# Submission to the European Commission (EC)

A proposal for a regulation of the European Parliament and of the Council amending Regulation 9EU) 2016/1011 on low carbon benchmarks and positive carbon impact benchmarks COM (2018) 355

ACTU Submission, 28 August 2018
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# Introduction

Since its formation in 1927, the ACTU has been the peak trade union body in Australia. There is no other national confederation representing unions. For 90 years the ACTU has played the leading role in advocating in the Australian Fair Work Commission, and its statutory predecessors, for the improvement of employment conditions of employees. It has consulted with governments in the development of almost every legislative measure concerning employment conditions and trade union regulation over that period.

The ACTU consists of affiliated unions and state and regional trades and labour councils. There are currently 43 ACTU affiliates. They have approximately 1.5million members who are engaged across a broad spectrum of industries and occupations in the public and private sector.

The ACTUs stakeholder interest in the European Commission regulation and guidance for investors derives from three core functions of the ACTU.

The first is that we represent the interests of the workforce of listed companies, so any shareholder/investor impact on the operations of companies will inevitably impact on the workforce and their communities. Notwithstanding that company workforces (human capital) are equally as important as the financial capital inputs to company performance, productivity and wealth creation, their voice, contribution, and value creation potential is consistently undervalued or is considered of secondary importance in corporate governance and ESG practice.

The second is that as the peak trade union council for the nation's workforce, we have a responsibility to promote and ensure compliance of a raft of international treaties and norms to which Australia is a signatory, including the ILO Core Labour Conventions and key guidance provided by United Nations bodies, including the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multi-National Enterprises.

The third is because we provide professional support and advice to member appointed/elected and labour organisation appointed trustee directors on industry and public-sector superannuation (pension) fund governance boards. In this role, the ACTU assists trustee directors in the performance of their fiduciary duty, one aspect of which is assessing investee ESG risk and integrating that into portfolio selection, monitoring and asset stewardship practice.

## Submission

The ACTU believes that ESG criteria should be integrated in a balanced manner in all sustainability indices, including the proposed environmental indices (low carbon and positive carbon impact).

In our view the proposed text raises reasonable doubts that this is the case. One example is that in the Explanatory Memorandum there is a reference to "or working conditions", when we believe it should refer to "and working conditions", given that labour rights is undoubtedly a minimum requisite that should be linked to environmental issues. As mentioned in the document itself, the EU Treaties recognise that the social and environmental dimensions must be addressed together. According to the principles recognised by the Charter of Fundamental Rights of the European Union, any economic activity that is considered sustainable from the environmental point of view must be carried out in compliance with minimum ethical, social and governance guarantees.

The risk of green washing is also mentioned. It is important to highlight that if the S in ESG is not incorporated properly within these indices (low carbon impact and positive carbon impact), there is also a danger of social washing, in addition to green washing. In the section on "Consistency with other policies of the Union", there is a mention that the "proposal is consistent with the review of the European System of Financial Supervision that foresees the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority to take account of risks related to environmental, social and governance factors when carrying out their tasks, so that financial market activities are more consistent with sustainable objectives." Given that reference, it would be optimal to incorporate all these issues in the definition of these indices.

If the intention is to promote sustainable and inclusive growth, as mentioned in the proposal, and strengthen financial stability by incorporating ESG factors, then S factors must necessarily be reinforced. The coherent approach and the greater legal security in the EU that is sought in the proposal, will only be achieved if the E, S and G are integrated in a gradual, proportional and balanced manner.

In the list of interested parties consulted, we note the absence of trade unions – who represent the workers who are beneficiaries of pension funds. Likewise, we consider that in the groups of technical experts to establish the parameters of the methodology used to select the underlying assets of the sustainability indices, experts representing the interests of workers – i.e.: trade unions - should be included. We would strongly propose that the EC confer with the General Secretary of the International Trade Union Confederation (ITUC) to ensure trade union representation on future technical work. It is essential in our view to recognise the value of social dialogue and to include the social partners.

We also propose that the criterion of a high degree of comparability established in sub-option 4b) should be introduced in sub-option 4a), the option that was ultimately chosen. Some flexibility can be considered - in the text it is justified by a cost issue - but this should not affect comparability. As indicated in the text, it is important to consider the impacts of reducing information asymmetry, reducing market fragmentation and improving quality and comparability. The risk of reducing these objectives due to a cost issue can lead to excessive flexibility and from a trade union perspective we consider that a balance between rigor, comparability and flexibility must be reached.

Dissociating the methodology from the taxonomy creates a risk that affects these objectives. We believe that it is necessary to establish a mandatory minimum that meets the objective of comparability. It is important that these minimums consider in a balanced way ESG issues, as we have previously mentioned. To protect consumers, as the proposal claims, it is important to avoid fragmentation and ambiguity; and this could occur with the dissociation of methodology and taxonomy and social factors, if these are not properly incorporated.

Within this context, we believe it essential to include "the Just Transition", so that the impacts on the workforce and associated communities are integrated in sustainable growth. This would also be in line with the Sustainable Development Goals (SDGs), which, together with the Paris Agreement and the Treaties of the Union, form the core of this proposal.

We consider as positive the obligation to disclose the ESG factors considered in the methodology of managers of sustainability indices, but it should be further emphasised that there must be a balance between E, S and G (environmental factors should not have a greater weight) and for that reason, the providers of low carbon and positive carbon impact indices should have clearly defined, minimum, ESG factors (besides the minimum social requirement: the fundamental standards of the ILO, as well as other criteria, such as fiscal responsibility, should be included).

Therefore, we believe the European Commission should specify this minimum content and the minimum ESG standards, which need to be balanced across all types of indices, to be established by an examination of current ESG disclosure frameworks like those arising from the Task Force on Climate Related Disclosure (TCFD) e.g. the CDP, and S factor disclosure frameworks like the Share Action Workforce Disclosure Initiative (WDI).

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