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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 and Corrigendum procedure (Strasbourg, 26 March 2019 and Brussels, 10 October 2019)

I. INTRODUCTION

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 legislative file at first reading.

This file was expected ² to undergo the Corrigendum procedure ³ in the new European Parliament after adoption by the previous Parliament of its position at first reading

¹ OJ C 145, 30.6.2007, p.5.

² 8507/19.

³ Rule 241, EP Rules of Procedure.

II. VOTES

At its sitting of 26 March 2019, and following informal interinstitutional negotiations, the European Parliament adopted an amendment (without legal linguistic revision) to the Commission proposal and a legislative resolution with a view to the adoption of the abovementioned proposal, constituting the European Parliament's position at first reading ⁴. It reflects what had been provisionally agreed between the Institutions.

After finalisation of the adopted text by the legal linguists, on 10 October 2019 the European Parliament approved a corrigendum to the position adopted at first reading.

With this corrigendum, the Council should be able to approve the position of the European Parliament as set out in the Annex⁵ hereto, thus bringing to a close the first reading for both Institutions.

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

⁴ 7224/19.

⁵ 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 2018⁶,
 - having regard to the opinion of the Committee of the Regions of 5 December 2018⁷,
 - 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 parliaments.

⁶ OJ C 62, 15.2.2019, p. 103

⁷ OJ C 86, 7.3.2019, p. 24

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, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks

(Text with EEA relevance)

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 Committee⁸,

Acting in accordance with the ordinary legislative procedure⁹,

⁸ OJ C 62, 15.2.2019, p. 103.

⁹ 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 (the ‘2030 Agenda’), which has at its core the Sustainable Development Goals (SDGs). The Commission Communication of 22 November 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, both within the Union and globally, take the SDGs on board at the outset. In its conclusions of 20 June 2017, the European Council confirmed the commitment of the Union and its 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) The Paris Agreement adopted under the United Nations Framework Convention on Climate Change (the ‘Paris Agreement’), which was approved by the Union on 5 October 2016¹⁰ and which entered into force on 4 November 2016, seeks to strengthen the response to climate change by, inter alia, making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.

¹⁰ Council Decision (EU) 2016/1841 of 5 October 2016 on the conclusion, on behalf of the European Union, of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change (OJ L 282, 19.10.2016, p. 1).

- (3) *In order to reach the objectives of the Paris Agreement and significantly reduce the risks and impacts of climate change, the global target is to hold the increase in the global average temperature to well below 2 °C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1,5 °C above pre-industrial levels.*
- (4) *On 8 October 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 to all aspects of society, and that limiting global warming to 1,5 °C as compared to 2 °C could go hand in hand with ensuring a more sustainable and equitable society.*
- (5) Sustainability and the transition to a low-carbon, climate resilient, more resource-efficient and circular economy are **crucial** to ensuring the long-term competitiveness of the **Union** economy. Sustainability has long been **central to** the Union project, and the **Treaty on European Union** and the Treaty on the Functioning of the European Union reflect its social and environmental dimensions. *There is a limited window in which to transform the culture in the financial sector towards sustainability to ensure that the global average temperature rise stays well below 2 °C. It is therefore essential that new infrastructure investments are sustainable in the long term.*

- (6) In its Communication of 8 March 2018, the Commission published its action plan on financing sustainable growth, **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 in order to achieve sustainable and inclusive growth. A **greater focus on limiting the impact of climate change is critical, as disasters triggered by unpredictable weather conditions have increased dramatically.**
- (7) Decision No. 1386/2013/EU of the European Parliament and of the Council¹¹ called for an increase in private sector funding for environmental and climate-related expenditure, notably through **the creation of** incentives and methodologies that stimulate companies to measure the environmental costs of their business and the profits derived from using environmental services.
- (8) Achieving the SDGs in the Union requires channelling capital flows towards sustainable investments. It is important to fully exploit the potential of the internal market to achieve 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 new obstacles from emerging.

¹¹ 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).

- (9) Regulation (EU) 2016/1011 of the European Parliament and of the Council¹² establishes uniform rules for benchmarks in the Union and caters for different types of benchmarks. An increasing number of investors pursue low-carbon investment strategies and use low-carbon benchmarks to measure the performance of investment portfolios. ***The establishment of EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks, underpinned by a methodology linked to the commitments laid down in the Paris Agreement regarding carbon emissions, would contribute to increasing transparency and would help prevent greenwashing.***

¹² 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).

