



EUROPEAN PARLIAMENT

2014 - 2019

Committee on Economic and Monetary Affairs

2013/0314(COD)

23.1.2015

AMENDMENTS 248 - 501

Draft report
Cora van Nieuwenhuizen
(PE544.150v02-00)

on the proposal for a regulation of the European Parliament and of the Council
on indices used as benchmarks in financial instruments and financial contracts

Proposal for a regulation
(COM(2013)/0641 – C7-0301/2013 – 2013/0314(COD))

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PE546.741v01-00

EN

United in diversity

EN

Amendment 248

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 1

Text proposed by the Commission

(1) The pricing of many financial instruments and financial contracts depends on the accuracy and integrity of benchmarks. Cases of manipulation of interest rate benchmarks such as LIBOR and EURIBOR, as well as allegations that energy, **oil and foreign exchange** benchmarks have been manipulated, have demonstrated that benchmarks whose setting processes share certain characteristics, such as being subject to conflicts of interest, the use of discretion and weak governance, **may be** vulnerable to manipulation. Failures in, or doubts about, the accuracy and integrity of indices used as benchmarks may undermine market confidence, cause losses to consumers and investors and distort the real economy. It is therefore necessary to ensure the accuracy, robustness and integrity of benchmarks and the benchmark setting process.

Amendment

(1) The pricing of many financial instruments and financial contracts depends on the accuracy and integrity of benchmarks. **Staggering** cases of **intentional and far-reaching** manipulation **driven mostly by Systemically Important Financial Institutions** of interest rate benchmarks such as LIBOR and EURIBOR **and of foreign exchange benchmarks, causing considerable losses to consumers and investors and further shattering the confidence of citizens in the banking sector**, as well as **serious** allegations that energy **and oil** benchmarks have been manipulated, have demonstrated that benchmarks whose setting processes share certain characteristics, such as being subject to conflicts of interest, the use of discretion and weak governance, **are** vulnerable to manipulation. Failures in, or doubts about, the accuracy and integrity of indices used as benchmarks may undermine market confidence, cause losses to consumers and investors and distort the real economy. It is therefore necessary to ensure the accuracy, robustness and integrity of benchmarks and the benchmark setting process.

Or. en

Amendment 249
Eva Kaili

Proposal for a regulation
Recital 1

Text proposed by the Commission

(1) The pricing of many financial instruments and financial contracts depends on the accuracy and integrity of benchmarks. Cases of manipulation of interest rate benchmarks such as LIBOR *and EURIBOR*, as well as allegations that energy, *oil and foreign exchange* benchmarks have been manipulated, *have demonstrated* that benchmarks *whose setting processes share certain characteristics, such as being* subject to conflicts of interest, *the use of discretion* and weak governance, *may be* vulnerable to manipulation. Failures in, or doubts about, the accuracy and integrity of indices used as benchmarks may undermine market confidence, cause losses to consumers and investors and distort the real economy. It is therefore necessary to ensure the accuracy, robustness and integrity of benchmarks and the benchmark setting process.

Amendment

(1) The pricing of many financial instruments and financial contracts depends on the accuracy and integrity of benchmarks. Cases of manipulation of interest rate benchmarks such as LIBOR, *EURIBOR and foreign exchange benchmarks*, as well as allegations that energy *and oil* benchmarks have been manipulated, *demonstrate* that benchmarks *can be* subject to conflicts of interest *and may have discretionary* and weak governance *regimes that are* vulnerable to manipulation. Failures in, or doubts about, the accuracy and integrity of indices used as benchmarks may undermine market confidence, cause losses to consumers and investors and distort the real economy. It is therefore necessary to ensure the accuracy, robustness and integrity of benchmarks and the benchmark setting process.

Or. en

Amendment 250
Steven Woolfe

Proposal for a regulation
Recital 1

Text proposed by the Commission

(1) The pricing of many financial instruments and financial contracts depends on the accuracy and integrity of benchmarks. Cases of manipulation of interest rate benchmarks such as LIBOR

Amendment

(1) The pricing of many financial instruments and financial contracts depends on the accuracy and integrity of benchmarks. Cases of manipulation of interest rate benchmarks such as LIBOR

and EURIBOR, as well as allegations that *energy, oil and* foreign exchange benchmarks have been manipulated, have demonstrated that benchmarks whose setting processes share certain characteristics, such as being subject to conflicts of interest, the use of discretion and weak governance, may be vulnerable to manipulation. Failures in, or doubts about, the accuracy and integrity of indices used as benchmarks may undermine market confidence, cause losses to consumers and investors and distort the real economy. It is therefore necessary to ensure the accuracy, robustness and integrity of benchmarks and the benchmark setting process.

and EURIBOR, as well as allegations that foreign exchange benchmarks have been manipulated, have demonstrated that benchmarks whose setting processes share certain characteristics, such as being subject to conflicts of interest, the use of discretion and weak governance, may be vulnerable to manipulation. Failures in, or doubts about, the accuracy and integrity of indices used as benchmarks may undermine market confidence, cause losses to consumers and investors and distort the real economy. It is therefore necessary to ensure the accuracy, robustness and integrity of benchmarks and the benchmark setting process.

Or. en

Amendment 251
Miguel Viegas, Marisa Matias

Proposal for a regulation
Recital 8

Text proposed by the Commission

(8) The scope of this Regulation should be as broad as necessary to create a preventive regulatory framework. The production of benchmarks involves discretion in their determination and is inherently subject to certain types of conflicts of interest, which implies the existence of opportunities and incentives to manipulate those benchmarks. These risk factors are common to all benchmarks, and all of them should be made subject to adequate governance and control requirements. Since the vulnerability and importance of a benchmark varies over time, restricting the scope by reference to currently important or vulnerable indices would not address the risks that any benchmark may pose in the future. In particular, benchmarks that are

Amendment

(8) The scope of this Regulation should be as broad as necessary to create a preventive regulatory framework. The production of benchmarks involves discretion in their determination and is inherently subject to certain types of conflicts of interest, which implies the existence of opportunities and incentives to manipulate those benchmarks. These risk factors are common to all benchmarks, and all of them should be made subject to adequate governance and control requirements. ***The degree of risk, however, is variable, and the approach adopted in each case should therefore invariably be tailored to the particular circumstances.*** Since the vulnerability and importance of a benchmark varies over time, restricting the scope by reference to

currently not widely used may be so used in the future, so that, in their regard, even a minor manipulation may have significant impact.

currently important or vulnerable indices would not address the risks that any benchmark may pose in the future. In particular, benchmarks that are currently not widely used may be so used in the future, so that, in their regard, even a minor manipulation may have significant impact.

Or. pt

Amendment 252

Marisa Matias, Matt Carthy, Miguel Viegas

Proposal for a regulation

Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) Physical commodities present unique characteristics which must be taken into account in order to avoid undermining the integrity of commodity benchmarks and ensure the existing transparency in the commodity market. Accordingly Annex III of this Regulation reflects the principles developed for commodities benchmarks by IOSCO, the International Energy Agency and the International Energy Forum specially designed to apply to all commodity benchmarks within this Regulation.

Or. en

Amendment 253

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 12

Text proposed by the Commission

Amendment

(12) All benchmark administrators are

(12) All benchmark administrators are

potentially subject to conflicts of interest, exercise discretion and may have inadequate governance and control systems in place. Further, as administrators control the benchmark process, requiring authorisation and supervision of administrators is the most effective way of ensuring the integrity of benchmarks.

potentially subject to conflicts of interest, exercise discretion and may have inadequate governance and control systems in place. Further, as administrators control the benchmark process, requiring authorisation and supervision of administrators is the most effective way of ensuring the integrity of benchmarks, *or where a benchmark is not designed to represent transactions and the nature of the benchmark is such that data other than transaction data is used to reflect what the benchmark is designed to measure, provided that in all cases such data is verifiable.*

Or. en

Amendment 254
Gunnar Hökmark

Proposal for a regulation
Recital 14

Text proposed by the Commission

(14) An administrator is the natural or legal person that has control over the provision of a benchmark, in particular who administers the benchmark, collects and analyses the input data, determines the benchmark and in some cases publishes the benchmark. However, where a person *merely* publishes or refers to a benchmark as part of his or her journalistic activities *but does not have control over the provision of that benchmark*, that person should not be subject to the requirements imposed on administrators by this Regulation.

Amendment

(14) An administrator is the natural or legal person that has control over the provision of a benchmark, in particular who administers the benchmark, collects and analyses the input data, determines the benchmark and in some cases publishes the benchmark. However, where a person publishes or refers to a benchmark as part of his or her journalistic activities, that person should not be subject to the requirements imposed on administrators by this Regulation.

Or. en

Amendment 255
Philippe Lamberts
on behalf of the Verts/ALE Group

Proposal for a regulation
Recital 16

Text proposed by the Commission

Amendment

(16) Benchmarks that are provided by central banks in the Union are subject to control by public authorities and meet principles, standards and procedures which ensure the accuracy, integrity and independence of their benchmarks as provided for by this Regulation. It is therefore not necessary that these benchmarks should be subject to this Regulation. However third country central banks may also provide benchmarks that are used in the Union. It is necessary to determine that only those central banks of third countries that produce benchmarks are exempted from the obligations under this Regulation that are subject to similar standards to those established by this Regulation.

deleted

Or. en

Amendment 256
Jonás Fernández

Proposal for a regulation
Recital 16

Text proposed by the Commission

Amendment

(16) Benchmarks that are provided by central banks in the Union are subject to control by public authorities and meet principles, standards and procedures which ensure the accuracy, integrity and independence of their benchmarks as provided for by this Regulation. It is therefore not necessary that these

(16) Benchmarks that are provided by central banks **and public authorities** in the Union are subject to control by public authorities and meet principles, standards and procedures which ensure the accuracy, integrity and independence of their benchmarks as provided for by this Regulation. It is therefore not necessary

benchmarks should be subject to this Regulation. However third country central banks may also provide benchmarks that are used in the Union. It is necessary to determine that only those central banks of third countries that produce benchmarks are exempted from the obligations under this Regulation that are subject to similar standards to those established by this Regulation.

that these benchmarks should be subject to this Regulation. However, third country central banks **and public authorities** may also provide benchmarks that are used in the Union. It is necessary to determine that only those central banks **and public authorities** of third countries that produce benchmarks are exempted from the obligations under this Regulation that are subject to similar standards to those established by this Regulation.

Or. es

Amendment 257
Kay Swinburne

Proposal for a regulation
Recital 26

Text proposed by the Commission

(26) The integrity and accuracy of benchmarks depends on the integrity and accuracy of the input data provided by contributors. It is essential that the obligations of the contributors in respect of this input data are clearly specified, can be relied on and are consistent with the benchmark administrator's controls and methodology. It is therefore necessary that **the** benchmark administrator produces a code of conduct to specify these requirements and **that the contributors are bound by that code of conduct.**

Amendment

(26) The integrity and accuracy of benchmarks depends on the integrity and accuracy of the input data provided by contributors. It is essential that the obligations of the contributors in respect of this input data are clearly specified, can be relied on and are consistent with the benchmark administrator's controls and methodology. It is therefore necessary that, **where appropriate and possible, the critical** benchmark administrator produces a code of conduct to specify these requirements and **reports to the competent authority any non-adherence or misconduct of contributors.**

Or. en

Justification

To be read alongside rapporteur's amendment 18

Amendment 258
Jonás Fernández

Proposal for a regulation
Recital 26

Text proposed by the Commission

(26) The integrity and accuracy of benchmarks depends on the integrity and accuracy of the input data provided by contributors. It is essential that the obligations of the contributors in respect of this input data are clearly specified, can be relied on and are consistent with the benchmark administrator's controls and methodology. It is therefore necessary that the benchmark administrator produces a code of conduct to specify these requirements and that the contributors are bound by that code of conduct.

Amendment

(26) The integrity and accuracy of benchmarks depends on the integrity and accuracy of the input data provided by contributors. It is essential that the obligations of the contributors in respect of this input data are clearly specified, can be relied on and are consistent with the benchmark administrator's controls and methodology. It is therefore necessary that the benchmark administrator produces a code of conduct to specify these requirements and that the contributors are bound by that code of conduct, ***which will be legally binding for critical benchmarks.***

Or. es

Amendment 259
Fulvio Martusciello

Proposal for a regulation
Recital 27

Text proposed by the Commission

(27) Many benchmarks are determined ***from input*** data that is provided by regulated venues, energy exchanges ***and*** emission allowance auctions. ***These venues are subject to*** regulation and supervision ***that ensures*** the integrity of the input data, ***provides*** for governance requirements and procedures for the notification of ***breaches***. Therefore these benchmarks ***are*** released from certain ***obligations in order to avoid dual regulation and because their supervision ensures the integrity*** of the

Amendment

(27) Many benchmarks are determined ***by the application of a formula calculated using input*** data that is provided by regulated venues, ***approved publication arrangements or reporting mechanisms,*** energy exchanges ***or*** emission allowance auctions. ***In these cases, existing*** regulation and supervision ***ensure*** the integrity ***and transparency*** of the input data, ***and provide*** for governance requirements and procedures for the notification of ***infringements***. Therefore

input data *used*.

these benchmarks, *which are subject to less independent verification, are less vulnerable and less susceptible to manipulation, and are accordingly released from certain obligations. Notwithstanding the above, independent index providers regularly obtain input data from third party data aggregators and data collectors of transactional data and stock prices which might not necessarily qualify as an APA, ARM or CTP under MiFID II. The use of such data should not prevent the resulting benchmarks from qualifying as regulated data benchmarks merely due to the technical classification of the party aggregating the data.*

For the avoidance of doubt, input data refers only to inbound pricing data, as opposed to any other element of the administrator's methodology or proprietary data or intellectual property of the administrator.

Or. en

Amendment 260
Miguel Viegas, Marisa Matias

Proposal for a regulation
Recital 27

Text proposed by the Commission

(27) Many benchmarks are determined from input data that is provided by regulated venues, energy exchanges and emission allowance auctions. These venues are subject to regulation and supervision that ensures the integrity of the input data, provides for governance requirements and procedures for the notification of breaches. Therefore these benchmarks are released from certain obligations in order to avoid dual regulation and because their

Amendment

(27) Many benchmarks are determined from input data that is provided by regulated venues, energy exchanges and emission allowance auctions. These venues are subject to regulation and supervision that ensures the integrity of the input data, provides for governance requirements and procedures for the notification of breaches. Therefore these benchmarks are released from certain obligations in order to avoid dual regulation and because their

supervision ensures the integrity of the input data used.

supervision ensures the integrity of the input data used. *Many benchmarks, however, are based on data contributions from outside entities which are not necessarily termed APAs, ARMs, or CTPs within the meaning of MiFID 2. The fact of using such data, provided that they have been obtained directly from market observation, should not serve to exclude the benchmarks concerned from the scope of this Regulation.*

Or. pt

Amendment 261

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 27

Text proposed by the Commission

(27) Many benchmarks are determined from input data that is provided by regulated venues, energy exchanges and emission allowance auctions. These venues are subject to regulation and supervision that ensures the integrity of the input data, provides for governance requirements and procedures for the notification of breaches. Therefore these benchmarks are released from certain obligations in order to avoid dual regulation and because their supervision ensures the integrity of the input data used.

Amendment

(27) Many benchmarks are determined from input data that is provided by regulated venues, energy exchanges and emission allowance auctions. These venues are subject to regulation and supervision that ensures the integrity of the input data, provides for governance requirements and procedures for the notification of breaches. Therefore, *provided they are sourced from venues subject to post trade transparency requirements, including a third country market considered as equivalent to a regulated market in the Union*, these benchmarks are released from certain obligations in order to avoid dual regulation and because their supervision ensures the integrity of the input data used.

Or. en

Amendment 262
Steven Woolfe

Proposal for a regulation
Recital 27

Text proposed by the Commission

(27) Many benchmarks are determined from input data that is provided by regulated venues, ***energy exchanges and emission allowance auctions. These venues are*** subject to regulation and supervision that ensures the integrity of the input data, provides for governance requirements and procedures for the notification of breaches. Therefore these benchmarks are released from certain obligations in order to avoid dual regulation and because their supervision ensures the integrity of the input data used.

Amendment

(27) Many benchmarks are determined from input data that is provided by regulated venues subject to regulation and supervision that ensures the integrity of the input data, provides for governance requirements and procedures for the notification of breaches. Therefore these benchmarks are released from certain obligations in order to avoid dual regulation and because their supervision ensures the integrity of the input data used.

Or. en

Amendment 263
Steven Woolfe

Proposal for a regulation
Recital 29

Text proposed by the Commission

(29) Different types of benchmark and different benchmark sectors have different characteristics, vulnerabilities and risks. The provisions of this Regulation should be further specified for particular benchmark sectors and types. Interbank interest rate benchmarks are benchmarks that play an important role in the transmission of monetary policy and so it is necessary to specify how these provisions would apply to these benchmarks in this Regulation. ***Commodity benchmarks are widely used and have sector specific characteristics and so it is necessary to***

Amendment

(29) Different types of benchmark and different benchmark sectors have different characteristics, vulnerabilities and risks. The provisions of this Regulation should be further specified for particular benchmark sectors and types. Interbank interest rate benchmarks are benchmarks that play an important role in the transmission of monetary policy and so it is necessary to specify how these provisions would apply to these benchmarks in this Regulation.

specify how these provisions would apply to these benchmarks in this Regulation.

