

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)

Article 1

Amendments to Regulation (EU) 2016/1011

Regulation (EU) 2016/1011 is amended as follows:

- (1) in Article 3(1), the following points are inserted:
 - (23a) “EU Climate Transition Benchmark” means a benchmark which is labelled as an EU Climate Transition Benchmark and fulfils the following requirements:
 - (a) for the purposes of point 1(b)(ii) of this paragraph and of Article 19b, its underlying assets are selected, weighted or excluded in such a manner that the resulting benchmark portfolio is on a decarbonisation trajectory; and
 - (b) it is constructed in accordance with the minimum standards laid down in the delegated acts referred to in Article 19a(2);
 - (23b) “EU Paris-aligned Benchmark” means a benchmark which is labelled as an EU Paris-aligned Benchmark and fulfils the following requirements:
 - (a) for the purposes of point 1(b)(ii) of this paragraph and of the delegated act referred to in Article 19c, its underlying assets are selected, weighted or excluded in such a manner that the resulting benchmark portfolio’s carbon emissions are aligned with the objectives of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change, approved by the Union on 5 October 2016⁽¹⁾ (the “Paris Agreement”);
 - (b) it is constructed in accordance with the minimum standards laid down in the delegated acts referred to in Article 19a(2); and
 - (c) the activities relating to its underlying assets do not significantly harm other environmental, social and governance (ESG) objectives;
 - (23c) “decarbonisation trajectory” means a measurable, science-based and time-bound trajectory towards alignment with the objectives of the Paris Agreement by reducing Scope 1, 2 and 3 carbon emissions as referred to in point (1)(e) of Annex III.;
- (2) Article 13 is amended as follows:
 - (a) paragraph 1 is amended as follows:
 - (i) the following point is added:

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- (d) an explanation of how the key elements of the methodology laid down in point (a) reflect ESG factors for each benchmark or family of benchmarks, with the exception of interest rate and foreign exchange benchmarks.;
- (ii) the following subparagraph is added:
 - Benchmark administrators shall comply with the requirement laid down in point (d) of the first subparagraph by 30 April 2020.;
- (b) the following paragraph is inserted:
 - 2a. The Commission is empowered to adopt delegated acts in accordance with Article 49 to supplement this Regulation by laying down the minimum content of the explanation referred to in point (d) of the first subparagraph of paragraph 1 of this Article, as well as the standard format to be used.;
- (3) in Title III, the following Chapter is inserted:

CHAPTER 3A

EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks

Article 19a

EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks

- 1 The requirements laid down in Annex III shall apply to the provision of, and contribution to, EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks, in addition to the requirements of Titles II, III and IV.
- 2 The Commission is empowered to adopt delegated acts in accordance with Article 49 to supplement this Regulation by laying down the minimum standards for EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks to specify:
 - a the criteria for the choice of the underlying assets, including, where applicable, any criteria for excluding assets;
 - b the criteria and method for the weighting of the underlying assets in the benchmark;
 - c the determination of the decarbonisation trajectory for EU Climate Transition Benchmarks.
- 3 Benchmark administrators which provide an EU Climate Transition Benchmark or an EU Paris-aligned Benchmark shall comply with this Regulation by 30 April 2020.

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Article 19b

Requirements for EU Climate Transition Benchmarks

Administrators of EU Climate Transition Benchmarks shall select, weight, or exclude underlying assets issued by companies that follow a decarbonisation trajectory by 31 December 2022, in accordance with the following requirements:

- (i) the companies disclose measurable carbon emission reduction targets to be achieved within specific timeframes;
- (ii) the companies disclose a reduction in carbon emissions which is disaggregated down to the level of relevant operating subsidiaries;
- (iii) the companies disclose annual information on progress made towards those targets;
- (iv) the activities relating to the underlying assets do not significantly harm other ESG objectives.

Article 19c

Exclusions for EU Paris-aligned Benchmarks

1 The Commission is empowered to adopt a delegated act in accordance with Article 49 in order to supplement this Regulation by identifying, in respect of EU Paris-aligned Benchmarks, the sectors to be excluded because they do not have measurable carbon emission reduction targets with specific deadlines that are aligned with the objectives of the Paris Agreement. The Commission shall adopt that delegated act by 1 January 2021 and update it every three years.

2 When drawing up the delegated act referred to in paragraph 1, the Commission shall take into account the work of the TEG.

Article 19d

Endeavour to provide EU Climate Transition Benchmarks

By 1 January 2022, administrators which are located in the Union and which provide significant benchmarks determined on the basis of the value of one or more underlying assets or prices shall endeavour to provide one or more EU Climate Transition Benchmarks.;

(4) in Article 21(3), the third subparagraph is replaced by the following:

By the end of that period, the competent authority shall review its decision to compel the administrator to continue to publish the benchmark. The competent authority may, where necessary, extend that period by an appropriate period not exceeding 12 months. The maximum period of mandatory administration shall not exceed five years.;

(5) Article 23 is amended as follows:

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(a) in paragraph (6), the second subparagraph is replaced by the following:

The maximum period of mandatory contribution under points (a) and (b) of the first subparagraph shall not exceed five years.;

(b) paragraph (10) is replaced by the following:

10. In the event that a critical benchmark is to be ceased to be provided, each supervised contributor to that benchmark shall contribute input data for a period of time determined by the competent authority, but not exceeding the maximum five year period laid down in the second subparagraph of paragraph 6.;

(6) in Article 27, the following paragraphs are inserted:

2a. By 30 April 2020, for each of the requirements referred to in paragraph 2, the benchmark statement shall contain an explanation of how ESG factors are reflected in each benchmark or family of benchmarks provided and published. For those benchmarks or families of benchmarks that do not pursue ESG objectives, it shall be sufficient for benchmark administrators to clearly state in the benchmark statement that they do not pursue such objectives.