- (10) A wide variety of indices are 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 that are used to measure the performance of 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 objective set out in the Paris Agreement. Despite differences in objectives and strategies, *many* of those benchmarks are commonly promoted as low-carbon benchmarks.

- (12) Divergent approaches to benchmark methodologies result in the fragmentation of the internal market because it is not clear to users of benchmarks whether a particular low-carbon index is a benchmark aligned to the objectives of the Paris Agreement 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 their own rules to protect investors from confusion and ambiguity 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 investors***, to further improve the functioning of the internal market, and to ensure a high level of consumer and investor protection, it is appropriate to ***amend*** Regulation (EU) 2016/1011 ***by introducing*** a regulatory framework ***which lays down minimum requirements*** for ***EU Climate Transition Benchmarks 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 Benchmarks*** and ***EU Paris-aligned Benchmarks*** and ***developing minimum standards for each of those benchmarks would contribute to consistency among those benchmarks.*** ***The EU Paris-aligned Benchmark should be in line with the objectives of the Paris Agreement at index level.***
- (16) ***In order to ensure that the labels ‘EU Climate Transition Benchmark’ and ‘EU Paris-aligned Benchmark’ are reliable and easy for investors across the Union to recognise, only administrators that comply with the requirements laid down in this Regulation should be eligible to use those labels when marketing EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks in the Union.***

- (17) *In order to encourage companies to disclose credible targets for reducing carbon emissions, the administrator of an EU Climate Transition Benchmark, when selecting or weighting underlying assets, should take into account companies that have as an objective the reduction of their carbon emissions towards alignment with the objectives of the Paris Agreement. Such targets should be public and credible, in the sense that they should entail a genuine commitment to decarbonisation and should be sufficiently detailed and technically viable.*
- (18) █ Users of █ benchmarks do not always have the necessary information on the extent to which the methodology of █ the benchmark administrators takes into account █ ESG *factors*. Such information is often scattered *or non-existent*, and does not allow for an effective comparison across borders for investment purposes. To enable market *participants* to make well-informed choices, *all* benchmark administrators, *with the exception of administrators of interest rate and foreign exchange benchmarks*, should be required to disclose █ in their benchmark statement *whether or not their* benchmarks █ or *families of benchmarks pursue* ESG objectives, *and whether or not the benchmark administrator offers such benchmarks*.

- (19) *In order to inform investors about the degree to which significant equity and bond benchmarks, as well as EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks, contribute to meeting the objectives of the Paris Agreement, benchmark administrators should publish detailed information on whether or not and to what extent a degree of overall alignment with the target of reducing carbon emissions or the attainment of the objectives of the Paris Agreement is ensured.*
- (20) Administrators of *EU Climate Transition Benchmarks* and administrators of *EU Paris-aligned Benchmarks* should also publish the methodology that they use for the calculation of those benchmarks. That information should describe how the underlying assets were selected and weighted, which assets were excluded and for what reason. █ In order 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 the data used. In order 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.

- (21) ***The methodologies used for EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks should be based on science-based decarbonisation trajectories or on an overall alignment with the objectives of the Paris Agreement.***
- (22) In order to ensure continued adherence to the selected objective of climate-change mitigation, administrators of ***EU Climate Transition Benchmarks and administrators of EU Paris-aligned Benchmarks*** should review their methodologies regularly and inform users of the applicable procedures for introducing any material change to those methodologies. When introducing a material change, benchmark administrators should disclose the reasons for that change and explain how ***that*** change is consistent with the initial objectives of the benchmarks.
- (23) ***Benchmarks which do not have underlying assets that have an impact on climate change, as would be the case, for example, for interest rate and foreign exchange benchmarks, should be exempt from the requirement to disclose in their benchmark statement whether or not and to what extent a degree of overall alignment with their target for reducing carbon emissions or the attainment of the objectives of the Paris Agreement is ensured. Moreover, it should be sufficient for each benchmark or, where applicable, for each family of benchmarks which does not pursue carbon emission objectives to clearly state in the benchmark statement that they do not pursue such objectives.***

(24) In order to enhance transparency and ensure an adequate level of harmonisation, 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 administrators *of EU Climate Transition Benchmarks and administrators of EU Paris-aligned Benchmarks* should be subject to, and to specify the minimum standards for harmonisation of the methodology of *EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks*, including the method for the calculation of the 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/EU¹³ *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-Making¹⁴. 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 delegated acts, *and are provided with the minutes of all meetings of the TEG*.