Or. en

Amendment 264

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 29

Text proposed by the Commission

(29) Different types of benchmark and different benchmark sectors have different characteristics, vulnerabilities and risks. The provisions of this Regulation should be further specified for particular benchmark sectors and types. Interbank interest rate benchmarks are benchmarks that play an important role in the transmission of monetary policy and so it is necessary to specify how these provisions would apply to these benchmarks in this Regulation. Commodity benchmarks are widely used and have sector specific characteristics and so it is necessary to specify how these provisions would apply to these benchmarks in this Regulation.

Amendment

(29) Different types of benchmark and different benchmark sectors have different characteristics, vulnerabilities and risks. The provisions of this Regulation should be further specified for particular benchmark sectors and types. Interbank interest rate benchmarks are benchmarks that play an important role in the transmission of monetary policy and so it is necessary to specify how these provisions would apply to these benchmarks in this Regulation. Commodity benchmarks are widely used and have sector specific characteristics and so it is necessary to specify how these provisions would apply to these benchmarks in this Regulation. ***ESMA should be empowered to supervise, delegate supervision and revoke delegated supervision for Interbank interest rate benchmarks, commodity benchmarks and foreign exchange benchmarks as well as all critical benchmarks.***

Or. en

Amendment 265

Kay Swinburne

Proposal for a regulation

Recital 29 a (new)

Text proposed by the Commission

Amendment

(29a) In order for a benchmark to be deemed critical under this Regulation it must be deemed systemic in nature or be used in a systemic manner and be vulnerable to manipulation in order to ensure regulatory proportionality.

Or. en

Amendment 266
Jonás Fernández

Proposal for a regulation
Recital 30

Text proposed by the Commission

Amendment

(30) The failure of certain critical benchmarks may have a significant impact on financial stability, market orderliness or investors and it is therefore necessary that additional requirements apply to ensure the integrity and robustness of these critical benchmarks. ***Where a benchmark references a significant value of financial instruments it will have such an impact. It is therefore necessary that the Commission determines those benchmarks that reference financial instruments above a certain threshold and should be considered*** critical benchmarks.

(30) The failure of certain critical benchmarks may have a significant impact on financial stability, market orderliness or investors and it is therefore necessary that additional requirements apply to ensure the integrity and robustness of these critical benchmarks. ***These potentially destabilising effects of critical benchmarks can be felt in a single Member State or in more than one. The critical nature of these benchmarks will thus be affirmed with regard to a single Member State or to the EU as a whole if more than one Member State is affected. The national competent authorities and EMSA will establish which benchmarks are to be classed as critical.***

Or. es

Amendment 267
Jonás Fernández

Proposal for a regulation
Recital 31 a (new)

Text proposed by the Commission

Amendment

(31a) Once a benchmark has been classed as critical, its administrator could exploit a monopoly position over the users of that benchmark. With this in mind, the college of competent authorities for that critical benchmark will need to oversee the sale price and the administrator's costs in order to prevent market abuse.

Or. es

Amendment 268
Udo Bullmann

Proposal for a regulation
Recital 32

Text proposed by the Commission

Amendment

(32) In order for users of benchmarks to make appropriate choices of, and understand the risks of, benchmarks, they need to know what the benchmark measures and their vulnerabilities. Therefore the benchmark administrator should publish a statement specifying these elements as well as publish the input data used to determine the benchmark.

(32) In order for users of benchmarks to make appropriate choices of, and understand the risks of, benchmarks, they need to know what the benchmark measures and their vulnerabilities. Therefore the benchmark administrator should publish a statement specifying these elements as well as publish the input data used to determine the benchmark. ***Since the publication of sensitive input data may lead to competitive disadvantages for companies, publication may under certain conditions be suspended by the competent authority.***

Or. de

Amendment 269
Steven Woolfe

Proposal for a regulation
Recital 33

Text proposed by the Commission

(33) Consumers may enter into financial contracts, in particular mortgages and consumer credit contracts that reference a benchmark, but unequal bargaining power and the use of standard terms mean that they may have a limited choice about the benchmark used. It is therefore necessary to ensure that the responsibility for assessing the suitability of such a benchmark for the consumer rests with the lenders or creditors who are supervised entities because they have a greater ability to choose the benchmark. However the suitability assessment should not be required by this Regulation for financial instruments referencing a benchmark, as it is already provided for in Directive [MIFID].

Amendment

deleted

Or. en

Amendment 270
Cora van Nieuwenhuizen

Proposal for a regulation
Recital 34

Text proposed by the Commission

(34) This Regulation should take into account the Principles for financial benchmarks issued by the International Organization of Securities Commissions (IOSCO) (hereinafter referred to as 'IOSCO Principles') **on the 17 July 2013** which serve as **a** global **standard** for regulatory requirements for benchmarks. It is necessary for investor protection that an assessment that the supervisions and regulation in any third country are equivalent to Union supervision and

Amendment

(34) This Regulation should take into account the Principles for financial benchmarks issued by the International Organization of Securities Commissions (IOSCO) **on 17 July 2013 and the IOSCO Principles for Oil Price Reporting Agencies issued by IOSCO on 5 October 2012** (hereinafter referred to as 'IOSCO Principles') which serve as global **standards** for regulatory requirements for benchmarks. It is necessary for investor protection that an assessment that the

regulation of benchmarks takes place before any benchmark provided from that third country can be used in the Union.

supervisions and regulation in any third country are equivalent to Union supervision and regulation of benchmarks takes place before any benchmark provided from that third country can be used in the Union.

Or. en

Justification

Justification: the PRA principles are distinct from the IOSCO principles for financial benchmarks. Both form the basis for this Regulation, and hence both should be mentioned here.

Amendment 271

Markus Ferber

Proposal for a regulation

Recital 34

Text proposed by the Commission

(34) This Regulation should take into account the Principles for financial benchmarks issued by the International Organization of Securities Commissions (IOSCO) (hereinafter referred to as ‘IOSCO Principles’) on the 17 July 2013 which serve as a *global standard for regulatory requirements for benchmarks. It is necessary for investor protection that an assessment that the supervisions and regulation in any third country are equivalent to Union supervision and regulation of benchmarks takes place before* any benchmark provided *from that* third country can be used in the Union.

Amendment

(34) This Regulation should take into account the Principles for financial benchmarks issued by the International Organization of Securities Commissions (IOSCO) (hereinafter referred to as ‘IOSCO Principles’) on the 17 July 2013 which *should* serve as a *key criterion for the question if* any benchmark provided *by a* third country *firm* can be used in the Union.

Or. en

Amendment 272

Kay Swinburne

Proposal for a regulation
Recital 34

Text proposed by the Commission

(34) This Regulation should take into account the Principles for financial benchmarks issued by the International Organization of Securities Commissions (IOSCO) (hereinafter referred to as 'IOSCO Principles') on the 17 July 2013 ***which serve as a global standard for regulatory requirements for benchmarks. It is necessary for investor protection that an assessment that the supervisions and regulation in any third country are equivalent to Union supervision and regulation of benchmarks takes place before any benchmark provided from that third country can be used in the Union.***

Amendment

(34) This Regulation should take into account the Principles for financial benchmarks issued by the International Organization of Securities Commissions (IOSCO) (hereinafter referred to as 'IOSCO ***Financial Benchmark*** Principles') on the 17 July 2013 ***as well as the Principles for Oil Price Reporting Agencies issued by IOSCO on the 5th October 2012 (hereinafter referred to as 'IOSCO PRA Principles')*** which serve as a global standard for regulatory requirements for benchmarks.

Or. en

Amendment 273
Cora van Nieuwenhuizen

Proposal for a regulation
Recital 34 a (new)

Text proposed by the Commission

Amendment

(34a) This Regulation introduces an endorsement regime allowing administrators located in the Union and authorised or registered in accordance with its provisions to endorse benchmarks provided in third countries, under certain conditions. Such an endorsement regime should be introduced for third country administrators that are affiliated or work closely with administrators located in the Union. An administrator that has endorsed benchmarks provided in a third country should be responsible for such endorsed benchmarks and ensure that

they fulfil the relevant conditions referred to in this Regulation.

Or. en

Amendment 274
Kay Swinburne

Proposal for a regulation
Recital 34 a (new)

Text proposed by the Commission

Amendment

(34a) This Regulation also introduces a recognition regime allowing administrators of benchmarks located in a third country to provide their benchmarks in the Union provided they fully comply with the IOSCO Financial Benchmark principles and provided that effective cooperation arrangements exist with their home country supervisor.

Or. en

Amendment 275
Sylvie Goulard

Proposal for a regulation
Recital 34 a (new)

Text proposed by the Commission

Amendment

(34a) Given the strategic importance of critical benchmarks for the whole Union, it may be of interest to grant the ESMA with direct supervisory powers. It is in particular the case with the Euro Interbank Offered Rate (EURIBOR) or the London Interbank Offered Rate (LIBOR). However the ESMA may choose to delegate part or all of the responsibility for supervision. It may also decide to revoke this delegation.

Amendment 276
Miguel Viegas, Marisa Matias

Proposal for a regulation
Recital 35 a (new)

Text proposed by the Commission

Amendment

(35a) This Regulation also establishes a recognition system allowing benchmark administrators located in a third country to supply their benchmarks in the Union, provided that these conform to the requirements set out in this Regulation or to internationally agreed IOSCO principles, and that effective cooperation arrangements exist with their home-country supervisors.

Or. pt

Amendment 277
Philippe Lamberts
on behalf of the Verts/ALE Group

Proposal for a regulation
Recital 36

Text proposed by the Commission

Amendment

(36) In some circumstances a person may provide an index but be unaware that this index is being used as a reference for a financial instrument. This is particularly the case where the users and benchmark administrator are located in different Member States. It is therefore necessary that competent authorities, whenever they become aware of the use of a benchmark in a financial instrument, notify ***a central coordinating authority such as ESMA***, who should notify the administrator.

(36) In some circumstances a person may provide an index but be unaware that this index is being used as a reference for a financial instrument. This is particularly the case where the users and benchmark administrator are located in different Member States. It is therefore necessary that competent authorities, whenever they become aware of the use of a benchmark in a financial instrument, notify ESMA, who should notify the administrator.

Amendment 278
Jonás Fernández

Proposal for a regulation
Recital 37

Text proposed by the Commission

(37) A set of effective tools and powers and resources for the competent authorities of Member States guarantees supervisory effectiveness. This Regulation therefore should in particular provide for a minimum set of supervisory and investigative powers *with* which competent authorities of Member States *should be entrusted* in accordance with national law. When exercising their powers under this Regulation competent authorities and ESMA should act objectively and impartially and remain autonomous in their decision making.

Amendment

(37) A set of effective tools and powers and resources for the competent authorities of Member States *and for EMSA* guarantees supervisory effectiveness. This Regulation therefore should in particular provide for a minimum set of supervisory and investigative powers which *should be entrusted to* competent authorities of Member States in accordance with national law *and to EMSA*. When exercising their powers under this Regulation competent authorities and ESMA should act objectively and impartially and remain autonomous in their decision making.

Amendment 279
Marisa Matias, Matt Carthy

Proposal for a regulation
Recital 37 a (new)

Text proposed by the Commission

Amendment

(37a) In the cases where this Regulation captures or potentially captures supervised entities and markets covered by Regulation (EU) No 1227/2011/EU of the European Parliament and of the Council^{1a} (REMIT), the Agency for the Cooperation of Energy Regulators (ACER) should be consulted by ESMA in order to draw on ACER's expertise in

energy markets and to mitigate dual regulation.

^{1a} Regulation (EU) No 1227/2011/EU of the European Parliament and of the Council on wholesale energy market integrity and transparency (OJ L 326, 8.12.2011, p. 1).

Or. en

Justification

ACER, as the European Energy Regulator, should be consulted by ESMA where this Regulation impacts upon European energy markets.

Amendment 280

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 38

Text proposed by the Commission

(38) For the purpose of detecting breaches of this Regulation, it is necessary for competent authorities to be able to access, in accordance with national law, the premises of natural and legal persons in order to seize documents. The access to such premises is necessary when there is reasonable suspicion that documents and other data related to the subject matter of an inspection or investigation exist and may be relevant to prove a breach of this Regulation. Additionally the access to such premises is necessary where: the person to whom a demand for information has already been made fails to comply with it; or where there are reasonable grounds for believing that if a demand were to be made, it would not be complied with, or that the documents or information to which

Amendment

(38) For the purpose of detecting breaches of this Regulation, it is necessary for competent authorities **and ESMA** to be able to access, in accordance with national law, the premises of natural and legal persons in order to seize documents. The access to such premises is necessary when there is reasonable suspicion that documents and other data related to the subject matter of an inspection or investigation exist and may be relevant to prove a breach of this Regulation. Additionally the access to such premises is necessary where: the person to whom a demand for information has already been made fails to comply with it; or where there are reasonable grounds for believing that if a demand were to be made, it would not be complied with, or that the

the information requirement relates, would be removed, tampered with or destroyed. If prior authorisation is needed from the judicial authority of the Member State concerned, in accordance with national law, such power for access into premises shall be used after having obtained that prior judicial authorisation.

documents or information to which the information requirement relates, would be removed, tampered with or destroyed. If prior authorisation is needed from the judicial authority of the Member State concerned, in accordance with national law, such power for access into premises shall be used after having obtained that prior judicial authorisation.

Or. en

Amendment 281

Marisa Matias, Matt Carthy, Miguel Viegas

Proposal for a regulation

Recital 41

Text proposed by the Commission

(41) This Regulation respects the fundamental rights and observes the principles recognised in the Treaty on the Functioning of the European Union (TFEU) and in the Charter of Fundamental Rights of the European Union, in particular the right to respect for private and family, the protection of personal data, the right to freedom of expression and information, the freedom to conduct a business, the right to property, the right to consumer protection, the right to an effective remedy, the right of defence. Therefore, this Regulation should be interpreted and applied in accordance with those rights and principles.

Amendment

(41) This Regulation respects the fundamental rights and observes the principles recognised in the Treaty on the Functioning of the European Union (TFEU) and in the Charter of Fundamental Rights of the European Union, in particular the right to respect for private and family, the protection of personal data, the right to freedom of expression and information, the freedom to conduct a business, the right to property, the right to consumer protection, the right to an effective remedy, the right of defence. ***Accordingly***, this Regulation should be interpreted and applied in accordance with those rights and principles. ***Notably, when this Regulation refers to rules governing the freedom of expression in other media and the rules or codes governing the journalist professions, consideration should be given to these freedoms as they are guaranteed in the Union as in the Member States and as recognised under Article 11 of the Charter of Fundamental Rights and other relevant provisions.***

Justification

Exception of the press in line with the exception in the market abuse regulation.

Amendment 282
Gunnar Hökmark

Proposal for a regulation
Recital 41

Text proposed by the Commission

(41) This Regulation respects the fundamental rights and observes the principles recognised in the Treaty on the Functioning of the European Union (TFEU) and in the Charter of Fundamental Rights of the European Union, in particular the right to respect for private and family, the protection of personal data, the right to freedom of expression and information, the freedom to conduct a business, the right to property, the right to consumer protection, the right to an effective remedy, the right of defence. Therefore, this Regulation should be interpreted and applied in accordance with those rights and principles.

Amendment

(41) This Regulation respects the fundamental rights and observes the principles recognised in the Treaty on the Functioning of the European Union (TFEU) and in the Charter of Fundamental Rights of the European Union, in particular the right to respect for private and family, the protection of personal data, the right to freedom of expression and information, the freedom to conduct a business, the right to property, the right to consumer protection, the right to an effective remedy, the right of defence. Therefore, this Regulation should be interpreted and applied in accordance with those rights and principles. ***In this regard, in order to uphold the rules governing the freedom of the press and the freedom of expression in media, as recognised under Article 11 of the Charter of Fundamental Rights and other relevant provisions, this Regulation should not apply to citizens using their freedom of expression, the press, other media and journalists or in any way prevent Member States from applying their constitutional rules relating to freedom of the press or freedom of expression.***

Amendment 283
Fulvio Martusciello

Proposal for a regulation
Recital 44

Text proposed by the Commission

(44) Taking into consideration the principles set out in the Commission's communication on reinforcing sanctioning regimes in the financial services sector and legal acts of the Union adopted as a follow-up to that Communication, Member States should **lay down** rules on penalties and administrative measures applicable to infringements of the provisions of this Regulation and should ensure that they are implemented. Those penalties and administrative measures should be effective, proportionate and dissuasive.

Amendment

(44) Taking into consideration the principles set out in the Commission's communication on reinforcing sanctioning regimes in the financial services sector and legal acts of the Union adopted as a follow-up to that Communication, Member States should **laydown** rules on penalties and administrative measures applicable to ***persistent or non-remediated intentional*** infringements of the provisions of this Regulation and should ensure that they are implemented. Those penalties and administrative measures should be effective, proportionate and dissuasive.

Or. en

Amendment 284
Fulvio Martusciello

Proposal for a regulation
Recital 45

Text proposed by the Commission

(45) Therefore, a set of administrative measures, sanctions and fines should be provided for to ensure a common approach in Member States and to enhance their deterrent effect. Sanctions applied in specific cases should be determined taking into account where appropriate factors such as the repayment of any identified financial benefit, the gravity and duration of the ***breach***, any aggravating or mitigating factors, the need for fines to have a

Amendment

(45) Therefore, a set of administrative measures, sanctions and fines should be provided for to ensure a common approach in Member States and to enhance their deterrent effect. Sanctions applied in specific cases should be determined taking into account where appropriate factors such as ***the presence or absence of intent***, the repayment of any identified financial benefit, the gravity and duration of the ***infringement***, any aggravating or

deterrent effect and, where appropriate, include a reduction in return for cooperation with the competent authority. ***In particular, the actual amount of administrative fines to be imposed in a specific case may reach the maximum level provided for in this Regulation, or the higher level provided for in national law, for very serious breaches, while fines significantly lower than the maximum level may be applied to minor breaches or in case of settlement. The possibility to impose a temporary ban to exercise management functions within benchmark administrators or contributors should be available to the competent authority. This Regulation should not limit Member States in their ability to provide for higher levels of administrative sanctions.***

mitigating factors, the need for fines to have a deterrent effect and, where appropriate, include a reduction in return for cooperation with the competent authority.

