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 (Text with EEA relevance)

REGULATION (EU) 2019/2089 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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(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 Committee[(1)],

Acting in accordance with the ordinary legislative procedure[(2)],

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 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 2016[(3)] 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.

(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

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2019/2089 of the European Parliament and of the Council. (See end of Document for details)*

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 (TFEU) 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 Council[(4)] 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.

(9) Regulation (EU) 2016/1011 of the European Parliament and of the Council[(5)] 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.

(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 TFEU 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/EU[(6)] 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-Making[(7)]. 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.

(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