¹³ 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).

¹⁴ (OJ L 123, 12.5.2016, p. 1)

(25) *Regulation (EU) 2016/1011 introduced a transitional period in which index providers providing benchmarks on 30 June 2016 are to apply for authorisation by 1 January 2020. The discontinuation of a critical benchmark could impact market integrity, financial stability, consumers, the real economy and the financing of households and businesses in Member States. The discontinuation of a critical benchmark could also affect the validity of financial contracts or financial instruments and could cause disruption to both investors and consumers, with potentially severe repercussions for financial stability. In addition, if input data for critical benchmarks were no longer available, this could undermine the representative nature of such benchmarks and could negatively impact the ability of such benchmarks to reflect the underlying market or economic reality. Therefore, the maximum period of the mandatory administration of critical benchmarks and the maximum period for mandatory contributions to such benchmarks should be extended to five years. Critical benchmarks are currently being reformed. Switching from an existing critical benchmark to an appropriate successor rate requires a transition period so that all legal and technical arrangements necessary for such a switch can be completed without disruption. During that transition period, the existing critical benchmark should be published alongside its successor rate. It is therefore necessary to extend the period during which an existing critical benchmark can be published and used without its administrator having applied for authorisation.*

(26) 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 which is labelled as an EU Climate Transition Benchmark and fulfils the following requirements:***

- (a) for the purposes of point 1(b)(ii) of this paragraph and of Article 19b, its underlying assets are selected, weighted or excluded in such a manner that the resulting benchmark portfolio is on a decarbonisation trajectory; and***
- (b) it is constructed in accordance with the minimum standards laid down in the delegated acts referred to in Article 19a(2);***

(23b) ***‘EU Paris-aligned Benchmark’ means a benchmark which is labelled as an EU Paris-aligned Benchmark and fulfils the following requirements:***

- (a) for the purposes of point 1(b)(ii) of this paragraph and of the delegated act referred to in Article 19c, its underlying assets are selected, weighted or excluded ***in such a manner*** that the resulting benchmark ***portfolio’s*** carbon emissions ***are aligned with the objectives of the*** Paris Agreement adopted under the United Nations Framework Convention on Climate Change, ***approved by the Union on 5 October 2016**** (the ***‘Paris Agreement’***);
- (b) it is constructed in accordance with the ***minimum*** standards laid down in the delegated acts referred to in Article 19a(2); and
- (c) ***the activities relating to its underlying assets do not significantly harm other environmental, social and governance (ESG) objectives;***

(23c) 'decarbonisation trajectory' means a measurable, science-based and time-bound trajectory towards alignment with the objectives of the Paris Agreement by reducing Scope 1, 2 and 3 carbon emissions as referred to in point (1)(e) of Annex III.

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- * Council Decision (EU) 2016/1841 of 5 October 2016 on the conclusion, on behalf of the European Union, of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change (OJ L 282, 19.10.2016, p. 1).";

(2) Article 13 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the following point ■ is added:

“(d) an explanation of how the key elements of the methodology laid down in point (a) reflect ESG factors for each benchmark or family of benchmarks, *with the exception of interest rate and foreign exchange benchmarks.*”;

(ii) the following subparagraph is added:

“Benchmark administrators shall comply with the requirement laid down in point (d) of the first subparagraph by 30 April 2020.”.

(b) the following paragraph ■ is inserted:

“2a. The Commission is empowered to adopt delegated acts in accordance with Article 49 to supplement this Regulation by laying down the minimum content of the explanation referred to in point (d) of the first subparagraph 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 Benchmarks and EU Paris-aligned Benchmarks

Article 19a

EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks

1. The requirements laid down in Annex III shall apply to the provision of, and contribution to, ■ *EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks*, in addition to the requirements of Titles II, III and IV.