Or. en

Amendment 285

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 47

Text proposed by the Commission

(47) Critical benchmarks may involve contributors, administrators and users in more than one Member State. Thus, the cessation of the provision of such a benchmark or any events that may significantly undermine its integrity may have an impact in more than one Member State meaning that the supervision of such a benchmark by the competent authority of the Member State in which it is located alone will not be efficient and effective in terms of addressing the risks that the critical benchmark poses. To ensure the effective exchange of supervisory information among competent authorities,

Amendment

(47) Critical benchmarks may involve contributors, administrators and users in more than one Member State. Thus, the cessation of the provision of such a benchmark or any events that may significantly undermine its integrity may have an impact in more than one Member State meaning that the supervision of such a benchmark by the competent authority of the Member State in which it is located alone will not be efficient and effective in terms of addressing the risks that the critical benchmark poses. To ensure the effective exchange of supervisory information among competent authorities,

coordination of their activities and supervisory measures, colleges of competent authorities should be formed. The activities of the colleges should contribute to the harmonised application of rules under this Regulation and to the convergence of supervisory practices. ESMA's legally binding mediation is a key element of the achievement of coordination, supervisory consistency and convergence of supervisory practices. Benchmarks may reference financial instruments and financial contracts that have a long duration. In certain cases such benchmarks may no longer be permitted to be provided once this Regulation comes into effect because they have characteristics that cannot be adjusted to conform to the requirements of this Regulation. However, prohibiting the continued provision of such a benchmark may result in the termination or frustration of the financial instruments or financial contracts and so harm investors. It is therefore necessary to make provision to allow for the continued provision of such benchmarks for a transitional period.

coordination of their activities and supervisory measures, colleges of competent authorities *with ESMA in the lead* should be formed. The activities of the colleges should contribute to the harmonised application of rules under this Regulation and to the convergence of supervisory practices. ESMA's legally binding mediation is a key element of the achievement of coordination, supervisory consistency and convergence of supervisory practices. Benchmarks may reference financial instruments and financial contracts that have a long duration. In certain cases such benchmarks may no longer be permitted to be provided once this Regulation comes into effect because they have characteristics that cannot be adjusted to conform to the requirements of this Regulation. However, prohibiting the continued provision of such a benchmark may result in the termination or frustration of the financial instruments or financial contracts and so harm investors. It is therefore necessary to make provision to allow for the continued provision of such benchmarks for a transitional period.

Or. en

Amendment 286
Luděk Niedermayer

Proposal for a regulation
Recital 48

Text proposed by the Commission

(48) In order to ensure uniform conditions for the implementation of this Regulation and further specify technical elements of the proposal, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the specification of technical elements

Amendment

(48) In order to ensure uniform conditions for the implementation of this Regulation and further specify technical elements of the proposal, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the specification of technical elements

of definitions, governance and control requirements applied to administrators and to supervised contributors, requirements concerning input data and methodology, the code of conduct, specific requirements for different types of benchmarks and sectors and the information to be provided in applications for authorisation of administrators.

of definitions, governance and control requirements applied to administrators and to supervised contributors, requirements concerning input data and methodology, the code of conduct, specific requirements for different types of benchmarks and sectors and the information to be provided in applications for authorisation of administrators. ***When proposing these acts, the prevailing international standards for administration, contribution and the use of benchmarks should be taken into account, especially results of the work of IOSCO. Proportionality, especially in case of non-critical benchmarks and commodity benchmarks must be respected.***

Or. en

Amendment 287
Luděk Niedermayer

Proposal for a regulation
Recital 51 a (new)

Text proposed by the Commission

Amendment

(51a) This Regulation includes requirements on administrators of non-financial benchmarks. In the implementation of this Regulation, ESMA and the Commission should therefore cooperate closely with energy supervisors and other relevant supervisory authorities, both at the national and the EU level.

Or. en

Amendment 288
Kay Swinburne

Proposal for a regulation
Recital 51 a (new)

Text proposed by the Commission

Amendment

(51a) Physical commodities markets present unique characteristics which must be taken account of in order to avoid undermining the integrity of commodity benchmarks and negatively impacting commodity market transparency, European security of supply, competitiveness and the interests of consumers. Accordingly, certain articles in this Regulation are not appropriate to apply to commodity benchmarks. Annex III of this Regulation, which closely reflects principles developed for commodity benchmarks by IOSCO in collaboration with the International Energy Agency and the International Energy Forum among others, is specifically designed to apply to all commodity benchmarks which fall within the scope of this Regulation and sets out which of the requirements in the Regulation will not apply to commodity benchmarks.

Or. en

Justification

Important amendment content suggestion by the Agency for the Cooperation of Energy Regulators (ACER)

**Amendment 289
Kay Swinburne**

**Proposal for a regulation
Recital 51 b (new)**

Text proposed by the Commission

Amendment

(51b) In the cases where this Regulation captures or potentially captures supervised entities and markets covered by

Regulation (EU) No 1227/2011 of the European Parliament and the Council^{1a} (REMIT), the Agency for the Cooperation of Energy Regulators should be fully consulted by ESMA in order to draw on ACER's expertise in energy markets and to mitigate any dual regulation.

^{1a} Regulation (EU) No 1227/2011/EU of the European Parliament and of the Council on wholesale energy market integrity and transparency (OJ L 326, 8.12.2011, p. 1).

Or. en

Justification

Important amendment content suggestion by the Agency for the Cooperation of Energy Regulators (ACER)

Amendment 290
Fulvio Martusciello

Proposal for a regulation
Article 1 – paragraph 1

Text proposed by the Commission

This Regulation introduces a common framework to ensure the **accuracy** and integrity of indices used as benchmarks in financial instruments and financial contracts in the Union. The Regulation thereby contributes to the proper functioning of the internal market while achieving a high level of consumer and investor protection.

Amendment

This Regulation introduces a common framework to ensure the **quality** and integrity of indices used as benchmarks in financial instruments and financial contracts in the Union. The Regulation thereby contributes to the proper functioning of the internal market while achieving a high level of consumer and investor protection.

Or. en

Amendment 291
Kay Swinburne

Proposal for a regulation
Article 1 – paragraph 1

Text proposed by the Commission

This Regulation introduces a common framework to ensure the accuracy and integrity of indices used as benchmarks in financial instruments and financial contracts in the Union. The Regulation thereby contributes to the proper functioning of the internal market while achieving a high level of consumer and investor protection.

Amendment

This Regulation introduces a common framework to ensure the accuracy and integrity of **financial** indices used as benchmarks in financial instruments and financial contracts in the Union. The Regulation thereby contributes to the proper functioning of the internal market while achieving a high level of consumer and investor protection.

Or. en

Justification

This regulation should only apply to financial benchmarks and indices, while the Commission should come forwards with a separate proposal with covers commodity benchmarks. The separation introduced by IOSCO between financial benchmarks and commodity benchmarks into two areas should be followed by the EU

Amendment 292
Marco Valli, Marco Zanni

Proposal for a regulation
Article 1 – paragraph 1

Text proposed by the Commission

This Regulation introduces a common framework to ensure the accuracy and integrity of indices used as benchmarks in financial instruments and financial contracts in the Union. The Regulation thereby contributes to the proper functioning of the internal market while achieving a high level of consumer and investor protection.

Amendment

This Regulation introduces a common framework to enhance the accuracy and integrity of indices used as benchmarks in **both** financial instruments and financial contracts in the Union **and ensure that there is a clear separation between the two.**

The Regulation thereby contributes to the

proper functioning of the internal market while achieving a high level of consumer and investor protection.

Or. it

Amendment 293
Steven Woolfe

Proposal for a regulation
Article 2 – paragraph 1

Text proposed by the Commission

Amendment

1. This Regulation shall apply to the provision of benchmarks, the contribution of input data to a benchmark and the use of a benchmark within the Union.

deleted

Or. en

Amendment 294
Kay Swinburne

Proposal for a regulation
Article 2 – paragraph 1

Text proposed by the Commission

Amendment

1. This Regulation shall apply to the provision of benchmarks, the contribution of input data to a benchmark and the use of a benchmark within the Union.

1. This Regulation shall apply to the provision of ***financial*** benchmarks, the contribution of input data to a ***financial*** benchmark and the use of a ***financial*** benchmark within the Union.

Or. en

Amendment 295
Philippe Lamberts
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 2 – paragraph 2

Text proposed by the Commission

Amendment

2. This Regulation shall not apply to: *deleted*

(a) Members of the European System of Central Banks (ESCB).

(b) Central banks of third countries whose legal framework is recognised by the Commission as providing for principles, standards and procedures equivalent to the requirements on the accuracy, integrity and independence of the provision of benchmarks provided for by this Regulation.

Or. en

Amendment 296
Steven Woolfe

Proposal for a regulation
Article 2 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) Members of the European System of Central Banks (ESCB). *deleted*

Or. en

Amendment 297
Kay Swinburne

Proposal for a regulation
Article 2 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) Members of the European System of Central Banks (ESCB).

(a) Central Banks when they are exercising their monetary policy functions;

Justification

Any exemption for public bodies including central banks should be severely restricted. If the regulation is not suitable for public bodies it suggests that it will impose undue burden on private sector entities as well.

Amendment 298
Jonás Fernández

Proposal for a regulation
Article 2 – paragraph 2 – point a

Text proposed by the Commission

(a) Members of the European System of Central Banks (ESCB).

Amendment

(a) Members of the European System of Central Banks (ESCB) **and EU public authorities which provide or have control over the provision of benchmarks provided for public policy purposes, including measures of employment, economic activity and inflation.**

Or. es

Amendment 299
Kay Swinburne

Proposal for a regulation
Article 2 – paragraph 2 – point a a (new)

Text proposed by the Commission

Amendment

(aa) public authorities only when they provide or are controlling the provision of benchmarks or indices provided for public policy purposes, including measures of employment, economic activity and inflation;

Or. en

Justification

This exemption should only apply to public authorities when they are collecting data for the provision of benchmarks or indices for public policy purposes, not to all public authorities in any circumstance

Amendment 300
Kay Swinburne

Proposal for a regulation
Article 2 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) Central banks of third countries whose legal framework is recognised by the Commission as providing for principles, standards and procedures equivalent to the requirements on the accuracy, integrity and independence of the provision of benchmarks provided for by this Regulation. *deleted*

Or. en

Amendment 301
Steven Woolfe

Proposal for a regulation
Article 2 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) Central banks of third countries whose legal framework is recognised by the Commission as providing for principles, standards and procedures equivalent to the requirements on the accuracy, integrity and independence of the provision of benchmarks provided for by this Regulation. *deleted*

Or. en

Amendment 302

Marco Valli, Marco Zanni

Proposal for a regulation

Article 2 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) Central banks of third countries whose legal framework is recognised by the Commission as providing for principles, standards and procedures equivalent to the requirements on the accuracy, integrity and independence of the provision of benchmarks provided for by this Regulation.

deleted

Or. it

Amendment 303

Jonás Fernández

Proposal for a regulation

Article 2 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) Central banks of third countries whose legal framework is recognised by the Commission as providing for principles, standards and procedures equivalent to the requirements on the accuracy, integrity and independence of the provision of benchmarks provided for by this Regulation.

(b) Central banks ***and public authorities*** of third countries whose legal framework is recognised by the Commission as providing for principles, standards and procedures equivalent to the requirements on the accuracy, integrity and independence of the provision of benchmarks provided for by this Regulation.

Or. es

Amendment 304

Cora van Nieuwenhuizen

Proposal for a regulation
Article 2 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

***(ba) single price or single value reference;
prices***

Or. en

Justification

Creating legal certainty in line with recitals and IOSCO principles

Amendment 305
Marisa Matias, Matt Carthy, Miguel Viegas

Proposal for a regulation
Article 2 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

***(ba) commodity benchmarks which
comply with the IOSCO Principles of 5
October 2012 for Oil Price Reporting
Agencies or the IOSCO Principles of 17
July 2013 for Financial Benchmarks,
until such time as ESMA, on the basis of
the review of the IOSCO Principles for
Oil Price Reporting Agencies, and of
Annex III of this Regulation, has
determined whether and how commodity
benchmarks can be encompassed within
the scope of this Regulation or whether
they should be governed by their own
rules.***

Or. en

Amendment 306
Kay Swinburne

Proposal for a regulation
Article 2 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) credit unions within the meaning of Directive 2013/36/EU of the European Parliament and the Council^{1a} (CRD IV).

^{1a} Directive 2013/36/EU of the European Parliament and the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

Or. en

Amendment 307
Gunnar Hökmark

Proposal for a regulation
Article 2 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) citizens using their freedom of expression, the press, other media and journalists in the conduct of their journalistic activities, including the provisions of information relating to or used as indices or benchmarks

Or. en

Amendment 308
Steven Woolfe

Proposal for a regulation
Article 2 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) benchmarks in respect of which the administrator has no discretionary influence over the calculation or composition of the benchmark;

Or. en

Amendment 309
Steven Woolfe

Proposal for a regulation
Article 2 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) commodity benchmarks.

Or. en

Amendment 310
Markus Ferber

Proposal for a regulation
Article 2 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) public authorities providing benchmarks for public policy purposes such as measures for employment, inflation or any other economic activity;

Or. en

Amendment 311
Pervenche Berès

Proposal for a regulation
Article 2 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. This Regulation shall not apply to administrators in respect of their noncritical benchmarks with respect to Articles 8(1), 8(2), 11(2a), 11(2b), 17(1).

Or. en

Amendment 312
Cora van Nieuwenhuizen

Proposal for a regulation
Article 2 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. This Regulation shall not apply to administrators of in respect of their noncritical benchmarks with respect to Articles 5(1a), 5(2a), 5(3b), 5(3c), 5(3d), 5a, 5b, 5d, 7, 7a, 8(1), 8(2), 9(1), 9(2), 11(2a), 11(2b), 17(1).

Or. en

Justification

Technical correction of draft report

Amendment 313
Cora van Nieuwenhuizen

Proposal for a regulation
Article 2 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Where a noncritical benchmark is a commodity benchmark subject to the requirements set out in Annex Ia in accordance with Article 14a, points 5– 16 of Annex Ia of this Regulation shall not

apply.

Or. en

Justification

Technical correction of draft report

Amendment 314

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 2 – paragraph 3

Text proposed by the Commission

Amendment

3. The Commission shall establish a list of central banks of third countries referred to in paragraph 2(b). *deleted*

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 38(2).

Or. en

Amendment 315

Kay Swinburne

Proposal for a regulation

Article 2 – paragraph 3

Text proposed by the Commission

Amendment

3. The Commission shall establish a list of central banks of third countries referred to in paragraph 2(b). *deleted*

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 38(2).

Or. en

Amendment 316
Steven Woolfe

Proposal for a regulation
Article 2 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Amendment

The Commission shall establish a list of central banks of third countries referred to in paragraph 2(b).

deleted

Or. en

Amendment 317
Marco Valli, Marco Zanni

Proposal for a regulation
Article 2 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Amendment

The Commission shall establish a list of central banks of third countries referred to in paragraph 2(b).

deleted

Or. it

Amendment 318
Jonás Fernández

Proposal for a regulation
Article 2 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Amendment

The Commission shall establish a list of central banks of third countries referred to in paragraph 2(b).

The Commission shall establish a list of central banks *and public authorities* of third countries referred to in paragraph 2(b).

Or. es

Amendment 319

Marco Valli, Marco Zanni

Proposal for a regulation

Article 2 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 38(2). *deleted*

Or. it

Amendment 320

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 3 – paragraph 1 – point 1 – introductory part

Text proposed by the Commission

Amendment

(1) 'index' means any figure:

(1) 'index' means any *rate or* figure:

Or. en

Amendment 321

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 3 – paragraph 1 – point 1 – point a

Text proposed by the Commission

Amendment

(a) that is published or made available to the public;

(a) that is published or made available to the public, *or made available to a benchmark user*;

Or. en

Amendment 322

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 3 – paragraph 1 – point 1 – point c

Text proposed by the Commission

(c) where this determination is made on the basis of the value of one or more underlying assets, or prices, including estimated prices, or other values.

Amendment

(c) where this determination is made on the basis of the value of one or more underlying assets, or prices, including estimated prices, ***actual or estimated interest rates***, or other values ***or surveys***.

Or. en

Amendment 323

Alain Cadec

Proposal for a regulation

Article 3 – paragraph 1 – point 1 – point c

Text proposed by the Commission

(c) where this determination is made on the basis of the value of one or more underlying assets, or prices, including estimated prices, or other values.

Amendment

(c) where this determination is made on the basis of the value of one or more underlying assets, or prices, including estimated prices, or other values, ***with the exception of the prices of one or more financial instruments which have been determined under the rules of a trading venue pursuant to Directive 2014/65/EU of the European Parliament and the Council^{1a} (MIFID) or a CCP pursuant to Regulation (EU) No 648/2012 of the European Parliament and of the Council^{1b} (EMIR)***.

