Commission Delegated Regulation (EU) 2018/64 of 29 September 2017 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to specifying how the criteria of Article 20(1)(c)(iii) are to be applied for assessing whether certain events would result in significant and adverse impacts on market integrity, financial stability, consumers, the real economy or the financing of households and businesses in one or more Member States (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2018/64

of 29 September 2017

supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to specifying how the criteria of Article 20(1)(c)(iii) are to be applied for assessing whether certain events would result in significant and adverse impacts on market integrity, financial stability, consumers, the real economy or the financing of households and businesses in one or more Member States

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard 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)], and in particular Article 20(6)(c) thereof,

Whereas:

(1) In view of the general nature of the qualitative condition of Article 20(1)(c)(iii) of Regulation (EU) 2016/1011 and the need to ensure a consistent application by competent authorities of that condition, it is appropriate to set out how, in the context of critical benchmarks, (i) the cessation of the provision of a benchmark, or (ii) the provision of a benchmark on the basis of input data which are no longer fully representative of the underlying market or economic reality, or (iii) the provision of a benchmark on the basis of unreliable input data, could have a significant and adverse impact on market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in one or more Member States.

(2) Critical benchmarks are often used in Member States other than the Member State where they are provided and are used in different ways, depending on the Member State in which they are used. Therefore there is potential for significant impact in either one or more Member States or at Union level. Similarly, there is potential for significant adverse impact with regard to only one or more of the criteria referred to in Article 20(1)(c)(iii) It is therefore important to conduct the assessment both at national or market level as well as at Union level.

Changes to legislation: *There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2018/64. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(3) Regulation (EU) 2016/1011 lists five areas where significant adverse impacts might arise. While market integrity focuses on the market for a specific financial product, financial stability refers to the financial system of a Member State or the Union as a whole. Consumers are primarily impacted through the financial instruments and investment funds, including pension funds, they have invested in and the financial contracts they have signed which reference the critical benchmark in question. The potential impact on the real economy is directly related to the value of financial instruments, financial contracts and investment funds that reference that benchmark. The potential impact on the financing of households and businesses is likely to increase with the value of outstanding loans relative to the size of the economy. Consumers and the financing of households and businesses are more vulnerable to adverse impacts where the overall level of indebtedness of households and businesses is high,

HAS ADOPTED THIS REGULATION:

Article 1

Assessment by competent authorities

1 Competent authorities shall assess whether there is a significant and adverse impact on market integrity, financial stability, consumers, the real economy or the financing of households and businesses in one or more Member States, as referred to in Article 20(1)(c)(iii) of Regulation (EU) 2016/1011, in accordance with the criteria referred to in Articles 2, 3, 4, 5 and 6.

2 Where competent authorities expect that such a significant and adverse impact shall occur in more than one Member State, they shall perform a separate assessment for each Member State concerned, as well as a general assessment for all Member States.

Article 2

Significant and adverse impact on market integrity

Competent authorities shall assess whether there is a significant and adverse impact on market integrity in accordance with the following criteria:

(a) the value of financial instruments that reference the benchmark, either directly or indirectly within a combination of benchmarks, and that are traded on trading venues in the Member States in question, both in absolute terms and relative to the total value of financial instruments that are traded on trading venues in those Member States;

(b) the value of financial contracts that reference the benchmark, either directly or indirectly within a combination of benchmarks, in the Member States in question, both in absolute terms and relative to the total value of financial contracts outstanding in the Member States considered;

(c) the value of investment funds referencing the benchmark for measuring their performance, either directly or indirectly within a combination of benchmarks, in the Member States considered, both in absolute terms and relative to the total value of investment funds authorised or notified for marketing in those Member States;

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(d) whether the benchmark has been nominated, in accordance with Article 28(2) of Regulation (EU) 2016/1011, as a potential substitute for, or has already been used as a successor to, other benchmarks that are included in the list of critical benchmarks referred to in Article 20(1) of Regulation (EU) 2016/1011;

(e) with reference to standards for accounting purposes or other regulatory purposes:

(i) whether the benchmark is used as a reference for prudential regulation such as capital, liquidity or leverage requirements;

(ii) whether the benchmark is used in international accounting standards.

Article 3

Significant and adverse impact on financial stability

Competent authorities shall assess whether there is a significant and adverse impact on financial stability in accordance with the following criteria:

(a) the value of financial instruments, financial contracts and investment funds that reference the benchmark, either directly or indirectly within a combination of benchmarks, in the Member States in question, both in absolute terms and relative to:

(i) the total assets of the financial sector in those Member States;

(ii) the total assets of the banking sector in those Member States;

(b) the vulnerability of financial institutions having signed or invested in financial instruments, financial contracts and investment funds that reference the benchmark.

Article 4

Significant and adverse impact on consumers

Competent authorities shall assess whether there is a significant and adverse impact on consumers in accordance with the following criteria:

(a) with reference to financial instruments and investment funds offered to consumers:

(i) the value of the financial instruments and investment funds referencing the benchmark, either directly or indirectly within a combination of benchmarks, sold to retail consumers in the Member States in question, both in absolute terms and relative to the total value of financial instruments and investment funds sold to retail investors in those Member States;

(ii) an estimate of the number of consumers who have bought financial instruments and investment funds referencing the benchmark, either directly or indirectly within a combination of benchmarks, in the Member States in question, both in absolute terms and relative to the total population in those Member States;

(b) with reference to institutions for occupational retirement provision:

(i) the value of the pension schemes referencing the benchmark which are operated by institutions for occupational retirement provision in the Member States in question, both in absolute terms and relative to the total value of