2. The Commission *is* empowered to adopt delegated acts in accordance with Article 49 to supplement this Regulation by laying down the minimum standards for ***EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks*** to specify:
 - (a) the criteria for the choice of the underlying assets, including, where applicable, *any* criteria for excluding assets;
 - (b) the criteria and method for the weighting of the underlying assets in the benchmark;
 - (c) *the determination of the decarbonisation trajectory* for ***EU Climate Transition Benchmarks***.
3. ***Benchmark administrators which provide an EU Climate Transition Benchmark or an EU Paris-aligned Benchmark shall comply with this Regulation by 30 April 2020.***

Article 19b

Requirements for EU Climate Transition Benchmarks

Administrators of EU Climate Transition Benchmarks 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) the companies disclose measurable carbon emission reduction targets to be achieved within specific timeframes;*
- (ii) the companies disclose a reduction in carbon emissions which is disaggregated down to the level of relevant operating subsidiaries;*
- (iii) the companies disclose annual information on progress made towards those targets;*
- (iv) the activities relating to the underlying assets do not significantly harm other ESG objectives.*

Article 19c

Exclusions for EU Paris-aligned Benchmarks

- 1. The Commission is empowered to adopt a delegated act in accordance with Article 49 in order to supplement this Regulation by identifying, in respect of EU Paris-aligned Benchmarks, the sectors to be excluded because they do not have measurable carbon emission reduction targets with specific deadlines that are aligned with the objectives of the Paris Agreement. The Commission shall adopt that delegated act by 1 January 2021 and update it every three years.*
- 2. When drawing up the delegated act referred to in paragraph 1, the Commission shall take into account the work of the TEG.*

Article 19d

Endeavour to provide EU Climate Transition Benchmarks

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

(4) in Article 21(3), the last subparagraph is replaced by the following:

“By the end of that period, the competent authority shall review its decision to compel the administrator to continue to publish the benchmark. The competent authority may, where necessary, extend that period by an appropriate period not exceeding 12 months. The maximum period of mandatory administration shall not exceed five years.”;

(5) Article 23 is amended as follows:

(a) in paragraph (6), the last subparagraph is replaced by the following:

“The maximum period of mandatory contribution under points (a) and (b) of the first subparagraph shall not exceed five years.”;

(b) paragraph (10) is replaced by the following:

"10. In the event that a critical benchmark is to be ceased to be provided, each supervised contributor to that benchmark shall contribute input data for a period of time determined by the competent authority, but not exceeding the maximum five year period laid down in the second subparagraph of paragraph 6.”;

(6) in Article 27, the following paragraphs **■** are inserted:

“2a. By 30 April 2020, for each of the requirements referred to in paragraph 2, the 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 that do not pursue 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 EU Climate Transition Benchmark or EU Paris-aligned Benchmark is available in the portfolio of that individual benchmark administrator, or the individual benchmark administrator has no benchmarks that pursue ESG objectives or take into account ESG factors, this shall be stated in the benchmark statements of all benchmarks provided by that administrator. For significant equity and bond benchmarks, as well as for EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks, benchmark administrators shall disclose in their benchmark statements details on whether or not and to what extent a degree of overall alignment with the target of reducing carbon emissions or the attainment of the objectives of the Paris Agreement is ensured in accordance with the disclosure rules for financial products in Article 9(3) of Regulation (EU) .../... of the European Parliament and of the Council*^{+±}.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS .../...2018/0179(COD) and insert the number, date, title and OJ reference of that Regulation in the footnote.

By 31 December 2021, benchmark administrators shall, for each benchmark or, where applicable, each family of benchmarks, with the exception of interest rate and foreign exchange benchmarks, include in their benchmark statement an explanation of how their methodology aligns with the target of carbon emission reductions or attains the objectives of the Paris Agreement.

- 2b. The Commission *is* empowered to adopt delegated acts in accordance with Article 49 to **■** supplement this Regulation by further ***specifying*** the information to be provided in the benchmark statement pursuant to paragraph 2a ***of this Article, as well as the standard format to be used for references to ESG factors to enable market participants to make well-informed choices and to ensure the technical feasibility of compliance with that paragraph.***

* Regulation (EU) .../... of the European Parliament and of the Council of ... on sustainability-related disclosures in the financial services sector (OJ ...).”;

(7) *in Article 42, the first subparagraph of paragraph 1 is replaced by the following:*

- "1. Without prejudice to the supervisory powers of competent authorities in accordance with Article 41, and the right of Member States to provide for and impose criminal sanctions, Member States shall, in conformity with national law, provide for competent authorities to have the power to impose appropriate administrative sanctions and other administrative measures in relation to at least the following infringements:
- (a) any infringement of Article 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19a, 19b, 19c, 21, 23, 24, 25, 26, 27, 28, 29 or 34 where they apply;
 - and (b) any failure to cooperate or comply in an investigation or with an inspection or request covered by Article 41."