^{1a} ***Directive 2014/65/EU of the European Parliament and the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and***

Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

^{1b} Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

Or. en

Amendment 324
Kay Swinburne

Proposal for a regulation
Article 3 – paragraph 1 – point 2

Text proposed by the Commission

(2) ‘benchmark’ means any index by reference to which the amount payable under a financial instrument or a financial contract, or the value of a financial instrument is determined *or an index that is used to measure the performance of an investment fund;*

Amendment

(2) ‘benchmark’ means any index by reference to which the amount payable under a financial instrument or a financial contract, or the value of a financial instrument is determined

Or. en

Justification

Support rapporteur's amendment 42

Amendment 325
Steven Woolfe

Proposal for a regulation
Article 3 – paragraph 1 – point 2

Text proposed by the Commission

(2) ‘benchmark’ means any index by reference to which the amount payable under a financial instrument or a financial

Amendment

(2) ‘benchmark’ means any index by reference to which the amount payable under a financial instrument or a financial

contract, or the value of a financial instrument is determined *or an index that is used to measure the performance of an investment fund*;

contract, or the value of a financial instrument is determined;

Or. en

Amendment 326
Kay Swinburne

Proposal for a regulation
Article 3 – paragraph 1 – point 2 a (new)

Text proposed by the Commission

Amendment

(2a) 'family of benchmarks' means the group of benchmarks provided by the same administrator determined from input data of a similar nature which provides specific measures of the same or similar market or economic reality.

Or. en

Justification

To be read alongside rapporteur's amendment 44. Expanded slightly so as to add more flexibility

Amendment 327
Thomas Mann

Proposal for a regulation
Article 3 – paragraph 1 – point 4

Text proposed by the Commission

Amendment

(4) 'administrator' means the natural or legal person that has control over the provision of a benchmark;

(4) 'administrator' means the natural or legal person that has control over the provision of a benchmark *and provides it to the public with regard to the financial product*;

Amendment 328
Steven Woolfe

Proposal for a regulation
Article 3 – paragraph 1 – point 5

Text proposed by the Commission

Amendment

(5) ‘user of a benchmark’ means any person who issues or owns a financial instrument or is party to a financial contract which references a benchmark;

deleted

Amendment 329
Kay Swinburne

Proposal for a regulation
Article 3 – paragraph 1 – point 5

Text proposed by the Commission

Amendment

(5) ‘user of a benchmark’ means any person who issues or owns a financial instrument or is party to a financial contract which references a benchmark;

(5) ‘use of a benchmark’ means:

a) the issuance of a financial instrument which references an index or combination of indices while holding positions in that instrument;

b) the determination of the amount payable under a financial instrument or a financial contract by referencing an index or a combination of indices;

c) being party to a financial contract which references an index or a combination of indices;

d) the determination of the performance of an investment fund through an index or combination of indices with the

purpose of tracking the return of such index or combination of indices or of defining the asset allocation of a portfolio or of computing the performance fees.

Or. en

Justification

To be read alongside rapporteur's amendment 45. Use of a benchmark should not be solely based on issuance but on the holding of positions while also being the issuer of that instrument.

Amendment 330
Burkhard Balz

Proposal for a regulation
Article 3 – paragraph 1 – point 5

Text proposed by the Commission

(5) ‘*user* of a benchmark’ means *any person who issues or owns* a financial instrument *or is party to* a financial *contract* which references a benchmark;

Amendment

(5) ‘*use* of a benchmark’ means:

(a) issuing on its own account a financial instrument, *which references a benchmark; or*

(b) holding an active position in a financial *instrument* which references a benchmark.

Or. en

Amendment 331
Fulvio Martusciello

Proposal for a regulation
Article 3 – paragraph 1 – point 7

Text proposed by the Commission

(7) ‘contributor’ means a natural or legal

Amendment

(7) ‘contributor’ means a natural or legal

person contributing input data;

person contributing input data *that is not regulated data or transaction data.*

Or. en

Amendment 332
Fulvio Martusciello

Proposal for a regulation
Article 3 – paragraph 1 – point 10

Text proposed by the Commission

(10) ‘input data’ means the *data in respect of the value* of one or more underlying assets, *or prices, including estimated prices, or other values*, used by the administrator to determine the benchmark;

Amendment

(10) ‘input data’ means the *prices or values, including estimated prices, quotes or other values*, of one or more underlying assets, used by the administrator to determine the benchmark;

Or. en

Amendment 333
Cora van Nieuwenhuizen

Proposal for a regulation
Article 3 – paragraph 1 – point 11

Text proposed by the Commission

(11) ‘regulated data’ means input data *that is* contributed *directly from* a trading venue as defined in point (25) of paragraph 1 of Article 2 of [MIFIR] *or* approved publication arrangement as defined in point (18) of paragraph 1 of Article 2 of [MIFIR] *or* an approved reporting *arrangement* as defined in point (20) of paragraph 1 of Article 2 of [MIFIR] in accordance with mandatory *post trade data* requirements *or* an electricity exchange as referred to in point (j) of paragraph 1 of Article 37 of Directive 2009/72/EC¹⁹ *or* a natural gas exchange as referred to in point (j) of paragraph 1 of Article 41 of Directive

Amendment

(11) ‘regulated data’ means:

2009/73/EC²⁰ *or* an auction platform referred to in Article 26 or in Article 30 of Regulation (EU) No 1031/2010 of the European Parliament and of the Council;

(i) input data contributed entirely from:

(a) a trading venue as defined in point (24) of paragraph 1 of Article 4 of Directive 2014/65/EU but only with reference to data concerning transactions of financial instruments; or

(b) an approved publication arrangement as defined in point (52) of paragraph 1 of Article 4 of Directive 2014/65/EU or a consolidated tape provider as defined in point (53) of paragraph 1 of Article 4 of Directive 2014/65/EU, in accordance with mandatory post-trade transparency requirements, but only with reference to data of transactions concerning financial instruments that are traded on a trading venue; or

(c) an approved reporting mechanism as defined in point (54) of paragraph 1 of Article 4 of Directive 2014/65/EU, but only with reference to data of transactions concerning financial instruments that are traded on a trading venue and that must be disclosed in accordance with mandatory post-trade transparency requirements; or

(d) an electricity exchange as referred to in point (j) of paragraph 1 of Article 37 of Directive 2009/72/EC¹⁹; or

(e) a natural gas exchange as referred to in point (j) of paragraph 1 of Article 41 of Directive 2009/73/EC²⁰ or

(f) an auction platform referred to in Article 26 or in Article 30 of Regulation (EU) No 1031/2010 of the European Parliament and of the Council; or

(ii) net asset values of the units of undertakings for collective investment in transferable securities (UCITS) as defined in Article 1(2) of Directive 2009/65/EU

¹⁹ OJ L 211, 14.8.2009, p. 55.

²⁰ OJ L 9, 14.8.2009, p. 112.

¹⁹ OJ L 211, 14.8.2009, p. 55.

²⁰ OJ L 9, 14.8.2009, p. 112.

Or. en

Amendment 334
Fulvio Martusciello

Proposal for a regulation
Article 3 – paragraph 1 – point 11

Text proposed by the Commission

(11) ‘regulated data’ means input data **that is** contributed **directly** from a trading venue as defined in point (25) of paragraph 1 of Article 2 of **[MIFIR]** or approved publication arrangement as defined in point (18) of paragraph 1 of Article 2 of **[MIFIR]** or **an approved reporting arrangement** as defined in point (20) of paragraph 1 of Article 2 of **[MIFIR]** in accordance with mandatory **post trade data** requirements or an electricity exchange as referred to in point (j) of paragraph 1 of Article 37 of Directive 2009/72/EC¹⁹ or a natural gas exchange as referred to in point (j) of paragraph 1 of Article 41 of Directive 2009/73/EC²⁰ or an auction platform referred to in Article 26 or in Article 30 of Regulation (EU) No 1031/2010 of the European Parliament and of the Council;

Amendment

(11) ‘regulated data’ means **the following**:

i) input data contributed **entirely** from:

(a) a trading venue as defined in point (24) of paragraph 1 of Article 4 of **Directive 2014/65/EU**; or

(b) **an** approved publication arrangement as defined in point (52) of paragraph 1 of Article 4 of **Directive 2014/65/EU** or **a consolidated tape provider** as defined in point (53) of paragraph 1 of Article 4 of **Directive 2014/65/EU**, in accordance with mandatory **post-trade transparency**

requirements, *but only with reference to data of transactions concerning financial instruments that are traded on a trading venue; or*

(c) an approved reporting mechanism as defined in point (54) of paragraph 1 of Article 4 of Directive 2014/65/EU, but only with reference to data of transactions concerning financial instruments that are traded on a trading venue and that must be disclosed in accordance with mandatory post-trade transparency requirements; or

(d) an electricity exchange as referred to in point (j) of paragraph 1 of Article 37 of Directive 2009/72/EC¹⁹; or

(e) a natural gas exchange as referred to in point (j) of paragraph 1 of Article 41 of Directive 2009/73/EC²⁰ or

(f) an auction platform referred to in Article 26 or in Article 30 of Regulation (EU) No 1031/2010 of the European Parliament and of the Council; or

(g) data from Union or third country governments or other competent authorities; or

(h) a third-country trading venue, platform, exchange, publication arrangement or reporting mechanism determined to be equivalent by the Commission to those specified in paragraphs (a) to (g) above or any other entity such as transactional data aggregators and transactional data collectors whose contribution of input data is already subject to appropriate supervision;

ii) net asset values of the units of undertakings for collective investment in transferable securities (UCITS) as defined in Article 1(2) of Directive 2009/65/EU;

¹⁹ OJ L 211, 14.8.2009, p. 55.

¹⁹ OJ L 211, 14.8.2009, p. 55.

Amendment 335
Kay Swinburne

Proposal for a regulation
Article 3 – paragraph 1 – point 11

Text proposed by the Commission

(11) ‘regulated data’ means input data **that is** contributed **directly from** a trading venue as defined in point (25) of paragraph 1 of Article 2 of [MIFIR] or approved publication arrangement as defined in point (18) of paragraph 1 of Article 2 of [MIFIR] or an approved reporting **arrangement** as defined in point (20) of paragraph 1 of Article 2 of [MIFIR] in accordance with mandatory post trade **data** requirements or an electricity exchange as referred to in point (j) of paragraph 1 of Article 37 of Directive 2009/72/EC¹⁹ or a natural gas exchange as referred to in point (j) of paragraph 1 of Article 41 of Directive 2009/73/EC²⁰ or an auction platform referred to in Article 26 or in Article 30 of Regulation (EU) No 1031/2010 of the European Parliament and of the Council;

Amendment

(11) ‘regulated data’ means **the following:**

input data contributed **entirely from:**

a) a trading venue as defined in point (24) of paragraph 1 of Article 4 of Directive 2014/65/EU; or

b) an approved publication arrangement as defined in point (52) of paragraph 1 of Article 4 of Directive 2014/65/EU or a consolidated tape provider as defined in point (53) of paragraph 1 of Article 4 of Directive 2014/65/EU, in accordance with mandatory post-trade transparency requirements, but only with reference to data of transactions concerning financial instruments that are traded on a trading

venue; or

*c) an approved reporting **mechanism** as defined in point (54) of paragraph 1 of Article 4 of **Directive 2014/65/EU**, but only with reference to data of transactions concerning financial instruments that are traded on a trading venue and that must be disclosed in accordance with mandatory post trade **transparency** requirements; or*

d) a third country trading venue, publication arrangement or reporting mechanism equivalent to those specified in this article including transactional data aggregators and transactional data collectors of statutorily required regulatory data;

e) an electricity exchange as referred to in point (j) of paragraph 1 of Article 37 of Directive 2009/72/EC¹⁹; or

f) a natural gas exchange as referred to in point (j) of paragraph 1 of Article 41 of Directive 2009/73/EC²⁰ or

g) an auction platform referred to in Article 26 or in Article 30 of Regulation (EU) No 1031/2010 of the European Parliament and of the Council;

h) data as defined in Article 8(1) of Regulation (EU) No 1227/2011 and further elaborated by the European Commission in Implementing Regulation (EU) No 1348/2014;

i) net asset values of the units of undertakings for collective investments in transferable securities (UCITs) as defined in Article 1(2) of Directive 2009/65/EU;

¹⁹ OJ L 211, 14.8.2009, p. 55.

²⁰ OJ L 9, 14.8.2009, p. 112.

¹⁹ OJ L 211, 14.8.2009, p. 55.

²⁰ OJ L 9, 14.8.2009, p. 112.

Or. en

Justification

Important amendment suggestion by the Agency for the Cooperation of Energy Regulators. Addition to make clear that Independent Index providers who only use regulated data would also be covered in this provision and that it should include third country providers when they are using data that is required by law in their own country

Amendment 336 **Luděk Niedermayer**

Proposal for a regulation **Article 3 – paragraph 1 – point 11**

Text proposed by the Commission

(11) ‘regulated data’ means input data ***that is contributed*** directly from a trading venue as defined in point (25) of paragraph 1 of Article 2 of [MIFIR] or approved publication arrangement as defined in point (18) of paragraph 1 of Article 2 of [MIFIR] or an approved reporting ***arrangement*** as defined in point (20) of paragraph 1 of Article 2 of [MIFIR] in accordance with mandatory ***post trade data*** requirements or an electricity exchange as referred to in point (j) of paragraph 1 of Article 37 of Directive 2009/72/EC¹⁹ or a natural gas exchange as referred to in point (j) of paragraph 1 of Article 41 of Directive 2009/73/EC²⁰ or an auction platform referred to in Article 26 or in Article 30 of Regulation (EU) No 1031/2010 of the European Parliament and of the Council;

Amendment

(11) ‘regulated data’ means ***the following***:

(i) input data ***contributed entirely and*** directly from:

(a) a trading venue as defined in point (24) of paragraph 1 of Article 4 of Directive 2014/65/EU; or

(b) an approved publication arrangement as defined in point (52) of paragraph 1 of Article 4 of Directive 2014/65/EU or a consolidated tape provider as defined in point (53) of paragraph 1 of Article 4 of Directive 2014/65/EU, in accordance with

mandatory post-trade transparency requirements, but only with reference to data of transactions concerning financial instruments that are traded on a trading venue; or

(c) an approved reporting mechanism as defined in point (54) of paragraph 1 of Article 4 of Directive 2014/65/EU, but only with reference to data of transactions concerning financial instruments that are traded on a trading venue and that must be disclosed in accordance with mandatory post-trade transparency requirements; or

(d) an electricity exchange as referred to in point (j) of paragraph 1 of Article 37 of Directive 2009/72/EC¹⁹; or

(e) a natural gas exchange as referred to in point (j) of paragraph 1 of Article 41 of Directive 2009/73/EC²⁰ or

(f) an auction platform referred to in Article 26 or in Article 30 of Regulation (EU) No 1031/2010 of the European Parliament and of the Council;

(g) data provided under paragraph 1 of Article 8 of Regulation (EU) No 1227/2011 and elaborated in Implementing Regulation (EU) No 1348/2014

(ii) net asset values of the units of undertakings for collective investment in transferable securities (UCITS) as defined in Article 1(2) of Directive 2009/65/EU;

¹⁹ OJ L 211, 14.8.2009, p. 55.

²⁰ OJ L 9, 14.8.2009, p. 112.

¹⁹ OJ L 211, 14.8.2009, p. 55.

²⁰ OJ L 9, 14.8.2009, p. 112.

Or. en

Amendment 337
Steven Woolfe

Proposal for a regulation
Article 3 – paragraph 1 – point 11

Text proposed by the Commission

(11) ‘regulated data’ means input data that is contributed directly from a trading venue as defined in point (25) of paragraph 1 of Article 2 of [MIFIR] or approved publication arrangement as defined in point (18) of paragraph 1 of Article 2 of [MIFIR] or an approved reporting arrangement as defined in point (20) of paragraph 1 of Article 2 of [MIFIR] in accordance with mandatory post trade data requirements or ***an electricity exchange as referred to in point (j) of paragraph 1 of Article 37 of Directive 2009/72/EC¹⁹ or a natural gas exchange as referred to in point (j) of paragraph 1 of Article 41 of Directive 2009/73/EC²⁰*** or an auction platform referred to in Article 26 or in Article 30 of Regulation (EU) No 1031/2010 of the European Parliament and of the Council;

¹⁹ OJ L 211, 14.8.2009, p. 55.

²⁰ OJ L 9, 14.8.2009, p. 112.

Amendment

(11) ‘regulated data’ means input data that is contributed directly from a trading venue as defined in point (25) of paragraph 1 of Article 2 of [MIFIR] or approved publication arrangement as defined in point (18) of paragraph 1 of Article 2 of [MIFIR] or an approved reporting arrangement as defined in point (20) of paragraph 1 of Article 2 of [MIFIR] in accordance with mandatory post trade data requirements or an auction platform referred to in Article 26 or in Article 30 of Regulation (EU) No 1031/2010 of the European Parliament and of the Council;

Or. en

Amendment 338
Philippe Lamberts
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 3 – paragraph 1 – point 11

Text proposed by the Commission

(11) ‘regulated data’ means input data that is contributed directly from a trading venue as defined in point (25) of paragraph 1 of Article 2 of [MIFIR] or approved publication arrangement as defined in point (18) of paragraph 1 of Article 2 of [MIFIR

Amendment

(11) ‘regulated data’ means input data that is ***sourced from venues subject to mandatory post trade transparency requirements and that is*** contributed directly from a trading venue as defined in point (25) of paragraph 1 of Article 2 of

] or an approved reporting arrangement as defined in point (20) of paragraph 1 of Article 2 of [MIFIR] in accordance with mandatory post trade data requirements or an electricity exchange as referred to in point (j) of paragraph 1 of Article 37 of Directive 2009/72/EC¹⁹ or a natural gas exchange as referred to in point (j) of paragraph 1 of Article 41 of Directive 2009/73/EC²⁰ or an auction platform referred to in Article 26 or in Article 30 of Regulation (EU) No 1031/2010 of the European Parliament and of the Council;

¹⁹ OJ L 211, 14.8.2009, p. 55.