Where no EU Climate Transition Benchmark or EU Paris-aligned Benchmark is available in the portfolio of that individual benchmark administrator, or the individual benchmark administrator has no benchmarks that pursue ESG objectives or take into account ESG factors, this shall be stated in the benchmark statements of all benchmarks provided by that administrator. For significant equity and bond benchmarks, as well as for EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks, benchmark administrators shall disclose in their benchmark statements details 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 in accordance with the disclosure rules for financial products in Article 9(3) of Regulation (EU) 2019/2088 of the European Parliament and of the Council⁽²⁾.

By 31 December 2021, benchmark administrators shall, for each benchmark or, where applicable, each family of benchmarks, with the exception of interest rate and foreign exchange benchmarks, include in their benchmark statement an explanation of how their methodology aligns with the target of carbon emission reductions or attains the objectives of the Paris Agreement.

2b. The Commission is empowered to adopt delegated acts in accordance with Article 49 to supplement this Regulation by further specifying the information to be provided in the benchmark statement pursuant to paragraph 2a of this Article, as well as the standard format to be used for references to ESG factors to enable market participants to make well-informed choices and to ensure the technical feasibility of compliance with that paragraph.;

(7) in Article 42(1), the first subparagraph is replaced by the following:

1. Without prejudice to the supervisory powers of competent authorities in accordance with Article 41, and the right of Member States to provide for and impose criminal sanctions, Member States shall, in conformity with national law, provide for competent authorities to have the power to impose appropriate administrative

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sanctions and other administrative measures in relation to at least the following infringements:

- a any infringement of Article 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19a, 19b, 19c, 21, 23, 24, 25, 26, 27, 28, 29 or 34 where they apply; and
- b any failure to cooperate or comply in an investigation or with an inspection or request covered by Article 41.;

(8) Article 49 is replaced by the following:

Article 49

Exercise of the delegation

1 The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2 The power to adopt delegated acts referred to in Articles 3(2), 13(2a), 19a(2), 19c(1), 20(6), 24(2), 27(2b), 33(7), 51(6) and 54(3) shall be conferred on the Commission for a period of five years from 10 December 2019. The Commission shall draw up a report in respect of the delegation of power no later than 11 March 2024. The delegation of power shall be tacitly extended for further periods of identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3 The delegations of power referred to in Articles 3(2), 13(2a), 19a(2), 19c(1), 20(6), 24(2), 27(2b), 33(7), 51(6) and 54(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of power specified in that decision. It shall take effect on the day following the publication of the decision in the *Official Journal of the European Union* or on a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4 Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5 As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6 A delegated act adopted pursuant to Article 3(2), 13(2a), 19a(2), 19c(1), 20(6), 24(2), 27(2b), 33(7), 51(6) or 54(3) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of three months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.;

(9) Article 51 is amended as follows:

(a) the following paragraphs are inserted:

4a. An index provider may continue to provide an existing benchmark that has been recognised as a critical benchmark by an implementing act adopted by the Commission in accordance with Article 20 until 31 December

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2021 or, where the index provider submits an application for authorisation in accordance with paragraph 1, unless and until such authorisation is refused.

4b An existing benchmark that has been recognised as a critical benchmark by an implementing act adopted by the Commission in accordance with Article 20 may be used for existing and new financial instruments, financial contracts, or for measuring the performance of an investment fund until 31 December 2021 or, where the index provider submits an application for authorisation in accordance with paragraph 1, unless and until such authorisation is refused.;

(b) paragraph 5 is replaced by the following:

5. Unless the Commission has adopted an equivalence decision as referred to in Article 30(2) or (3) or unless an administrator has been recognised pursuant to Article 32, or a benchmark has been endorsed pursuant to Article 33, the use in the Union by supervised entities of a benchmark provided by an administrator located in a third country where the benchmark is already used in the Union as a reference for financial instruments, financial contracts, or for measuring the performance of an investment fund, shall be permitted only for such financial instruments, financial contracts and measurements of the performance of an investment fund that already reference the benchmark in the Union on, or which add a reference to such benchmark prior to, 31 December 2021.;

(10) in Article 54, the following paragraphs are added:

4. By 31 December 2022, the Commission shall review the minimum standards for EU Climate Transition Benchmarks and for EU Paris-aligned Benchmarks in order to ensure that the selection of the underlying assets is coherent with environmentally sustainable investments as defined in a Union-wide framework.

5. Before 31 December 2022, the Commission shall present a report to the European Parliament and to the Council on the impact of this Regulation and the feasibility of an “ESG benchmark”, taking into account the evolving nature of sustainability indicators and the methods used to measure them. That report shall be accompanied, where appropriate by a legislative proposal.

6. By 1 April 2020, the Commission shall submit a report to the European Parliament and to the Council on the impact of this Regulation on the operation of third country benchmarks in the Union, including on the recourse by third country benchmark administrators to endorsement, recognition or equivalence, and on potential shortcomings of the current framework. That report shall analyse the consequences of the application of paragraphs 4a, 4b and 4c of Article 51 for Union and third-country benchmark administrators, including in terms of a level playing field. That report shall assess in particular whether there is a need to amend this Regulation and shall be accompanied by a legislative proposal, if appropriate.;

(11) the Annexes are amended in accordance with the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

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It shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 27 November 2019.

For the European Parliament

The President

D. M. SASSOLI

For the Council

The President

T. TUPPURAINEN

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- (1) Council Decision (EU) 2016/1841 of 5 October 2016 on the conclusion, on behalf of the European Union, of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change (OJ L 282, 19.10.2016, p. 1).’;
- (2) Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).’;

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