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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the delegation of power to adopt delegated acts conferred on the Commission pursuant to 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

1. Introduction

Regulation (EU) 2016/1011 of the European Parliament and of the Council[1] was adopted on 8 June 2016. Regulation (EU) 2016/1011 has subsequently been amended by Regulation (EU) 2019/2089 of the European Parliament and of the Council[2], Regulation (EU) 2019/2175 of the European Parliament and of the Council[3], Regulation (EU) 2021/168 of the European Parliament and of the Council[4] and Regulation (EU) 2023/2869 of the European Parliament and of the Council[5].

Regulation (EU) 2016/1011 introduced a common framework to ensure the accuracy and integrity of indices used either as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds in the Union.

According to Article 49(1) of Regulation (EU) 2016/1011, the Commission is empowered to adopt delegated acts.

With regard to Articles 3(2), 13(2a), 19a(2), 19c(1), 20(6), 24(2), 27(2b), 33(7), 51(6) and 54(3) of Regulation (EU) 2016/1011, Article 49(2) of Regulation (EU) 2016/1011 provides that the power to adopt delegated acts is conferred on the Commission for a five-year period, which can be tacitly extended for further period of identical duration unless the European Parliament or the Council opposes to it no later than three months before the end of each period. Initially, the five-year period ran from 30 June 2016 until 30 June 2021. Regulation (EU) 2019/2089 amended Article 49(2) so that the empowerment is currently granted from 10 December 2019 until 10 December 2024, and added the requirement to prepare a report in respect of the delegation of power. This report aims to fulfil that requirement.

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[1] 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, ELI: http://data.europa.eu/eli/reg/2016/1011/oj–65).

[2] Regulation (EU) 2019/2089 of the European Parliament and of the Council of 27 November 2019 amending Regulation (EU) 2016/1011 as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks (OJ L 317, 9.12.2019, p. 17, ELI: http://data.europa.eu/eli/reg/2019/2089/oj).

[3] Regulation (EU) 2019/2175 of the European Parliament and of the Council of 18 December 2019 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, and Regulation (EU) 2015/847 on information accompanying transfers of funds, (OJ L 334, 27.12.2019, p. 1, ELI: http://data.europa.eu/eli/reg/2019/2175/oj).

[4] Regulation (EU) 2021/168 of the European Parliament and of the Council of 10 February 2021 amending Regulation (EU) 2016/1011 as regards the exemption of certain third-country spot foreign exchange benchmarks and the designation of replacements for certain benchmarks in cessation, and amending Regulation (EU) No 648/2012 (OJ L 49, 12.2.2021, p. 6, ELI: http://data.europa.eu/eli/reg/2021/168/oj).

[5] Regulation (EU) 2023/2869 of the European Parliament and of the Council of 13 December 2023 amending certain Regulations as regards the establishment and functioning of the European single access point (OJ L, 2023/2869, 20.12.2023, ELI: http://data.europa.eu/eli/reg/2023/2869/oj).

2. Legal basis

Article 49(2) of Regulation (EU) 2016/1011 requires the Commission to prepare a report in respect of the empowerments referred to in that provision before the end of the five-year period for which they are granted.

3. Exercise of the delegation

3.1. Consultation prior to adoption

In accordance with Article 49(4) of Regulation (EU) 2016/1011, during the preparation of the delegated acts the Commission consulted the Expert Group of the European Securities Committee (EG ESC). All Member States were invited to nominate experts to take part in those consultations and the European Parliament was also invited to participate.

The Commission took the observations presented in those consultations into consideration when preparing the final versions of the delegated acts. The Commission also regularly informed the members of the EG ESC of the progress made with the draft delegated acts.

As soon as delegated acts were adopted by the Commission, they were notified simultaneously to the European Parliament and to the Council, triggering the objection period referred to in point 3.2. below.

3.2. Delegated acts adopted

During the reporting period that goes from 10 December 2019 to 10 December 2024, the Commission exercised its delegated powers by adopting the delegated acts referred to in the Table below. Before the creation of the reporting requirement, the Commission had already adopted delegated acts under Articles 3(2), 20(6)(a), 20(6)(c) and 51(6) of Regulation (EU) 2016/1011[6].

Delegated Act	**Empowerments**
Commission Delegated Regulation (EU) 2020/1816[7]	Art. 13(2a)
Commission Delegated Regulation (EU) 2020/1818[8]	Art. 19a(2) Art. 19c(1)
Commission Delegated Regulation (EU) 2020/1817[9]	Art. 27(2b)

[6] Prior to the current reference period, 4 delegated acts regarding the empowerments under Articles 3(2), 20(6)(a), 20(6)(c) and 51(6) of Regulation (EU) 2016/1011 had already been adopted by the Commission.

[7] Commission Delegated Regulation (EU) 2020/1816 of 17 July 2020 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council as regards the explanation in the benchmark statement of how environmental, social and governance factors are reflected in each benchmark provided and published (OJ L 406, 3.12.2020, p. 1, ELI: http://data.europa.eu/eli/reg_del/2020/1816/oj).