²⁰ OJ L 9, 14.8.2009, p. 112.

[MIFIR] or approved publication arrangement as defined in point (18) of paragraph 1 of Article 2 of [MIFIR] or an approved reporting arrangement as defined in point (20) of paragraph 1 of Article 2 of [MIFIR] in accordance with mandatory post trade data requirements or an electricity exchange as referred to in point (j) of paragraph 1 of Article 37 of Directive 2009/72/EC¹⁹ or a natural gas exchange as referred to in point (j) of paragraph 1 of Article 41 of Directive 2009/73/EC²⁰ or an auction platform referred to in Article 26 or in Article 30 of Regulation (EU) No 1031/2010 of the European Parliament and of the Council; ***or from a third country market considered as equivalent to a regulated market in accordance with Article 19(6) of Directive 2004/39/EC;***

¹⁹ OJ L 211, 14.8.2009, p. 55.

²⁰ OJ L 9, 14.8.2009, p. 112.

Or. en

Amendment 339 **Miguel Viegas, Marisa Matias**

Proposal for a regulation **Article 3 – paragraph 1 – point 11**

Text proposed by the Commission

(11) ‘regulated data’ means input data that is contributed ***directly*** from a trading venue as defined in point (25) of paragraph 1 of Article 2 of [MIFIR] or approved publication arrangement as defined in point (18) of paragraph 1 of Article 2 of [MIFIR] or an approved reporting arrangement as defined in point (20) of paragraph 1 of Article 2 of [MIFIR] in accordance with mandatory ***post trade*** data requirements or an electricity exchange as referred to in point (j) of paragraph 1 of Article 37 of

Amendment

(11) ‘regulated data’ means input data that is contributed from a trading venue as defined in point (25) of paragraph 1 of Article 2 of [MIFIR] or approved publication arrangement as defined in point (18) of paragraph 1 of Article 2 of [MIFIR] or an approved reporting arrangement as defined in point (20) of paragraph 1 of Article 2 of [MIFIR] in accordance with mandatory ***post-trade*** data requirements or an electricity exchange as referred to in point (j) of paragraph 1 of Article 37 of

Directive 2009/72/EC¹⁹ or a natural gas exchange as referred to in point (j) of paragraph 1 of Article 41 of Directive 2009/73/EC²⁰ or an auction platform referred to in Article 26 or in Article 30 of Regulation (EU) No 1031/2010 of the European Parliament and of the Council;

Directive 2009/72/EC or a natural gas exchange as referred to in point (j) of paragraph 1 of Article 41 of Directive 2009/73/EC or an auction platform referred to in Article 26 or in Article 30 of Regulation (EU) No 1031/2010 of the European Parliament and of the Council, ***or data contributed by third countries or groupings of third countries or other competent public authorities under the technical conditions set out above;***

¹⁹ OJ L 211, 14.8.2009 p. 55.

²⁰ OJ L 9, 14.8.2009 p. 112.

¹⁹ OJ L 211, 14.8.2009 p. 55.

²⁰ OJ L 9, 14.8.2009 p. 112.

Or. pt

Amendment 340

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 3 – paragraph 1 – point 13

Text proposed by the Commission

(13) ‘financial instrument’ means any of the instruments listed in Section C of Annex I to Directive 2004/39/EC ***for which a request for admission to trading on a trading venue has been made or which are traded on a trading venue;***

Amendment

(13) ‘financial instrument’ means any of the instruments listed in Section C of Annex I to Directive 2004/39/EC;

Or. en

Amendment 341

Kay Swinburne

Proposal for a regulation

Article 3 – paragraph 1 – point 14 – point g

Text proposed by the Commission

Amendment

(g) central counterparties as defined in point (1) of Article 2 of Regulation (EU) No 648/2012 of the European Parliament and of the Council²⁵ ;

deleted

²⁵ *OJ L 174, 1.7.2011, p. 1.*

Or. en

Amendment 342
Kay Swinburne

Proposal for a regulation
Article 3 – paragraph 1 – point 14 – point i

Text proposed by the Commission

Amendment

(i) an administrator;

deleted

Or. en

Justification

It is not clear that all of the references in the Regulation to supervised entities can be applied to all benchmark administrators, particularly those that do not deal in financial data. A more tailored definition should be explored

Amendment 343
Eva Paunova

Proposal for a regulation
Article 3 – paragraph 1 – point 17

Text proposed by the Commission

Amendment

(17) ‘management body’ means the ***governing body, comprising the supervisory and the management function, which has ultimate decision-making authority and is*** empowered to set

(17) ‘management body’ means the ***body or bodies of an administrator or another supervised entity, which are appointed in accordance with national law, which are*** empowered to set the entity's strategy,

the entity's strategy, objectives and overall direction;

objectives and overall direction, **and which oversee and monitor management decision-making and include persons who effectively direct the business of the entity;**

Or. en

Justification

This definition is more precise as it reflects the existence of both one-tier and two-tier governance structures.

Amendment 344
Jonás Fernández

Proposal for a regulation
Article 3 – paragraph 1 – point 19

Text proposed by the Commission

(19) ‘interbank interest **rate** benchmark’ means a benchmark where the underlying asset for the purposes of point (1)(c) of this Article is the rate at which banks may lend to, or borrow from other banks;

Amendment

(19) ‘interbank interest benchmark’ means a benchmark where the underlying asset for the purposes of point (1)(c) of this Article is the rate at which banks may lend to, or borrow from other banks, **or the rate available on the wholesale financial markets;**

Or. es

Amendment 345
Philippe Lamberts
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 3 – paragraph 1 – point 19 a (new)

Text proposed by the Commission

Amendment

(19a) ‘foreign exchange rate benchmark’ means a benchmark whose value is determined in relation to the price, expressed in one currency, of one or a

basket of other currencies;

Or. en

Amendment 346

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 3 – paragraph 1 – point 20

Text proposed by the Commission

(20) ‘commodity benchmark’ means a benchmark where the underlying asset for the purposes of point (1)(c) of this Article is a commodity within the meaning of point (2) of Article 2 of Commission Regulation (EC) No 1287/2006²⁷ ;

Emission allowances as defined in point (11) of Section C of Annex I of [MiFID] shall not be considered commodities for the purpose of this Regulation;

²⁷ OJ L 241, 2.9.2006, p. 1.

Amendment

(20) ‘commodity benchmark’ means a benchmark where the underlying asset for the purposes of point (1)(c) of this Article is a commodity within the meaning of point (2) of Article 2 of Commission Regulation (EC) No 1287/2006²⁷ ;

²⁷ OJ L 241, 2.9.2006, p. 1.

Or. en

Amendment 347

Cora van Nieuwenhuizen

Proposal for a regulation

Article 3 – paragraph 1 – point 20

Text proposed by the Commission

(20) ‘commodity benchmark’ means a benchmark where the underlying asset for the purposes of point (1)(c) of this Article is a commodity within the meaning of point (2) of Article 2 of Commission Regulation (EC) No 1287/2006²⁷ ;
Emission allowances as defined in point

Amendment

(20) ‘commodity benchmark’ means a benchmark where the underlying asset for the purposes of point (1)(c) of this Article is a commodity within the meaning of point (1) of Article 2 of Commission Regulation (EC) No 1287/2006²⁷ ;
Emission allowances as defined in point

(11) of Section C of Annex I of [MiFID] shall not be considered commodities for the purpose of this Regulation;

²⁷ OJ L 241, 2.9.2006, p. 1.

(11) of Section C of Annex I of [MiFID] shall not be considered commodities for the purpose of this Regulation;

²⁷ OJ L 241, 2.9.2006, p. 1.

Or. en

Justification

Commission proposal included point 2 of Article 2, instead of point 1 of Article 2 which in fact contains the correct definition of 'commodity'

Amendment 348 **Steven Woolfe**

Proposal for a regulation **Article 3 – paragraph 1 – point 20**

Text proposed by the Commission

(20) 'commodity benchmark' means a benchmark where the underlying asset for the purposes of point (1)(c) of this Article is a commodity within the meaning of point (2) of Article 2 of Commission Regulation (EC) No 1287/2006²⁷ ;
Emission allowances as defined in point (11) of Section C of Annex I of [MiFID] shall not be considered commodities for the purpose of this Regulation;

²⁷ OJ L 241, 2.9.2006, p. 1.

Amendment

(20) 'commodity benchmark' means a benchmark where the underlying asset for the purposes of point (1)(c) of this Article is a commodity within the meaning of point (1) of Article 2 of Commission Regulation (EC) No 1287/2006²⁷;

²⁷ OJ L 241, 2.9.2006, p. 1.

Or. en

Amendment 349 **Thomas Mann**

Proposal for a regulation **Article 3 – paragraph 1 – point 20 a (new)**

Text proposed by the Commission

Amendment

(20a) ‘regulated data benchmark’ means a benchmark compiled from regulated data as well as net asset values of the units of UCITS and AIFs;

Or. en

**Amendment 350
Fulvio Martusciello**

**Proposal for a regulation
Article 3 – paragraph 1 – point 21**

Text proposed by the Commission

Amendment

(21) ‘critical benchmark’ means *a benchmark, the majority of contributors to which are supervised entities and that reference financial instruments having a notional value of at least 500 billion euro;*

(21) ‘critical benchmark’ means *(i) an interbank interest rate benchmark, , and (ii) any other benchmark (excluding regulated-data benchmarks) designated by the Commission that (a) is referencing the amount payable under at least one financial instrument or one financial contract, of more than [x] in value, (b) is considered by the Commission as important for the proper functioning of markets, and (c) presents conflicts of interest due to (x) the administrator's ownership or control or due to other interests in its group or as a result of other persons that may exercise influence or control over the administrator in relation to setting the benchmark, or due to (y) the fact that the input data consists mainly of a limited number of estimates that are not regulated data, transaction data, data derived from transaction data, or factual data, and the majority of contributors are supervised entities. A benchmark based on regulated data shall not be considered a critical benchmark.*

Or. en

Amendment 351
Jonás Fernández

Proposal for a regulation
Article 3 – paragraph 1 – point 21

Text proposed by the Commission

(21) ‘critical benchmark’ means a benchmark, *the majority of contributors to which are supervised entities and that reference financial instruments having a notional value of at least 500 billion euro;*

Amendment

(21) ‘critical benchmark’ means a benchmark *which, if it were no longer to be provided, or if it is provided using an unrepresentative set of contributors or data with regard to the underlying reality it is designed to measure, would have a significant adverse impact on financial stability, on the orderly functioning of the markets and on the real economy;*

(a) a critical benchmark shall be ‘national’ in nature if the adverse effects of it no longer being provided or of it not being fully provided are restricted to one Member State. If such an effect is felt in more than one Member State, the benchmark shall be a ‘critical European benchmark’.

Or. es

Amendment 352
Philippe Lamberts
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 3 – paragraph 1 – point 21

Text proposed by the Commission

(21) ‘critical benchmark’ means a benchmark, *the majority of contributors to which are supervised entities and that reference financial instruments having a notional value of at least 500 billion euro;*

Amendment

(21) ‘critical benchmark’ means a benchmark *with reference financial instruments having a notional value of at least 100 billion euro; or a benchmark that in the event it were to be provided or were provided using an unrepresentative*

set of contributors or input data, this would have a significant adverse impact on financial stability, the orderly functioning of the markets, consumers or the real economy, in one or more Member States or States or other jurisdiction which are different to the Member State where the benchmark's administrator is located;

Or. en

Amendment 353
Burkhard Balz

Proposal for a regulation
Article 3 – paragraph 1 – point 21

Text proposed by the Commission

(21) ‘critical benchmark’ means a benchmark, *the majority* of contributors *to which are supervised entities and that reference* financial instruments having a *notional value of at least 500 billion euro*;

Amendment

(21) ‘critical benchmark’ means a benchmark *that is not based on regulated data and whose cessation or provision on the basis of input data or a panel* of contributors *no longer representative of the market or economic reality the benchmark seeks to measure, would have an adverse impact on the integrity of markets, financial stability, the real economy, or the financing of households and corporations in one or more Member States, as covered by the criticality criteria set out in Article 13*;

Or. en

Amendment 354
Markus Ferber

Proposal for a regulation
Article 3 – paragraph 1 – point 21

Text proposed by the Commission

(21) ‘critical benchmark’ means a benchmark, the majority of contributors to which are supervised entities and that reference financial instruments having a notional value of at least 500 billion euro;

Amendment

(21) ‘critical benchmark’ means a benchmark, the majority of contributors to which are supervised entities and that reference financial instruments having a notional value of at least 500 billion euro; ***furthermore, the manipulation or cessation of a 'critical benchmark' must potentially have an adverse impact on the stability of financial markets and/or the real economy; the decision if a benchmark is deemed to be critical shall be made by the national competent authorities in accordance with the provisions outlined in Article 13 of this regulation;***

Or. en

Justification

The definition of a 'critical benchmark' should also encompass a qualitative element in order to avoid misclassification due to a limited focus on quantitative criteria.

Amendment 355
Kay Swinburne

Proposal for a regulation
Article 3 – paragraph 1 – point 21

Text proposed by the Commission

(21) ‘critical benchmark’ means a benchmark, the majority of contributors to which are supervised entities and ***that reference financial instruments having a notional value of at least 500 billion euro;***

Amendment

(21) ‘critical benchmark’ means a benchmark, ***other than a benchmark calculated using regulated data within the meaning of subpoint (h) of point 11 of this paragraph,*** the majority of contributors to which are supervised entities and ***fulfil the criticality criteria set out in Article 13;***

Or. en

Justification

Important amendment from the Agency for the Cooperation of Energy Regulators (ACER)

Amendment 356

Kay Swinburne

Proposal for a regulation

Article 3 – paragraph 1 – point 21

Text proposed by the Commission

(21) ‘critical benchmark’ means a benchmark, the majority of contributors *to which* are supervised entities *and that reference financial instruments having a notional value of at least 500 billion euro;*

Amendment

(21) ‘critical benchmark’ means a ***submission based*** benchmark, the majority of *whose* contributors, ***or underlying panel of contributors***, are supervised entities, ***and fulfil the criticality criteria set out in Article 13;***

Or. en

Justification

The definition of critical benchmarks should only apply to supervised entities otherwise the extra provisions provided for the regulation will not be able to be monitored as there will be no Supervisor.

Amendment 357

Marco Valli, Marco Zanni

Proposal for a regulation

Article 3 – paragraph 1 – point 21

Text proposed by the Commission

(21) ‘critical benchmark’ means a benchmark, the majority of contributors to which are supervised entities and that reference financial instruments having a notional value of at least 500 billion euro;

Amendment

(21) ‘critical benchmark’ means a benchmark, the majority of contributors to which are supervised entities and that reference financial instruments having a notional value of at least 500 billion euro. ***A benchmark of less than 500 billion euro may be deemed critical by the competent authorities if the supply or cessation of that benchmark could have an adverse***

impact on financial stability and on the real economy;

Or. it

Amendment 358

Jonás Fernández

Proposal for a regulation

Article 3 – paragraph 1 – point 22 a (new)

Text proposed by the Commission

Amendment

(22a) ‘public authority’ means:

(a) any government or public administration;

(b) any entity or person, either performing public administrative functions under national law, or having public responsibilities or functions or providing public services, including measures of inflation, labour and economic activities, under the control of an entity falling within the definition laid down in point (a).

Or. es

Amendment 359

Marco Valli, Marco Zanni

Proposal for a regulation

Article 4 – paragraph 1

Text proposed by the Commission

Amendment

1. This Regulation shall not apply to ***an administrator*** in respect of a benchmark provided by him where that administrator is unaware and could not reasonably have been aware that that benchmark is used for the purposes referred to in point (2) of Article 3(1).

1. This Regulation shall not apply to ***a contributor*** in respect of a benchmark provided by him where that administrator is unaware and could not reasonably have been aware that that benchmark is used for the purposes referred to in point (2) of Article 3(1).

This exemption shall not apply to administrators who have control over the provision of benchmarks, as referred to in Article 3(1)(4) of this Regulation.

Or. it

Amendment 360
Philippe Lamberts
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 4 – paragraph 2

Text proposed by the Commission

Amendment

2. This Regulation shall not apply to the administrator of a benchmark referred to in Article 25(3) in respect of that benchmark.

deleted

Or. en

Amendment 361
Marco Valli, Marco Zanni

Proposal for a regulation
Article 4 – paragraph 2

Text proposed by the Commission

Amendment

2. This Regulation shall not apply to the administrator of a benchmark referred to in Article 25(3) in respect of that benchmark.

deleted

Or. it

Amendment 362
Marco Valli, Marco Zanni

Proposal for a regulation
Article 5 – title

Text proposed by the Commission

Governance requirements

Amendment

Governance requirements ***and handling of conflicts of interest***

Or. it

Amendment 363
Jonás Fernández

Proposal for a regulation
Article 5 – paragraph 2

Text proposed by the Commission

2. An administrator shall comply with the governance and control requirements set out in Section A of Annex *I*.

Amendment

2. An administrator shall comply with the governance and control requirements set out in Section A of Annex ***I, with differential requirements between critical benchmarks and everything else.***

Or. es

Amendment 364
Kay Swinburne

Proposal for a regulation
Article 5 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Where appropriate and proportionate, the provision of a benchmark shall be operationally separated from the part of the administrator's business that generates a conflict of interest. Where conflicts of interest may arise within the administrator due to its ownership structure, controlling interests or other activities conducted by any entity owning or controlling the administrator or that is

owned or controlled by the administrator or any of its affiliates, the administrator shall establish an independent oversight function which shall include a balanced representation of a range of stakeholders where the stakeholders are known, subscribers and contributors. If such conflicts cannot be adequately managed, the administrator shall cease any activities or relationships that create these conflicts or cease producing the benchmark.

