2a), 19(2a), 20(6), 24(2), 27(2b), 33(7), 51(6) and 54(3) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council."

(8) In Article 51 the following paragraphs are inserted:

"4a. An index provider may continue to provide an existing benchmark designated as critical by an implementing act adopted by the Commission in accordance with Article 20 until 31 December 2021.

4b. An existing benchmark designated as critical by an implementing act adopted by the Commission in accordance with Article 20 may be used for existing and new financial instruments, financial contracts, or measurement of the performance of an investment fund until 31 December 2021.

4c. Unless the Commission has adopted an equivalence decision as referred to in Article 30(2) or (3) or unless an administrator has been recognized pursuant to Article 32, or a benchmark has been endorsed pursuant to Article 33, the use in the Union by supervised entities of a benchmark provided by an administrator located in a third country where the benchmark is already used in the Union as a reference for financial instruments, financial contracts, or for measuring the performance of an investment fund, shall be permitted only for such financial instruments, financial contracts and measurements of the performance of an investment fund that already reference the benchmark in the Union on, or which add a reference to such benchmark prior to, 31 December 2021.";

3a. By 31 December 2022, the Commission shall review the minimum standards of the benchmarks referred to in Article 23a and 23b in order to ensure that the selection of the underlying assets is coherent with environmentally sustainable investments as defined by a Union-wide framework.

4. Before 31 December 2022, the Commission shall present a report to the European Parliament and the Council on the impact of this Regulation and the feasibility of an 'ESG benchmarks', taking into account the evolving nature of sustainability indicators and the methods used to measure them. That report shall be accompanied, where appropriate by a legislative proposal."

(9) the following paragraph is added in Article 54:

"1a. By 1 April 2020 the Commission shall submit a report to the European Parliament and the Council on the impact on how the provisions related to the operation of third country benchmarks in the EU have been implemented in practice, including the recourse by third country benchmark administrators to endorsement, recognition or equivalence, and potential shortcomings of the current framework. The report shall also analyse the consequences of the application of the provisions of article 51 paragraph 4a to 4c to EU and non-EU benchmark administrators, including in terms of level playing field. That report shall assess in particular whether there is a need to amend this Regulation and shall be accompanied by a legislative proposal, if appropriate."

(10) The Annexes are amended in accordance with the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the day following that of its publication in the Official Journal of the European Union.

A benchmark administrator providing an EU Climate Transition or an EU Paris-aligned Benchmark in accordance with Article 19a shall comply with the requirements set out in this Regulation by 30 April 2020. Benchmark administrators shall comply with the requirements under Article 13(1), point (d), Article 27((1a), (1b) and (2a) by 30 April 2020.

It shall be binding in its entirety and directly applicable in all Member States.

Done at ...,

For the European Parliament *For the Council*

The President *The President*

ANNEX

The following Annex is added:

"ANNEX III

EU Climate Transition and EU Paris-aligned Benchmarks

Methodology for ***EU Climate Transition*** Benchmarks

1. The administrator of ***an EU Climate Transition Benchmark*** shall formalise, document and make public any methodology used for the calculation of ***the benchmark***, describing the following***, while ensuring confidentiality and protection of undisclosed know-how and business information (trade secrets) as defined by Directive EU 2016/943***:

   (a) the list of the ***top constituents of*** the ▌ benchmark;

   (b) all criteria and methods, including selection and weighting factors, metrics ***and*** proxies used in the benchmark ***methodology***;

   (c) the criteria applied to exclude assets or companies that are associated with a level of carbon footprint or a level of fossil ***fuel*** reserves that are incompatible with inclusion in the▌ benchmark;

   (d) the criteria for ▌ the ***determination*** of ▌ the ***decarbonisation trajectory***;

   ▌

   (e) the type and source of ▌ data used ***to determine the decarbonisation trajectory***, including:

      (i) emissions ***generated*** from sources that are controlled by the company ***that issues the underlying assets "scope 1"***;

      (ii) emissions from the consumption of purchased electricity, steam, or other sources of energy generated upstream from the company ***that issues the underlying assets "scope 2"***;

(iii) ***all indirect*** emissions that are ***not covered in point (h) (ii) that occur in the value chain*** of the ***reporting*** company***, including both upstream and downstream emissions "scope 3", in particular for sectors with high impact on climate change and its mitigation***;

▌

(iv) whether the ▌ data uses the Product and Organisation Environmental Footprint methods as defined in points (a) and (b) of point 2 of Commission Recommendation 2013/179/EU***, or, global standards such as the Financial Stability Board's Taskforce on Climate-related Financial Disclosures***;

(f) the total carbon ***emissions*** of the index portfolio ▌ ;

▌

Where a parent index is used for the construction of an EU Climate Transition Benchmark, the tracking error between the EU Climate Transition Benchmark and the parent index shall be disclosed.

Where a parent index is used for the construction of an EU Climate Transition Benchmark, the ratio between the market value of the securities that are in the EU Climate Transition Benchmark and the market value of the securities in the parent index shall be disclosed.

Methodology for ***EU Paris-aligned Benchmarks***

2. ***In addition to points (1) (a), (b), (c), the*** administrator of ***EU Paris-aligned Benchmarks,*** shall specify the formula or calculation that is used to determine whether the ***emissions are in line with the long-term global warming target of*** the ***Paris Climate Agreement, while ensuring confidentiality and protection of undisclosed know-how and business information (trade secrets) as defined by Directive EU 2016/943***.

Changes to the methodology

3. Administrators of ***EU Climate Transition*** and ***EU Paris-aligned Benchmarks*** shall adopt and make public to users procedures for and the rationale of any proposed material change in their methodology. Those procedures shall be consistent with the overriding objective

that benchmark calculations adhere continuously to the ***Climate Transition*** or ***Paris Alignment*** objectives. Those procedures shall provide:

(a) advance notice in a clear time frame that gives users sufficient opportunity to analyse and comment on the impact of such proposed changes, having regard to the administrators' calculation of the overall circumstances;

(b) for the possibility for users to comment on those changes and for the administrators to respond to those comments, where those comments shall be accessible for all market users after any given consultation period, except where the commenter has requested confidentiality.

4. Administrators of ***EU Climate Transition*** and ***EU Paris-aligned Benchmarks*** shall regularly***, and at least annually,*** examine their methodologies to ensure that they reliably reflect the ***stated*** objectives and shall have a process in place for taking the views of ***all*** relevant users into account.".