(8) *Article 49 is replaced by the following:*

“Article 49

Exercise of the delegation

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), 19a(2), 19c(1), 20(6), 24(2), 27(2b), 33(7), 51(6) and 54(3) shall be conferred on the Commission for a period of five years from ... [date of entry into force of this amending Regulation]. The Commission shall draw up a report in respect of the delegation of power no later than ... [51 months after the date of entry into force of this amending Regulation]. The delegation of power shall be tacitly extended for further periods of identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.*

3. *The delegations of power referred to in Articles 3(2), 13(2a), 19a(2), 19c(1), 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 Article 3(2), 13(2a), 19a(2), 19c(1), 20(6), 24(2), 27(2b), 33(7), 51(6) or 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 to 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.”;*

(9) Article 51 is amended as follows

a) the following paragraphs are inserted:

“4a. An index provider may continue to provide an existing benchmark that has been recognised as a critical benchmark by an implementing act adopted by the Commission in accordance with Article 20 until 31 December 2021 or, where the index provider submits an application for authorisation in accordance with paragraph 1, unless and until such authorisation is refused.

4b. An existing benchmark that has been recognised as a critical benchmark 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 for measuring the performance of an investment fund until 31 December 2021 or, where the index provider submits an application for authorisation in accordance with paragraph 1, unless and until such authorisation is refused."

b) paragraph 5 is replaced by the following:

"5. Unless the Commission has adopted an equivalence decision as referred to in Article 30(2) or (3) or unless an administrator has been recognised 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."

(10) in Article 54, the following paragraphs are added:

"4. By 31 December 2022, the Commission shall review the minimum standards for EU Climate Transition Benchmarks and for EU Paris-aligned Benchmarks in order to ensure that the selection of the underlying assets is coherent with environmentally sustainable investments as defined in a Union-wide framework.

5. *Before 31 December 2022, the Commission shall present a report to the European Parliament and to the Council on the impact of this Regulation and the feasibility of an 'ESG benchmark', 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.*

6. *By 1 April 2020, the Commission shall submit a report to the European Parliament and to the Council on the impact of this Regulation on the operation of third country benchmarks in the Union, including on the recourse by third country benchmark administrators to endorsement, recognition or equivalence, and on potential shortcomings of the current framework. That report shall analyse the consequences of the application of paragraphs 4a, 4b and 4c of Article 51 for Union and third-country benchmark administrators, including in terms of a 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*.

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

Done at ...,

For the European Parliament

The President

For the Council

The President

ANNEX

The following Annex is added:

“ANNEX III

EU Climate Transition Benchmarks 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*, giving the following information, *while ensuring confidentiality and the protection of undisclosed know-how and business information (trade secrets) as defined in Directive (EU) 2016/943 of the European Parliament and of the Council*¹⁵:
 - (a) the list of the *main 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;

¹⁵ Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ L 157, 15.6.2016, p. 1.)

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

■

(e) the type and source of ■ data used *to determine the decarbonisation trajectory* for:

(i) Scope 1 carbon emissions, namely emissions *generated* from sources that are controlled by the company *that issues the underlying assets*;

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

(iii) *Scope 3 carbon emissions*, namely *all indirect* emissions that are *not covered by points (i) and (ii) that occur in the value chain* of the *reporting* company, *including both upstream and downstream emissions, in particular for sectors with a 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 those of 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), (1)(b), and (1)(c), the administrator of an EU Paris-aligned Benchmarks shall specify the formula or calculation that is used to determine whether the emissions are in line with the objectives of the Paris Agreement, while ensuring confidentiality and the 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 procedures for introducing changes to their methodology. They shall make those procedures public, and shall make public any proposed changes to their methodology and the rationale for those changes. Those procedures shall be consistent with the overriding objective that benchmark calculations be consistent with points (23a) and (23b) of Article 3(1). Those procedures shall provide:
- (a) advance notice within a clear timeframe that gives users of benchmarks 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 of benchmarks to comment on those changes and for the administrators to respond to those comments, and shall make those comments accessible after any given consultation period, except where the commenter has requested confidentiality.
- (4) Administrators of *EU Climate Transition Benchmarks* and *EU Paris-aligned Benchmarks* shall regularly examine their methodologies on at least an annual basis to ensure that their benchmarks reliably reflect the ***stated*** objectives, and shall have a process in place for taking the views of ***all*** relevant users into account.”.