Or. en

Justification

To be read alongside rapporteur's amendment 68. Corporate governance provisions concerning conflicts of interest are covered in CRD4 and MiFID article 47 and should be aligned here to ensure the provisions are coherent as well as proportionate to the risk involved in the conflict of interest.

Amendment 365
Fulvio Martusciello

Proposal for a regulation
Article 5 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. For the purpose of Article 5a, the shareholders of an administrator that happen to contribute or use benchmarks administered by such administrator are not considered as owning or controlling the administrator if such ownership is completely independent and unrelated to their contribution or use of such benchmarks.

Or. en

Amendment 366
Kay Swinburne

Proposal for a regulation
Article 5 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The administrator shall establish specific control procedures to ensure the integrity and reliability of the employee or person determining the benchmark, this could include an internal sign off by management before the dissemination of a benchmark or an appropriate substitution for example in the case of a benchmark that is updated intra-day or on a real-time basis.

Or. en

Justification

Should be read alongside rapporteur's amendment 73. Real time updating of benchmarks should be appropriately accommodated in this provision

Amendment 367
Georgios Kyrtzos

Proposal for a regulation
Article 5 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The Administrator shall establish specific internal control procedures to ensure the integrity and reliability of the employee or person in charge to publish the benchmark taking into consideration the experience of that employee or person in charge.

Or. en

Amendment 368
Eva Kaili

Proposal for a regulation
Article 5 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The administrator shall establish specific internal control procedures to ensure the integrity and reliability of the employee or person responsible to publish the benchmark, including a review of the market awareness and experience of that person or employee, before the dissemination of the benchmark.

Or. en

Amendment 369
Kay Swinburne

Proposal for a regulation
Article 5 a (new)

Text proposed by the Commission

Amendment

Article 5a

Oversight Function Requirement

1. The administrator shall establish and maintain a permanent and effective oversight function to ensure oversight of all aspects of the provision of its benchmarks.

2. The oversight function shall operate independently and shall include the following responsibilities, which shall be adjusted for the complexity, use and vulnerability of the benchmark:

(a) periodically reviewing the benchmark's definition and methodology;

(b) overseeing any changes to the benchmark methodology and authorising the administrator to consult on such

changes;

(c) overseeing the administrator's control framework, the management and operation of the benchmark, and, where a benchmark makes use of contributors, the code of conduct referred to in Article 9(1);

(d) reviewing and approving procedures for cessation of the benchmark, including any consultation about a cessation;

(e) overseeing any third party involved in the benchmark provision, including calculation or dissemination agents;

(f) assessing internal and external audits or reviews, and monitoring the implementation of identified actions;

(g) where the benchmark makes use of contributors, monitoring the input data and contributors and the actions of the administrator in challenging or validating contributions of input data;

(h) where the benchmark makes use of contributors, taking effective measures in respect of any breaches of the code of conduct; and

(i) where the benchmark makes use of contributors, reporting to the relevant competent authorities any misconduct by contributors or administrators of which the oversight function becomes aware, and any potentially anomalous or suspicious input data.

3. The oversight function shall be one of the following:

(a) where the administrator is owned or controlled by its contributors or users, a separate board or committee whose composition ensures its independence and the absence of conflicts of interest. Where the administrator is owned or controlled by contributors, a majority of the committee shall not be contributors. Where the administrator is owned or controlled by users, a majority of the

committee shall not be users;

(b) Where the administrator is not owned or controlled by its contributors or users, an internal board or committee should be established. The majority of the members of the internal board or committee shall not be involved in the provision of any benchmark that they oversee;

(c) where the administrator is able to demonstrate that, in view of the nature, scale and complexity of its provision of the benchmark and the risk and impact of the benchmark, the requirements under points a and b are not proportionate, a natural person may provide the function of oversight officer. The oversight officer shall not be involved in the provision of any benchmark that it oversees.

4. The oversight function may exercise oversight of more than one benchmark provided by an administrator provided that it otherwise complies with the other requirements of Title I and Title IV.

Or. en

Justification

To be read alongside rapporteur's amendment 74. For smaller administrators in specialist areas it may be necessary to include users or contributors on the board or committee of an administrator in order to access their specialist expertise. They should therefore not be in a majority on the board but should be available as a resource.

Amendment 370
Kay Swinburne

Proposal for a regulation
Article 5 b (new)

Text proposed by the Commission

Amendment

Article 5b

Control Framework Requirement

1. The administrator shall have a control framework that ensures that the benchmark is provided and published or made available in accordance with this regulation.

2. The control framework shall be proportionate to the level of conflicts of interest identified, the extent of discretion in the benchmark provision and the nature of benchmark input data and include:

a) the management of operational risk;

b) the contingency procedures that are in place in the event of a disruption to the suppliers of data for the benchmark provision.

3. Where input data is not transaction data, the administrator shall:

a) establish measures to ensure, to the extent possible, that submitters provide evidence to satisfy the administrator that they comply with the code of conduct referred to in Article 9(1) and the applicable standards for the input data;

b) establish measures to monitor input data including where feasible, monitoring input data before publication of the benchmark and validating the input data after publication in order to identify errors and anomalies.

4. The control framework shall be documented, reviewed and updated as appropriate and, upon request, made available to users and the relevant competent authority.

Or. en

Justification

Agree with the Rapporteur on the inclusion of this article however would suggest a slight change to ensure the feasibility of a benchmark administrator monitoring input data when a benchmark must be published in more or less real time. Also to make clear that the liability for following the code on conduct must lie with the submitter although demonstrated to the

administrator

Amendment 371
Kay Swinburne

Proposal for a regulation
Article 5 c (new)

Text proposed by the Commission

Amendment

Article 5c

Accountability Framework Requirements

- 1. The administrator shall have an accountability framework covering record keeping, auditing and review, and complaints process that provides evidence of compliance with the requirements of this regulation.***
- 2. The administrator shall appoint an independent internal or external function, with the necessary capability to review and report on the administrator's compliance with the benchmark methodology and this Regulation.***
- 3. For non-critical benchmarks, the administrator shall publish and maintain a compliance statement in which the administrator shall report on its compliance with this Regulation. The compliance statement shall at least cover the requirements laid out in Articles 5(1), 5(2), 5(4), 5(5), 5(6), 5a, 5b, 5d, 7, 7a, 7b, 7c, 8(1), 8(2), 9(1), 11(2a), 11(2b), 17(1). where the administrator does not comply with the requirements laid down in Articles 5(1), 5(2), 5(4), 5(5), 5(6), 5a, 5b, 5d, 7, 7a, 7c, 7d, 8(1), 8(2), 9(1), 9(2), 11(2a), 11(2b), 17(1) of this Regulation, the compliance statement shall clearly state why it is appropriate for that administrator not to comply with those provisions.***
- 4. The administrator of a non-critical benchmark shall appoint either its***

statutory auditor or an external auditor to periodically and not less than once every five years or when a material change to the benchmark takes place, to review and report on the accuracy of the administrator's compliance statement.

5. Upon request of the relevant competent authority, or any user of the benchmark, the administrator shall provide or publish details of the reviews in paragraph 2 or paragraph 4.

Or. en

Justification

For non-critical benchmarks the audit of compliance could be costly when no material changes have taken place. Therefore it would be more proportional to require this only on a 5 year basis or when there has been a fundamental change in the benchmark. Further, an audit of compliance for critical benchmark providers as proposed by the rapporteur does not seem necessary as this will already be being performed by the competent authority on an ongoing basis as part of its supervisory function. Duplication here seems unnecessary.

Amendment 372 Kay Swinburne

Proposal for a regulation Article 5 d (new)

Text proposed by the Commission

Amendment

Article 5d

Record Keeping Requirements

1. The administrator shall keep records of:

a) all input data;

b) any exercise of judgement or discretion by the administrator and, where applicable, by assessors, in the benchmark determination, including the full reasoning for such judgements or discretion;

c) records of the disregard of any input data, in particular where it conformed to the requirements of the benchmark methodology, and the rationale for such disregard;

d) the identities of the submitters and of the natural persons employed by the administrators for determining the benchmarks;

e) all documents relating to any complaint;

f) records of relevant communications between any relevant person employed by the administrator for the provision of the benchmark and the contributors or submitters in respect of the benchmark.

2. Where the benchmark is based on contributors, the contributor shall also keep records of any relevant communications, including with other contributors.

3. The administrator shall keep the records set out in paragraph 1 for at least five years in a form that it is possible to replicate and fully understand the benchmark calculations and enable an audit or evaluation of the input data, calculations, judgements and discretion. Records of telephone conversations or electronic communications shall be provided to the persons involved in the conversation or communication upon request and shall be kept for a period of three years.

4. Point (a) of paragraph 1 of this Article shall not apply to trading venues for financial instruments listed in Directive 2014/65/EU, Annex 1 Section D.

Or. en

Justification

Should be read alongside rapporteur amendment 77. The record keeping requirement will

cross over to provisions within MiFID II for trading venues and therefore should be streamlined with these provisions, it should also be more specific in who it applies to at the benchmark administrator

Amendment 373

Kay Swinburne

Proposal for a regulation

Article 5 e (new)

Text proposed by the Commission

Amendment

Article 5e

ESMA regulatory technical standards on governance and control requirements

ESMA shall develop draft regulatory standards to specify further the governance and control requirements under Articles 5(2), 5(4), 5(6), 5a(2), 5a(3), 5b(2), 5b(3), 5c(2), 5c(2a), 5c(4), 5c(5), 5(3). ESMA shall take account of the following:

a) developments in benchmarks and financial markets in light of international convergence of supervisory practice in relation to governance requirements of benchmarks;

b) specific features of different types of benchmarks and administrators including size and impact, sectoral features and the types of input data used;

c) distinctions between critical and noncritical benchmarks

Where these regulatory technical standards capture supervised entities and markets covered by Regulation (EU) No 1227/2011 (REMIT), the Agency for the Cooperation of Energy Regulators (ACER) should be fully consulted by ESMA in order to draw on ACER's expertise in energy markets and to mitigate dual regulation.

ESMA shall submit those draft regulatory

technical standards to the Commission by [...]

Power is delegated to the commission to adopt the regulatory technical standards referred to in the first paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Or. en

Justification

The regulatory technical standards should also take into account both the size and the impact of the benchmark upon the rest of the economy. Consultation with ACER necessary to take into account the specificities of energy markets.

Amendment 374

Marco Valli, Marco Zanni

Proposal for a regulation

Article 6 – paragraph 1

Text proposed by the Commission

1. Administrators shall ***not outsource*** functions in the provision of a benchmark ***in such a way*** as to impair ***materially*** the administrator's control over the provision of the benchmark or the ability of the ***relevant*** competent authority to supervise the benchmark.

Amendment

1. Administrators shall ***be prohibited from outsourcing*** functions in the provision of a benchmark, ***so as not*** to impair the administrator's control over the provision of the benchmark or the ability of the competent authority to supervise the benchmark.

Or. it

Amendment 375

Marco Valli, Marco Zanni

Proposal for a regulation

Article 6 – paragraph 2

Text proposed by the Commission

2. Where outsourcing takes place, an

Amendment

deleted

administrator shall ensure that the outsourcing requirements set out in Section B of Annex 1 are satisfied.

Or. it

Amendment 376

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 6 – paragraph 2

Text proposed by the Commission

2. Where outsourcing takes place, an administrator shall ensure that the outsourcing requirements set out in Section B of Annex 1 are satisfied.

Amendment

2. Where outsourcing takes place:

- an administrator shall ensure that the outsourcing requirements set out in Section B of Annex I are satisfied;

- a contributor shall define and implement an internal control process to guarantee the effective availability of data.

Or. en

Amendment 377

Marco Valli, Marco Zanni

Proposal for a regulation

Article 6 – paragraph 3

Text proposed by the Commission

3. Where an administrator outsources functions or any relevant services and activities in the provision of a benchmark to any service provider, it shall remain fully responsible for discharging all of its obligations under this Regulation.

Amendment

deleted

Amendment 378
Fulvio Martusciello

Proposal for a regulation
Article 7 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

The provision of a benchmark shall be governed by the following requirements in respect of its input data **and methodology**:

Amendment

The provision of a benchmark shall be governed by the following requirements in respect of its input data:

Or. en

Amendment 379
Eva Kaili

Proposal for a regulation
Article 7 – paragraph 1 – subparagraph 1 – point a – paragraph 1

Text proposed by the Commission

(a) The input data shall be sufficient to represent accurately and reliably the market or economic reality that the benchmark is intended to measure (**'Sufficient and accurate data'**).

Amendment

(a) The input data shall be sufficient to represent accurately and reliably the market or economic reality that the benchmark is intended to measure, **and shall be verifiable; when relevant transaction data are not available for the production of a specific benchmark, other forms of input including non-transaction data (e.g. experts opinion, financial econometric methods, etc), can be employed, and this input should qualify according to predetermined procedures set in advance by the administrator who is responsible for the quality and integrity of the benchmark.**

Or. en

Amendment 380

Eva Paunova

Proposal for a regulation

Article 7 – paragraph 1 – subparagraph 1 – point a – paragraph 2

Text proposed by the Commission

The input data shall be transaction data. If available transaction data is not sufficient to represent accurately and reliably the market or economic reality that the benchmark is intended to measure, input data which is not transaction data may be used provided that such data is verifiable.

Amendment

The input data shall be transaction data. If available transaction data is not sufficient to represent accurately and reliably the market or economic reality that the benchmark is intended to measure, ***including a firm and executable bid and offer quotes, indicative bids and offers quotes and estimates***, input data which is not transaction data may be used provided that such data is verifiable.

Or. en

Amendment 381

Fulvio Martusciello, Lara Comi, Elisabetta Gardini, Antonio Tajani

Proposal for a regulation

Article 7 – paragraph 1 – subparagraph 1 – point a – paragraph 2

Text proposed by the Commission

The input data shall be transaction data. ***If available transaction data is not sufficient to represent*** accurately and reliably the market or economic reality that the benchmark is intended to measure, ***input data which is not transaction data may be used provided that such data is verifiable.***

Amendment

The input data shall be transaction data ***or, where appropriate, non-transaction based data, including committed quotes and verifiable estimates provided that it*** accurately and reliably ***represents*** the market or economic reality that the benchmark is intended to measure.

Or. en

Justification

In light of the current difficulties of the interbank lending market in the Euro area, it would be advisable to admit the alternative use of transaction-based and non-transaction based data provided that they accurately and reliably represent the market or economic reality that the benchmark is intended to measure.

Amendment 382
Luděk Niedermayer

Proposal for a regulation

Article 7 – paragraph 1 – subparagraph 1 – point a – paragraph 2

Text proposed by the Commission

The input data shall be transaction data. ***If available transaction data is not sufficient to represent*** accurately and reliably the market or economic reality that the benchmark is intended to measure, ***input data which is not transaction data may be used provided that such data is verifiable.***

Amendment

The input data shall be transaction data ***or, where more appropriate, non-transaction based data, including committed quotes and verifiable estimates provided that it*** accurately and reliably ***represent*** the market or economic reality that the benchmark is intended to measure.

Or. en

Justification

The transaction data are not always more reliable and more representative for the given market. In the light of the current difficulties of the interbank lending market in the Euro area, which is not very liquid in some segments in some times, it would be reasonable to admit the alternative use of transaction-based and non-transaction based data provided that they accurately and reliably represent the market or economic reality that the benchmark is intended to measure.

Amendment 383
Georgios Kyrtsos

Proposal for a regulation

Article 7 – paragraph 1 – subparagraph 1 – point a – paragraph 2

Text proposed by the Commission

The input data shall be transaction data. If available transaction data is not sufficient to represent accurately and reliably the market or economic reality that the benchmark is intended to measure, input data which is not transaction data may be used provided that such data is verifiable.

Amendment

The input data shall be transaction data. If available transaction data is not sufficient to represent accurately and reliably the market or economic reality that the benchmark is intended to measure, input data which is not transaction data may be used provided that such data is verifiable ***(e.g. expert opinions, guidelines or related***

financial econometric methodologies).

Or. en

Amendment 384

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 7 – paragraph 1 – subparagraph 1 – point a – paragraph 2 a (new)

Text proposed by the Commission

Amendment

An administrator may seek authorisation from the relevant competent authority to use data other than transaction data for a benchmark that is not designed to represent transactions and where the nature of the benchmark is such that data other than transaction data is used to reflect what the benchmark is designed to measure, provided that such data is verifiable.

Or. en

Amendment 385

Marisa Matias, Matt Carthy

Proposal for a regulation

Article 7 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) The administrator shall obtain the input data from a reliable and representative panel or sample of contributors so as to ensure that the resultant benchmark is reliable and representative of the market or economic reality that the benchmark is intended to measure ('Representative contributors').

(b) The administrator shall obtain the input data from a reliable and representative panel or sample of contributors so as to ensure that the resultant benchmark is reliable and representative of the market or economic reality that the benchmark is intended to measure ('Representative contributors'). ***In case of transactional based benchmarks the administrator shall obtain the data in an aggregated***

anonymous form from trade repositories and regulators according to Directive 2014/65/EU [MIFID], in Regulation (EU) No 1227/2011 [REMIT] and Regulation (EU) No 648/2012 [EMIR].

Or. en

Amendment 386
Fulvio Martusciello

Proposal for a regulation
Article 7 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

(b) The administrator shall obtain the input data from a **reliable and** representative panel or sample of contributors so as to ensure that the resultant benchmark is **reliable** and representative of the market or economic reality that the benchmark is intended to measure ('Representative contributors').

