Feedback on the draft delegated regulation as regards the explanation in the benchmark statement of how environmental, social and governance factors are reflected in each benchmark provided and published

Eumedion, representing the interests of around 50 Dutch and non-Dutch institutional investors who have more than € 5 trillion assets under management, welcomes the opportunity to give feedback. Although Eumedion supports the overall objectives of the draft delegated regulation, we would like to draw attention to several considerable issues regarding the proposal for the explanation in the benchmark statement.

Harmonisation between various EU ESG-disclosure requirements is crucial

Institutional investors and asset managers, generally speaking, rely heavily on the information of benchmarks providers for the executing of investment mandates. This means that they need to be able to use benchmark disclosures also for complying with other disclosure requirements, such as those to be laid out under the Sustainable Finance Disclosure Regulation (SFDR). In turn, benchmark providers need to be able to rely on disclosures through e.g. corporate reporting, which makes the Non-Financial Reporting Directive (NFRD) come into play as well. Misalignment of these various disclosure regulations will not only lead to extra costs for financial market participants and their ultimate beneficiaries for the acquisition of additional data, but will also negatively contribute to consistent and uniform disclosure on sustainability factors throughout the financial sector and in the real economy. Additionally, in light of further consolidation in the markets for benchmark providers and their subsidiary ESG-data providers, the misalignment between requirements and the consequential need to purchase additional data is yet an extra cause for worry for institutional investors. Since they rely on the combined information services of these providers, this potentially leads to a lock-in on the side of data purchase. For these reasons, harmonisation between various interrelated disclosure requirements is absolutely key to the success of the sustainable finance strategy of the EU. We have provided in the **annex** a table showing the estimated extent of misalignment between the disclosure requirements under several EU-regulations.

ESG-disclosure should be mandatory for all ESG-relevant benchmarks

Eumedion is of the opinion that mandatory ESG-disclosures for investment benchmarks enhances transparency and comparability. This further enables investors to better integrate sustainability information into their investment decisions and help build trust in sustainable investment products, which in turn should facilitate shifting more capital to sustainable investments. Also, standardized sustainability disclosure by benchmark administrators could help other market participants comply with transparency obligations under the SFDR. Investors commonly take ESG-factors into account, even if certain benchmarks are not marketed as pursuing ESG-objectives. This is recognized by the EC in the text of the pre-ambles to the draft Delegated Regulations on both the benchmark statement and methodology, stating: ‘The ESG information to be disclosed by benchmark administrators will improve the level of comparability among benchmarks and provide clarity for investors willing to make informed climate related investments.'

However, in the draft Delegated Regulations the EC allows benchmark administrators to withhold ESG-disclosures, if a benchmark does not pursue ESG-objectives or if a benchmark methodology does not take ESG-factors into account. This not only goes against the spirit of the pre-ambles as quoted above, but will potentially lead to various undesired side effects. These concern e.g. the level playing field between ESG and non-ESG marketed benchmarks, as well as the amount and quality of information available on the sustainability performance of benchmarks not explicitly pursuing ESG-objectives. Such could negatively contribute to the Commission's goal of a sustainable financial sector.

Enabling a periodic review of ESG-factors to be considered by type of benchmark

To facilitate uniform disclosure, the EC proposes a set of ESG-factors to be considered per asset class-benchmark. However, the suggested disclosure on ESG-factors could prove problematic in practice, since the required information or data might not be available and/or some of the methodologies for reporting on certain ESG-factors have not yet been fully developed or broadly and uniformly established. Given the on-going developments and regular new insights in the field of ESG-information, as well as the current absence of an independent authoritative standard setter, Eumedion is of the opinion that a periodic review process for ESG-disclosure requirements is necessary, in addition to the review of the Regulation already to be provided by the Commission before December 31, 2022. Such a (periodic) review can contribute to the continuous process of optimizing the disclosure of investor-relevant benchmark information, also and perhaps especially for benchmarks that are not marketed as ESG-benchmarks (see previous feedback point on mandatory disclosure for non-ESG marketed benchmarks).

Improving the grouping of asset class benchmarks and applicable ESG factors to be considered

The draft Delegated Regulation on the benchmark statement provides a selection of ESG-relevant asset class-benchmarks. Section 2 of Annex II (Fixed income corporate benchmarks) does not distinguish between corporate debt, asset backed securities and money market instruments. In the opinion of Eumedion, most of the ESG-factors relevant for equity benchmarks *also* apply to corporate credit bonds, but explicitly not to asset backed securities. In the opinion of Eumedion, this requires a regrouping of the fixed income asset class and an alignment of the requirements for corporate credit bonds benchmarks with those for equity benchmarks.

Additional governance factors to be considered

Finally, Eumedion considers the suggested ESG-disclosures rather thin where it regards the area of 'governance'. Therefore, in addition to our suggestion to fully align the various EU ESG-disclosure regulations, we would like to suggest an expansion of the list of elementary g-factors to be considered for the benchmark categories equity and corporate debt, such as:

- Minimum Shareholder Rights;
- Executive Compensation Policies;
- Transparency Rating (openness, willingness, accuracy, and timeliness);
- Risk Management;
- Separation of CEO and Chair functions.

Annex: Indicative (non-exhaustive) overview of misalignment of ESG-disclosures between interconnected EU regulations

	Draft delegated acts benchmarks	NFRD and non-binding guidelines (selection)	SFDR and proposed RTS (selection)
Overall ESG Disclosure	Weighted Average ESG Rating		
	ESG Ratings Top Ten Constituents		
	UNGC Violations		
Environmental Disclosure	Weighted Average Environmental Rating		
	Sector Exposure % (NACE)		
	GHG Intensity		
	GHG Emissions Reported vs Estimated %		
	Manufacture and Extraction of Fossil Fuel Sector Exposure %		
	Exposure to activities related to environmental protection and resource management		
	Exposure renewable energy activities (as share of total CapEx by energy companies in pf)		
	Exposure Climate-Related Physical Risks (issuer exposure)		
	Green Bonds %		
		Environmental matters	
		Use and Protection of Natural Resources	
		Protection of Biodiversity	
		Waste Management	
			Energy performance
			Water emissions
			Exposure to areas of high water stress
			Untreated discharged waste water
			Hazardous waste ratio
			Non-recycled waste ratio
Social Disclosure	Weighted Average Social Rating		
	Controversial Weapons Definition		
	Controversial Weapons %		
	Tobacco Sector %		
	Social violations		
		Employee matters (e.g. Diversity, Training, Consultation, Turnover)	
		Respect for Human Rights	
		Health and Safety at Work	
		Trade Union Relationships	
		Community Relationships	*[continued on next page]*

			Gender pay gap
			Excessive CEO pay ratio
			Insufficient whistle blower protection
			Workplace accident prevention policies
			Human rights due diligence processes
			Child labour
			Forced or compulsory labour
Governance Disclosure	Weighted Average Governance Rating		
	Board Independence %		
	Board Diversity %		
		Corruption and Bribery	
			Insufficient actions to address breaches of standards of anti-corruption and bribery
			Number of convictions or fines
			Lack of separation of CEO and Chair functions on the boards of investee companies

	Elementary governance factors to be added (as suggested by Eumedion)
	Minimum Shareholder Rights
	Executive Compensation Policies
	Transparency Rating (openness, willingness, accuracy, and timeliness)
	Risk Management