[8] Commission Delegated Regulation (EU) 2020/1818 of 17 July 2020 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council as regards minimum standards for EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks (OJ L 406, 3.12.2020, p. 17, ELI: http://data.europa.eu/eli/reg_del/2020/1818/oj).

[9] Commission Delegated Regulation (EU) 2020/1817 of 17 July 2020 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council as regards the minimum content of the explanation on

3.3. Objection to delegated acts

According to Article 49(6) and (6a) of Regulation (EU) 2016/1011, the European Parliament or the Council may object to a delegated act within a period of three months from the date of notification, extendable by another three months at the initiative of either the European Parliament or the Council. If either the European Parliament or the Council objects to a delegated act within that period, it does not enter into force. Neither the European Parliament nor the Council objected to any of the delegated acts mentioned in Section 3.2.

3.4. Need for extending the power to adopt delegated acts

While a number of delegated acts have been adopted at this point, the empowerments listed in the table below have not been used until now.

Delegated Acts	**Empowerments**
Delegated act to review the calculation method used to determine the thresholds referred to in Article 20(1) in the light of market, price and regulatory developments as well as the appropriateness of the classification of benchmarks with a total value of financial instruments, financial contracts, or investment funds referencing them that is close to the thresholds	Article 20(6), point (b)
Delegated act to review the calculation method used to determine the threshold referred to in Article 24(1), point (a), in the light of market, price and regulatory developments as well as the appropriateness of the classification of benchmarks with a total value of financial instruments, financial contracts or investment funds referencing them that is close to that threshold	Article 24(2)
Delegated act concerning measures to determine the conditions under which the relevant competent authorities may assess whether there is an objective reason for the provision of a benchmark or family of benchmarks in a third country and their endorsement for their use in the Union.	Article 33(7)
Delegated act to extend the 42-month period referred to in Article 51(2) by 24 months, if the report referred to in point (b) of paragraph 1 of Article 54 provides evidence that the transitional registration regime under Article 51(2) is not detrimental to a common European supervisory culture and consistent supervisory practices and approaches among competent authorities.	Article 54(3)

The reasons why those delegated acts have not yet been adopted vary.

how environmental, social and governance factors are reflected in the benchmark methodology (OJ L 406, 3.12.2020, p. 12, ELI: http://data.europa.eu/eli/reg_del/2020/1817/oj).

- The delegated acts to be adopted under the empowerments laid down in Article 18a(3), Article 30(2a), Article 30(3a) and Article 33(7) of Regulation (EU) 2016/1011 are related to the rules for the use of non-EU benchmarks in the Union. The date of application of that regime has been postponed several times, most recently until 31 December 2025, as it became apparent that restricting access to non-EU benchmarks would be detrimental to supervised entities in the EU using those benchmarks.[10] As the rules for the use of third-country benchmarks in the EU are yet to come into mandatory application, it was judged too early to adopt the delegated acts under these empowerments.

- as regards the delegated acts to be adopted under the empowerments laid down in Article 20(6), point (b), and Article 24(2), the Commission has not been made aware in its regular contacts with the European Securities and Markets Authority and national competent authorities of any practical difficulties in applying the quantitative thresholds of EUR 500 billion and EUR 50 billion which delineate between critical, significant and non-significant benchmarks. Therefore, the Commission has considered that there was no need to review the calculation method to determine the various quantitative thresholds in Regulation (EU) 2016/1011 and has not adopted delegated acts to that effect. The Commission will do so should the circumstances change.

- the delegated act to be adopted under the empowerment laid down in Article 54(3) concerns the extension of the 42-month period referred to in Article 51(2) by 24 months for the application of Regulation (EU) 2016/1011 to benchmark administrators established in the Union before 2020. Not having acted on this empowerment, the transitional period that it would have permitted to extend has now lapsed, rendering the empowerment obsolete.

Finally, noting that the Commission has proposed to amend Article 24 of Regulation (EU) 2016/1011[11], and that the European Parliament has subsequently proposed amendments to Article 33[12], it is presently uncertain whether to which extent the empowerments contained in those articles will be amended in the revised regulation[13].

4. Conclusion

Given the explanation provided in Section 3, the Commission considers that there is a clear need for a tacit extension of the delegation of power provided for in Article 49(2) of Regulation (EU) 2016/1011 for a further period of five years.

The Commission invites the European Parliament and the Council to take note of this report.

[10] Regulation (EU) 2019/2089 postponed the entry into application until 31 December 2022; Regulation (EU) 2021/168 postponed the entry into application until 31 December 2024 and introduced the possibility of a further postponement by a delegated act of the Commission. On 14 July 2023, the Commission adopted Delegated Regulation (EU) 2023/2222 extending the transitional period laid down for third-country benchmarks in Article 51(5) of Regulation (EU) 2016/1011.

[11] 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, COM(2023) 660 final.

[12] Report 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, A9-0076/2024.

[13] Inter-institutional negotiations are expected to begin in the new parliamentary term after the elections of 6-9 June 2024.