Amendment

(b) The administrator shall obtain the input data from a representative panel or sample of contributors so as to ensure that the resultant benchmark is and representative of the market or economic reality that the benchmark is intended to measure ('Representative contributors').

Or. en

Amendment 387
Luděk Niedermayer

Proposal for a regulation
Article 7 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

(c) Where the input data of a benchmark is not transaction data **and a contributor is a party to more than 50% of value of transactions in the market which that the benchmark intends to measure, the administrator shall verify** that the input data represents a market subject to competitive supply and demand forces. Where the administrator finds that the

Amendment

(c) Where the input data of a benchmark is not transaction data, **the administrator shall verify, where it is practically possible**, that the input data represents a market subject to competitive supply and demand forces. Where the administrator finds that the input data does not represent a market subject to competitive supply and demand forces, it shall either change the

input data does not represent a market subject to competitive supply and demand forces, it shall either change the input data, the contributors or the methodology to ensure that the input data represents a market subject to competitive supply and demand forces, or cease to provide that benchmark (*'Market impact'*).

input data, the contributors or the methodology to ensure that the input data represents a market subject to competitive supply and demand forces, or cease to provide that benchmark. ***Any change referred to in this paragraph shall not be considered as a breach of any financial contract or financial instrument which references that benchmark.***

Or. en

Justification

Administrators should assess and guarantee on an on-going basis that the benchmark correctly represents the market it intends to represent regardless of weight or importance one or more contributors have in the relevant market at any given point in time. In case where benchmarks are used to reference financial contracts sold to consumers, changes to the benchmark setting-process might be necessary to increase the robustness of the benchmark process.

Amendment 388

Fulvio Martusciello, Antonio Tajani, Lara Comi, Elisabetta Gardini

Proposal for a regulation

Article 7 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

(c) Where the input data of a benchmark is not transaction data ***and a contributor is a party to more than 50% of value of transactions in the market which that the benchmark intends to measure***, the administrator shall verify that the input data represents a market subject to competitive supply and demand forces. Where the administrator finds that the input data does not represent a market subject to competitive supply and demand forces, it shall either change the input data, the contributors or the methodology to ensure that the input data represents a market subject to competitive supply and demand forces, or cease to provide that

Amendment

(c) Where the input data of a ***critical*** benchmark is not transaction data, the administrator shall verify ***where possible*** that the input data represents a market subject to competitive supply and demand forces. Where the administrator finds that the input data does not represent a market subject to competitive supply and demand forces, it shall either change the input data, the contributors or the methodology to ensure that the input data represents a market subject to competitive supply and demand forces, or cease to provide that benchmark (*'Market impact'*). ***Any change referred to in this paragraph shall not be intended as a breach of any financial***

benchmark ('Market impact').

contract or financial instrument which references that benchmark.

Or. en

Justification

Where benchmarks are used to reference financial contracts sold to consumers, i.e. where critical benchmarks are concerned, changes to the benchmark setting-process might be necessary to safeguard the continuity and the stability of the existing contracts.

Administrators should assess and guarantee on an on-going basis that the benchmark correctly represents the market it intends to represent, regardless of the weight or importance one or more contributors have in the relevant market at any given point in time. For the sake of legal certainty, any change referred to in this paragraph shall not be intended as a breach of any financial contract or financial instrument which references that benchmark.

Amendment 389

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 7 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

(c) Where the input data of a benchmark is not transaction data and a contributor is a party to more than 50% of value of transactions in the market which that the benchmark intends to measure, the administrator shall verify that the input data represents a market subject to competitive supply and demand forces. Where the administrator finds that the input data does not represent a market subject to competitive supply and demand forces, it shall either change the input data, the contributors or the methodology to ensure that the input data represents a market subject to competitive supply and demand forces, or cease to provide that benchmark ('Market impact').

Amendment

(c) Where the input data of a benchmark is not transaction data and a contributor is a party to more than 50% of value of transactions in the market which that the benchmark intends to measure, the administrator shall verify that the input data represents a market subject to competitive supply and demand forces. Where the administrator finds that the input data does not represent a market subject to competitive supply and demand forces, it shall either change the input data, the contributors or the methodology to ensure that the input data represents a market subject to competitive supply and demand forces, or cease to provide that benchmark ('Market impact').

The administrator shall communicate to the relevant competent authority the results of the verification process referred

to in this subparagraph.

Or. en

Amendment 390

Sylvie Goulard

Proposal for a regulation

Article 7 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

Amendment

(c) Where the input data of a benchmark is not transaction data and a contributor is a party to more than 50% of value of transactions in the market which that the benchmark intends to measure, the administrator shall verify that the input data represents a market subject to competitive supply and demand forces. Where the administrator finds that the input data does not represent a market subject to competitive supply and demand forces, it shall either change the input data, the contributors or the methodology to ensure that the input data represents a market subject to competitive supply and demand forces, or cease to provide that benchmark ('Market impact').

(c) The administrator shall **not use** input data **from** contributors **which do not comply with the code of conduct referred to in Article 9.**

Or. en

Justification

Some benchmarks are based on publicly available input data that are not provided by contributors. This wording means that contributors are required to comply with the code of conduct while allowing the use of publicly available input data.

Amendment 391

Marco Valli, Marco Zanni

Proposal for a regulation

Article 7 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

(c) ***Where the input data of a benchmark is not transaction data and a contributor is a party to more than 50% of value of transactions in the market which that the benchmark intends to measure,*** the administrator shall verify that the input data represents a market subject to competitive supply and demand forces. Where the administrator finds that the input data does not represent a market subject to competitive supply and demand forces, it shall either change the input data, the contributors or the methodology to ensure that the input data represents a market subject to competitive supply and demand forces, or cease to provide that benchmark ('Market impact').

Amendment

(c) The administrator shall ***always*** verify that the input data represents a market subject to competitive supply and demand forces. Where the administrator finds that the input data does not represent a market subject to competitive supply and demand forces, it shall either change the input data, the contributors or the methodology to ensure that the input data represents a market subject to competitive supply and demand forces, or cease to provide that benchmark ('Market impact').

Or. it

Amendment 392

Marco Valli, Marco Zanni

Proposal for a regulation

Article 7 – paragraph 1 – subparagraph 1 – point d

Text proposed by the Commission

(d) The administrator shall use a methodology for the determination of the benchmark that is robust and reliable and that has clear rules identifying how and when discretion may be exercised in the determination of that benchmark ('Robust and reliable methodology').

Amendment

(d) The administrator shall use a methodology for the determination of the benchmark that is robust and reliable and that has clear rules identifying how and when discretion may be exercised in the determination of that benchmark. ***The methodology that is to be employed shall be communicated to and approved by the ESMA prior to its use*** ('Robust and reliable methodology').

Or. it

Amendment 393
Fulvio Martusciello

Proposal for a regulation
Article 7 – paragraph 1 – subparagraph 1 – point d

Text proposed by the Commission

(d) The administrator **shall** use a methodology for the determination of the benchmark that is robust and reliable and that has clear rules identifying how and when discretion may be exercised in the determination of that benchmark ('Robust and reliable methodology').

Amendment

(d) The administrator **should, as appropriate**, use a methodology for the determination of the benchmark that is robust and reliable and that has clear rules identifying how and when discretion may be exercised in the determination of that benchmark ('Robust and reliable methodology').

Or. en

Amendment 394
Fulvio Martusciello

Proposal for a regulation
Article 7 – paragraph 1 – subparagraph 1 – point e

Text proposed by the Commission

(e) The administrator shall develop, operate and administer the benchmark data and methodology transparently ('Transparency').

Amendment

deleted

Or. en

Amendment 395
Marco Valli, Marco Zanni

Proposal for a regulation
Article 7 – paragraph 1 – subparagraph 1 – point e

Text proposed by the Commission

(e) The administrator shall develop, operate and administer the benchmark data

Amendment

(e) The administrator shall develop, operate and administer the benchmark data

and methodology transparently
(‘Transparency’).

and methodology transparently. *The administrator shall post the benchmark data and methodology online in a clear and straightforward manner, so that they may be accessed and used by all market operators* (‘Transparency’).

Or. it

Amendment 396
Marco Valli, Marco Zanni

Proposal for a regulation
Article 7 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

(1a) The ESMA shall draft technical standards for the application of a uniform methodology at EU level.

Or. it

Amendment 397
Kay Swinburne

Proposal for a regulation
Article 7 – paragraph 3

Text proposed by the Commission

Amendment

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 37 concerning measures to further specify the controls in respect of input data, the circumstances under which transaction data may not be sufficient and how this can be demonstrated to supervisors and the requirements for developing methodologies. The Commission shall take account of the following:

deleted

(a) developments in benchmarks and financial markets in light of international

convergence of supervisory practice in relation to benchmarks;

(b) specific features of different benchmarks and types of benchmarks; and

(c) the vulnerability of benchmarks to manipulation in light of the methodologies and input data used;

Or. en

Amendment 398
Luděk Niedermayer

Proposal for a regulation
Article 7 – paragraph 3 – point b

Text proposed by the Commission

Amendment

(b) specific features of different benchmarks and types of benchmarks; and

(b) Proportionality on requirements for critical, non-critical and commodity benchmarks and specificity of different types of benchmarks; and

Or. en

Justification

The proposed legislation should mainly build on principles approved by G20 a prepared by IOSCO. The attention should be given to proportionality - the key focus of the regulation are benchmarks most frequently used with strongest relevance to financial stability - defined as critical benchmarks.

Amendment 399
Eva Kaili

Proposal for a regulation
Article 7 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Where the input data of a benchmark is contributed from a front office

function, which means any department, division, group, or personnel of contributors or any of its affiliates that performs any pricing trading, sales, marketing, advertising, solicitation, structuring, or brokerage activities, the administrator shall:

(a) where reasonably available, obtain data from other sources that corroborates that input data;

b) ensure that contributors have reasonable internal oversight and verification procedures that allow for:

- validation of input contributed, including procedures for multiple reviews by senior staff to check inputs and internal sign off procedures by management for submitting inputs;

- the physical separation of employees in the front office function and reporting lines;

- full consideration of conflict management measures to identify, disclose, manage, mitigate and avoid existing or potential incentives to manipulate or otherwise influence data inputs, including through remuneration policies and conflicts of interest between the contribution of input data activities and any other business of the contributor, its affiliates, or their respective clients or customers.

Or. en

Amendment 400
Kay Swinburne

Proposal for a regulation
Article 7 – paragraph 3 a (new)

3a. Where the input data of a benchmark is contributed directly from a front office function, which means any department, division, group, or personnel of contributors or any of its affiliates that perform any pricing, trading, sales, marketing, advertising, solicitation, structuring or brokerage activities, the administrator shall:

a) where reasonably available, obtain data from other sources that corroborates that input data;

b) ensure that contributors have adequate internal oversight and verification procedures that allow for:

- validation of input contributed prior or post submission, including procedures for multiple reviews by senior staff to check inputs and internal sign off procedures by management for submitting inputs;

- the physical separation of employees in the front office function and reporting lines;

- full consideration of conflict management measures to identify, disclose, manage, mitigate and avoid existing or potential incentives to manipulate or otherwise influence data inputs, including through remuneration policies and conflict of interest between the contribution of input data activities and any other business of the contributor, its affiliates or their respective clients or customers.

Or. en

Justification

To be read alongside rapporteur's amendment 91 - needs to take into account the speed with which automatic submissions can be included therefore a post submission analysis should

also be possible

Amendment 401
Kay Swinburne

Proposal for a regulation
Article 7 a (new)

Text proposed by the Commission

Amendment

Article 7a

ESMA guidelines on input data and methodology

ESMA shall develop and maintain guidelines to supplement the controls in respect of input data, the circumstances under which transaction data may not be sufficient and how this can be demonstrated to supervisors and the requirements for developing methodologies, distinguishing for different types of benchmarks and sectors as set out in this Regulation. ESMA shall take account of the following:

- a) developments in benchmarks and financial markets in light of international convergence of supervisory practice in relation to benchmarks;***
- b) specific features of different benchmarks and types of benchmarks;***
and
- c) the vulnerability of benchmarks to manipulation in light of the methodologies and input data used.***
- d) that sufficient detail should be available to users to allow them to understand how a benchmark is provided in order to assess its relevance and appropriateness as a reference.***

ESMA shall issue those guidelines by [...].

Or. en

Justification

Should be read alongside rapporteur's amendment 96. Guidelines would be appropriate given the evolving nature of supervision of benchmark administrators and the need to recognise the specificities of different sectors as well as the requirements of very different users.

Amendment 402
Sylvie Goulard

Proposal for a regulation
Article 7 a (new)

Text proposed by the Commission

Amendment

Article 7a

Transparency of Methodology

1. The administrator shall transparently develop, operate and administer the benchmark data and methodology.

The administrator shall publish or make available, by means that ensure a fair and easy access:

(i) the methodology used for each of the benchmark or family of benchmarks;

(ii) the procedure for consulting on, and the rationale for, any proposed material change in its methodology and the rationale for such a change, including a definition of what constitutes a material change and when it will notify users of any changes.

2. Where such a publication would not be compatible with applicable intellectual property law, the methodology shall be made available to the relevant competent authority.

3. For non-critical benchmarks, the publication of the methodology and the procedure referred in points (i) and (ii) of paragraph 1 can be limited to persons who own financial instruments or are party to financial contracts referencing the benchmark or family of benchmarks,

and the relevant competent authority.

Or. en

Justification

Many non-critical benchmarks reference only a small number of financial instruments, so that public transparency of their methodology is not proportionate. Their methodology reflect the know-how and expertise of their administrators. However, they are not protected under intellectual property law (they are based on mathematical formulas). Publication of the methodology may seriously hamper the business model of such benchmarks and finally reduce investment opportunities for investors.

Amendment 403

Marisa Matias, Matt Carthy

Proposal for a regulation

Article 8 – paragraph 1

Text proposed by the Commission

1. The administrator shall ensure that there are adequate systems and effective controls to ensure the integrity the input data for the purpose of paragraph 2.

Amendment

1. The administrator ***of benchmarks under Article 5*** shall ensure that there are adequate systems and effective controls ***designed*** to ensure the integrity ***of*** the input data for the purpose of paragraph 2.

Or. en

Amendment 404

Fulvio Martusciello

Proposal for a regulation

Article 9 – paragraph 1

Text proposed by the Commission

1. The administrator shall ***adopt*** a code of conduct for each benchmark clearly specifying the ***administrator's and*** contributors' responsibilities and obligations with respect to the ***provision of the benchmark which shall include a***

Amendment

1. Where a benchmark is based on input data from contributors, the administrator shall ***draw up*** a code of conduct for each benchmark, ***family of benchmarks or across families of benchmarks,*** clearly specifying the contributors' responsibilities

clear description of the input data to be provided, and at least the elements set out in Section D of Annex I.

with respect to the *contribution of* input data.

Or. en

Amendment 405
Kay Swinburne

Proposal for a regulation
Article 9 – paragraph 1

Text proposed by the Commission

1. The administrator shall *adopt* a code of conduct for each benchmark clearly specifying the *administrator's and* contributors' responsibilities *and obligations* with respect to the *provision of the benchmark which* shall *include a clear description of the input data to be provided, and at least the elements set out in Section D of Annex I.*

Amendment

1. *Where a benchmark is based on input data from contributors*, the administrator shall *draw up* a code of conduct for each benchmark clearly specifying the contributors' responsibilities with respect to the *contribution of input data and* shall *ensure contributors confirm whenever there is a material change in the code of conduct, that they continue to be compliant.*

Or. en

Justification

To be read alongside Rapporteur's amendment 103. This would cause huge administrative burden if done on an annual basis, it would be more proportionate to do whenever there was a material change in the benchmark.

Amendment 406
Georgios Kyrtos

Proposal for a regulation
Article 9 – paragraph 1

Text proposed by the Commission

1. The administrator shall *adopt* a code of conduct for each benchmark clearly

Amendment

1. *Where a benchmark is based on input data from contributors*, the administrator

specifying *the administrator's and contributors' responsibilities and obligations* with respect to the *provision of the benchmark which shall include a clear description of the input data to be provided, and at least the elements set out in Section D of Annex I.*

shall *draw up* a code of conduct for each benchmark clearly specifying contributors' responsibilities with respect to the *contribution of input data and shall evaluate at least once per year the compliance of each submitter with the code of conduct as well as in the event of any changes to it.*

Or. en

Amendment 407

Eva Kaili

Proposal for a regulation

Article 9 – paragraph 1

Text proposed by the Commission

1. The administrator shall adopt a code of conduct for each benchmark clearly specifying the administrator's and contributors' responsibilities and obligations with respect to the *provision of the benchmark which shall include a clear description of the input data to be provided, and at least the elements set out in Section D of Annex I.*

Amendment

1. The administrator shall adopt a code of conduct for each benchmark clearly specifying the administrator's and contributors' responsibilities and obligations with respect to the *contribution of input data and is obliged to reassess in an annual basis the compliance of each submitters with the code of conduct as updated from time to time.*

Or. en

Amendment 408

Marco Valli, Marco Zanni

Proposal for a regulation

Article 9 – paragraph 1

Text proposed by the Commission

1. The administrator shall adopt a code of conduct for each benchmark clearly specifying the administrator's and contributors' responsibilities and obligations with respect to the provision of

Amendment

1. The administrator shall adopt a code of conduct for each benchmark clearly specifying the administrator's and contributors' responsibilities and obligations with respect to the provision of

the benchmark which shall include a clear description of the input data to be provided, **and at least the elements set out in Section D of Annex I.**

the benchmark which shall include a clear description of the input data to be provided, **the control systems the contributor intends to establish and the arrangements for handling any conflicts of interest;**

Or. it

Amendment 409
Marisa Matias, Matt Carthy

Proposal for a regulation
Article 9 – paragraph 1

Text proposed by the Commission

1. The administrator shall adopt a code of conduct for each benchmark clearly specifying the administrator's and contributors' responsibilities and obligations with respect to the provision of the benchmark which shall include a clear description of the input data to be provided, and at least the elements set out in Section D of Annex I.

