

Deutsche Börse Group

Response on Climate Benchmarks Delegated Acts

6 May 2020

Deutsche Börse Group (DBG) welcomes the opportunity to contribute to the Commission's consultation on Climate Benchmarks Draft Delegated Acts. In 2019, in the context of the sustainable finance agenda, a regulation on climate benchmarks, defining two new types of benchmarks was adopted. These types of benchmarks need to comply with a set of dedicated requirements to benefit from the label of 'Paris-Aligned' or 'Climate-Transition' benchmark. This is a welcome development as, while there was already a spectrum of low carbon benchmarks available to the market, consistently applied and clear definitions could help bring consistency and clarity.

Following the conclusion of Level 1, the Commission has prepared three draft Delegated Acts to provide more clarity and detail regarding certain provisions. As a starting point, we would like to make a few remarks regarding the process for this. While, some of the obligations set out in the Climate Benchmarks Regulation are due by 30th April, the Level 2 measures have only been published for consultation on 8th April, with a deadline for feedback by 6th May, which is after the application of the aforementioned obligations. Taking into account normal legislative procedures, it is not expected that these measures will be published in the Official Journal before the summer.

DBG is currently in the process of simultaneously studying the proposals, providing input to the consultation, and trying to incorporate these potential proposals into the implementation process but without a confirmed outcome. Therefore, given the uncertainty of what the final obligations will look like, benchmarks administrators will possibly have to make further changes after official publication. Needless to say, this situation is very challenging. This poses two serious concerns:

- The lack of a proper period to prepare for implementation (as there are only three weeks between the publication of the draft format and the application date of Level 1); and
- The uncertainty of changes to be made by benchmarks administrator after official publication.

We have voiced these concerns to the Commission since October last year and were under the impression that the draft texts would have been published earlier. Understandably, this has been delayed. DBG therefore very much welcomes the opinion from ESMA on 29th April stating that NCAs should not prioritize supervisory or enforcement action against administrators regarding these new requirements until the Delegated Acts apply and the opinion addressed to the Commission stating that any delay in the adoption of the Delegated Acts should be avoided.

In terms of substance, DBG would like to provide the following input in relation to these drafts Delegated Acts.

Benchmark statements - How environmental, social and governance factors are reflected

There is a need to clarify the draft Delegated Act's (DA's) annexes regarding if administrators need to report on all items listed or just those deemed relevant. The ESG disclosure obligation can be interpreted as an obligation: i) to report the KPIs on the Annex II factors; ii) to report selected relevant ESG factors, i.e. not all of Annex II. Our understanding is that administrators have to report relevant ESG factors. It should be clarified that the ESG factors in Annex II are considered as "additional ESG factors and related information" and flexibility should be given to report relevant ESG factors for each benchmark. Otherwise, it would be unclear how to calculate disclosure obligations, notably when the factors have no links with the benchmark's underlying.

Annex I:

Section 1, item 4 should be clarified for benchmarks that do not pursue ESG objectives so that where the answer to "Does the benchmark pursue ESG objectives?" is "No", the administrator is not obliged to display the entire table on climate-related disclosures but only item 4 and 5. Item 1 – 3 will be part of any benchmark statement.

Regarding Section 1, Item 7 b) it is unclear what reference standards to disclose. If this refers to item 6 it would not seem necessary to re-disclose these.

In Section 3, Item 9 it should be set out that an administrator may state that a benchmark is not aligned with the target of reducing carbon emissions or the attainment of the objectives of the Paris Agreement. In this case, no further information on the degree of alignment with reducing carbon emissions would need to be disclosed.

Annex II: According to the TEG report, the coverage for each ESG factor should be disclosed. As the draft DAs do not mention this, administrators would not report coverage.

Weighting changes – depending on methodology – can be caused by price fluctuations. Constituents of an index can change, e. g. due to corporate actions. To ensure disclosures are meaningful, changes of weightings and constituents should be considered. However, administrators should only have to publish such data quarterly.

Environmental

Classification of economic activities according to NACE: This may be difficult to implement as administrators do not use NACE. NACE is more granular than industry classification used as it looks at economic activities, while sector classification only categorizes entities. It is unclear how to obtain such data without significant costs/efforts.

Percentage of GHG emissions reported versus estimated: We understand this to mean a comparison of the constituents of a benchmark) which provide reported numbers vs. the percentage of entities (as constituents of a benchmark) which provide only estimated numbers. Alternatively, the requirement could refer to a comparison of the ex-ante estimated values of all constituents of an index versus the ex-post actual emissions.

Exposure to environmental goods and services sector: Administrators usually do not produce data needed to calculate indices on their own. Rather, they obtain data from data vendors. Currently, data on the Exposure of the benchmark portfolio to activities included in the environmental goods and services sector cannot be obtained from vendors on activities-level as such exposure can currently only be determined on entity/constituent level. According to preliminary feedback, the draft requirement is vague from the perspective of data providers. It may be that such data products will be overly expensive and of limited value for investors. Exposure of the benchmark portfolio to renewable energy: There is no definition of 'renewable energy sector' and administrators will have to define this term.

Social

Controversial weapons: Administrators are to choose which definition to rely on for the term 'controversial weapon'. This might be better placed in Annex I, item 7, 'data and standards used' where administrators disclose the supporting standards used.

Minimum standards for EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks

DBG has concerns that some of the proposed elements in the draft Delegated Acts are not defined. For instance: it is unclear how a 'base year' is defined. Without guidance, the risk of divergent application is apparent which would be contrary to the goal of promoting transparency and comparability for investors.

The same applies to the term 'tobacco' which should be defined for consistency. In the absence of a definition, we understand that the factor 'involvement in activities related to tobacco' is met by excluding companies with tobacco production at > 0% revenue threshold.

Benchmark administrators believe that flexibility on the calculation moment for the 7% year-on-year decarbonisation requirement is needed. Benchmark administrators should be allowed to choose a date for the yearly assessment which is aligned with their internal processes, e. g. the date for index review and optimization. In addition, at the end of the calendar year, market movements are typically extraordinary and could impact the assessment.