Amendment

1. The administrator shall adopt **in collaboration with the contributors** a code of conduct for each benchmark clearly specifying the administrator's and contributors' responsibilities and obligations with respect to the provision of the benchmark which shall include a clear description of the input data to be provided, and at least the elements set out in Section D of Annex I.

Or. en

Amendment 410
Kay Swinburne

Proposal for a regulation
Article 9 – paragraph 2

Text proposed by the Commission

2. The code of conduct shall **be signed by** the administrator **and the contributors and shall be legally binding on all parties to it.**

Amendment

2. The code of conduct shall **include at least the following elements:**

a) a clear description of the input data to be provided and the requirements necessary to ensure that the input data to

be provided in accordance with Articles 7 and 8;

b) a list of legal persons who may contribute input data to the administrator including procedures to evaluate the identity of a contributor and any submitters;

c) policies to ensure contributors provide all relevant input data; and

d) the systems and controls that the contributor is required to establish including:

- procedures for submitting input data including requirements for the contributor to specify whether the input data is transaction data and whether the input data conforms with the administrator's requirements;

-policies on the use of discretion in providing input data;

-any requirement for the validation of input data before it is provided to the administrator;

- record keeping policies;

- suspicious input data reporting requirements;

- conflict management requirements.

Or. en

Amendment 411
Jonás Fernández

Proposal for a regulation
Article 9 – paragraph 2

Text proposed by the Commission

2. The code of conduct shall be signed by the administrator and the contributors *and* shall be legally binding on all parties to it.

Amendment

2. The code of conduct shall be signed by the administrator and the contributors. *Where critical benchmarks are concerned, the code of conduct* shall be

legally binding on all parties to it.

Or. es

Amendment 412

Marco Valli, Marco Zanni

Proposal for a regulation

Article 9 – paragraph 3 – subparagraph 2

Text proposed by the Commission

The Commission shall take into account the different characteristics of benchmarks and contributors, notably in terms of differences in input data and methodologies, the risks of input data being manipulated and international convergence of supervisory practices in relation to benchmarks.

Amendment

deleted

Or. it

Amendment 413

Marisa Matias, Matt Carthy, Miguel Viegas

Proposal for a regulation

Article 9 – paragraph 3 – subparagraph 2

Text proposed by the Commission

The Commission shall take into account the different characteristics of benchmarks and contributors, notably in terms of differences in input data and methodologies, the risks of input data being manipulated and international convergence of supervisory practices in relation to benchmarks.

Amendment

The Commission shall take into account the different characteristics of benchmarks and contributors, notably in terms of differences in input data and methodologies, ***whether the contributors are voluntary***, the risks of input data being manipulated and international convergence of supervisory practices in relation to benchmarks ***of this regulation***.

ESMA shall provide guidelines, after close consultation with ACER, with regard to applicability of legally binding codes of conduct in particular with regard

to non-regulated entities and price reporting agencies within the EU.

Or. en

Amendment 414
Luděk Niedermayer

Proposal for a regulation
Article 9 – paragraph 3 – subparagraph 2

Text proposed by the Commission

The Commission shall take into account the different characteristics of benchmarks and contributors, notably in terms of differences in input data and methodologies, the risks of input data being manipulated and international convergence of supervisory practices in relation to benchmarks.

Amendment

The Commission shall ***apply proportionality on requirements for critical, non-critical and commodity benchmarks and*** take into account the different characteristics of benchmarks and contributors, notably in terms of differences in input data and methodologies, the risks of input data being manipulated and international convergence of supervisory practices in relation to benchmarks.

Or. en

Justification

The proposed legislation should mainly build on principles approved by G20 a prepared by IOSCO. The attention should be given to proportionality - the key focus of the regulation are benchmarks most frequently used with strongest relevance to financial stability - defined as critical benchmarks.

Amendment 415
Kay Swinburne

Proposal for a regulation
Article 10

Text proposed by the Commission

Article 10

Amendment

deleted

Regulated data

1. When the input data contributed to a benchmark is regulated data, Articles 7(1)(b), 8(1), 8(2) and Article 9 shall not apply.

2. The administrator shall enter into an agreement with the contributor of the regulated data which clearly identifies to the contributor the benchmarks that the administrator is determining with the regulated data and shall ensure compliance with this Regulation.

Or. en

Amendment 416

Marco Valli, Marco Zanni

Proposal for a regulation

Article 10

Text proposed by the Commission

Amendment

Article 10

deleted

Regulated data

1. When the input data contributed to a benchmark is regulated data, Articles 7(1)(b), 8(1), 8(2) and Article 9 shall not apply.

2. The administrator shall enter into an agreement with the contributor of the regulated data which clearly identifies to the contributor the benchmarks that the administrator is determining with the regulated data and shall ensure compliance with this Regulation.

Or. it

Amendment 417

Jonás Fernández

Proposal for a regulation
Article 11 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. If a benchmark is classed as critical, contributors to that benchmark, even if they are not supervised contributors, must comply with all the obligations laid down in this article and set out in Section E of Annex I.

Or. es

Amendment 418
Marco Valli, Marco Zanni

Proposal for a regulation
Article 11 – paragraph 4 – subparagraph 2

Text proposed by the Commission

Amendment

The Commission shall take into account the different characteristics of benchmarks and supervised contributors, notably in terms of differences in input data provided and methodologies used, the risks of manipulation of the input data and the nature of the activities carried out by the supervised contributors, and the developments in benchmarks and financial markets in light of international convergence of supervisory practices in relation to benchmarks.

deleted

Or. it

Amendment 419
Luděk Niedermayer

Proposal for a regulation
Article 11 – paragraph 4 – subparagraph 2

Text proposed by the Commission

The Commission shall take into account the different characteristics of benchmarks and supervised contributors, notably in terms of differences in input data provided and methodologies used, the risks of manipulation of the input data and the nature of the activities carried out by the supervised contributors, and the developments in benchmarks and financial markets in light of international convergence of supervisory practices in relation to benchmarks.

Amendment

The Commission shall ***apply proportionality on requirements for critical, non-critical and commodity benchmarks and*** take into account the different characteristics of benchmarks and supervised contributors, notably in terms of differences in input data provided and methodologies used, the risks of manipulation of the input data and the nature of the activities carried out by the supervised contributors, and the developments in benchmarks and financial markets in light of international convergence of supervisory practices in relation to benchmarks.

Or. en

Justification

The proposed legislation should mainly build on principles approved by G20 a prepared by IOSCO. The attention should be given to proportionality - the key focus of the regulation are benchmarks most frequently used with strongest relevance to financial stability - defined as critical benchmarks.

Amendment 420

Marco Valli, Marco Zanni

Proposal for a regulation

Title 3

Text proposed by the Commission

SECTORAL REQUIREMENTS AND CRITICAL BENCHMARKS

Amendment

REQUIREMENTS FOR THE VARIOUS TYPES OF BENCHMARK

Or. it

Amendment 421

Marco Valli, Marco Zanni

Proposal for a regulation
Title 3 – chapter 1 – title

Text proposed by the Commission

Amendment

Benchmark sectors

Benchmarks

Or. it

Amendment 422
Kay Swinburne

Proposal for a regulation
Article 12

Text proposed by the Commission

Amendment

Article 12

deleted

***Specific requirements for different types
of benchmarks and sectors***

- 1. In addition to the requirements of the Title II, the specific requirements set out in Annex II shall apply to inter-bank interest rate benchmarks.***
- 2. In addition to the requirements of the Title II, the specific requirements set out in Annex III shall apply to commodity benchmarks.***
- 3. The Commission shall be empowered to adopt delegated acts in accordance with Article 39 to specify, or adjust, in light of market and technological developments and international developments, the following elements of Annexes II and III:***
 - (a) The period of time after which input data shall be published (Annex II point 6)***
 - (b) The processes for election and nomination and responsibilities of the oversight committee (Annex II points 8, 9 and 10)***
 - (c) The frequency of audits (Annex II point 12)***

- (d) The processes by which input data is provided to be specified in the code of conduct (Annex II point 13)*
- (e) The systems and controls of a contributor (Annex II point 16)*
- (f) The records which are to be kept by a contributor and the medium in which they are to be kept(Annex II point 17 and 18)*
- (g) The findings to be reported to management by the compliance function of the contributor (Annex II point 19)*
- (h) The frequency of internal reviews of input data and procedures (Annex II point 20)*
- (i) The frequency of external audits of the contributor's input data (Annex II point 21)*
- (j) The criteria and procedures for developing the benchmark (Annex III point 1 a)*
- (k) The elements to be included in the methodology and the description of the methodology (Annex III point 1 and 2)*
- (l) The requirements of the administrator regarding the quality and the integrity of the benchmark calculation and the content of the description attached to each calculation (Annex III point 5 and 6)*

Or. en

Amendment 423
Marco Valli, Marco Zanni

Proposal for a regulation
Article 12 – title

Text proposed by the Commission

Specific requirements for different types of benchmarks *and sectors*

Amendment

Specific requirements for different types of benchmarks

Or. it

Amendment 424
Gunnar Hökmark

Proposal for a regulation
Article 12 – paragraph 1

Text proposed by the Commission

1. In addition to the requirements of the Title II, the specific requirements set out in Annex II shall apply to inter-bank interest rate benchmarks.

Amendment

1. In addition to the requirements of the Title II, the specific requirements set out in Annex II shall apply to inter-bank interest rate benchmarks. ***When it comes to non-critical benchmarks in non-eurozone Member States the requirements set out in Annex II shall apply in accordance with decisions by the competent national authority.***

Or. en

Amendment 425
Steven Woolfe

Proposal for a regulation
Article 12 – paragraph 2

Text proposed by the Commission

2. In addition to the requirements of the Title II, the specific requirements set out in Annex III shall apply to commodity benchmarks.

Amendment

deleted

Or. en

Amendment 426
Steven Woolfe

Proposal for a regulation
Article 12 – paragraph 3 – introductory part

Text proposed by the Commission

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 39 to specify, or adjust, in light of market and technological developments and international developments, the following elements of **Annexes II and III**:

Amendment

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 39 to specify, or adjust, in light of market and technological developments and international developments, the following elements of **Annex II**:

Or. en

Amendment 427
Jonás Fernández

Proposal for a regulation
Article 12 – paragraph 3 – point a

Text proposed by the Commission

(a) The period of time after which input data shall be published (Annex II point 6)

Amendment

deleted

Or. es

Amendment 428
Steven Woolfe

Proposal for a regulation
Article 12 – paragraph 3 – point j

Text proposed by the Commission

(j) The criteria and procedures for developing the benchmark (Annex III point 1 a)

Amendment

deleted

Or. en

Amendment 429
Steven Woolfe

Proposal for a regulation
Article 12 – paragraph 3 – point k

Text proposed by the Commission

Amendment

(k) The elements to be included in the methodology and the description of the methodology (Annex III point 1 and 2)

deleted

Or. en

Amendment 430
Steven Woolfe

Proposal for a regulation
Article 12 – paragraph 3 – point l

Text proposed by the Commission

Amendment

(l) The requirements of the administrator regarding the quality and the integrity of the benchmark calculation and the content of the description attached to each calculation (Annex III point 5 and 6)

deleted

Or. en

Amendment 431
Philippe Lamberts
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 12 a (new)

Text proposed by the Commission

Amendment

Article 12 a

Supervision of critical benchmarks by ESMA

1. ESMA shall be empowered to supervise critical benchmarks. It may delegate some or all of the responsibility for supervision to Member State competent authorities

when appropriate, but shall be empowered to revoke the delegation, in order to assume direct supervision, where it is deemed appropriate such as for reasons of resource, supervisory consistency, or at the request of the Member State.

2. When deciding to delegate some or all of the responsibility for supervision concerning critical benchmarks to a Member State competent authority, ESMA may take into account, amongst other things:

(i) whether there is a high concentration of contributors that are located or supervised within the Member State concerned;

(ii) whether the supervision in the Member State is IOSCO compliant;

(iii) and, in respect of benchmarks compiled from regulated data, whether there is a need for provisions on mandatory contributions pursuant to Article 14.

3. When the ESMA exercises direct supervision of a critical benchmark, it shall charge fees to the administrators. Those fees shall fully cover ESMA's necessary expenditure relating to the registration and supervision.

Or. en

Justification

the AM reflects the compromise of the old EP which could serve as a good compromise for the new EP

Amendment 432

Sylvie Goulard

Proposal for a regulation

Article 12 a (new)

Article 12a

***Supervision of critical benchmarks by
ESMA***

1. ESMA shall be empowered to supervise critical benchmarks. It may delegate some or all of the responsibility for supervision to Member State competent authorities when appropriate, but shall be empowered to revoke the delegation, in order to assume direct supervision, where it is deemed appropriate such as for reasons of resource, supervisory consistency, at the reasoned request of the Commission or a Member State or in situation in which a competent authority does not or is not able to comply with this regulation.

2. When deciding to delegate some or all of the responsibility for supervision concerning critical benchmarks to a Member State competent authority, the ESMA may take into account, amongst other things:

(i) whether there is a high concentration of contributors that are located or supervised within the Member State concerned;

(ii) whether the supervision in the Member State is IOSCO compliant;

(iii) and, in respect of benchmarks compiled from regulated data, whether there is a need for provisions on mandatory contributions pursuant to Article 14.

3. When deciding to delegate the exercise of the delegation or to revoke the delegation, the ESMA may take into account the opinion of the relevant competent authorities.

When deciding to delegate the supervision of a critical benchmark, the ESMA may provide guidance for the exercise of the

delegation.

4. When the ESMA exercises direct supervision of a critical benchmark, it shall charge fees to the administrators. Those fees shall fully cover ESMA's necessary expenditure relating to the registration and supervision.

Or. en

**Amendment 433
Kay Swinburne**

**Proposal for a regulation
Article 12 a (new)**

Text proposed by the Commission

Amendment

Article 12a

Regulated data

Where benchmarks are determined by the application of a formula to data set out in point 11(ii) of Article 3(1), Articles 7(1)(b), 7(1)(c), 7(2), 7(3), 8(1), 8(2), 9 and 11 shall not apply to the provision of and the contribution to such benchmarks. Article 5d(1)(a) shall not apply to the provision of such benchmarks with reference to input data that are contributed entirely and without change as specified in Article 3(1)(20a). These requirements shall also not apply for purposes of Article 5c(2a).

Or. en

Justification

A minor change to the rapporteur's inclusion in amendment 122 to clarify that if the data is not changed between the trading venue and a data vendor it should still be included in this definition.

Amendment 434
Markus Ferber

Proposal for a regulation
Article 13 – paragraph 1 – subparagraph 1

Text proposed by the Commission

The Commission shall adopt a list of benchmarks located within the Union which are critical benchmarks, in accordance with the definition laid down in Article 3(21).

Amendment

A national competent authority of a Member State may classify a benchmark administered within its jurisdiction as critical where it has an average notional value totalling of EUR 500 000 000 000 or if the manipulation or cessation of a 'critical benchmark' could potentially have an adverse impact on the stability of financial markets and/or the real economy; if a national competent authority makes such a decision, it shall notify ESMA of its decision within ten days.

Or. en

Justification

The definition of a 'critical benchmark' should also encompass a qualitative element in order to avoid misclassification due to a limited focus on quantitative criteria.

Amendment 435
Jonás Fernández

Proposal for a regulation
Article 13 – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. The Commission shall adopt a list of benchmarks located within the Union which are critical benchmarks, in accordance with the definition laid down in Article 3(21).

Amendment

1. A national competent authority may study any benchmark, registered at any time owing to needs detected by the competent authority itself, and describe it as 'critical' in line with the definition laid down in Article 3(21). The national competent authority may assess the benchmark and describe it as a 'critical

national benchmark’ or a ‘critical European benchmark’. EMSA, the remaining national competent authorities and the administrator of that benchmark shall be informed of any such decision. Once all parties have been notified:

(a) If any of the national competent authorities and/or the administrator raise an objection, they shall have 20 calendar days to submit the appropriate documentation substantiating their position to the competent authority responsible for the benchmark. At the end of this period the competent authority shall make an informed decision within the following five calendar days.

(b) If a national competent authority continues to object to the decision, EMSA must take action at the request of the national authority concerned and in accordance with Article 19 of Regulation EU No 1095/2010 and issue a judgment within the following 20 calendar days.

(c) The administrator may also apply to EMSA should he or she disagree with his or her benchmark being classed as critical, once the procedure for informing the competent authority has been exhausted. EMSA shall once again have 20 calendar days within which to issue a binding decision.

Or. es

Amendment 436
Burkhard Balz

Proposal for a regulation
Article 13 – paragraph 1 – subparagraph 1

Text proposed by the Commission

The Commission shall adopt a list of benchmarks located within the Union

Amendment

A benchmark shall be deemed to be a critical benchmark in the following

which are critical benchmarks, in accordance with the definition laid down in Article 3(21).

circumstances:

(a) the benchmark is used as a reference for financial instruments and financial contracts having an average value of at least 500 000 000 000, as measured over an appropriate period of time;

(b) the benchmark is not based on regulated data.

Or. en

Amendment 437
Kay Swinburne

Proposal for a regulation
Article 13 – paragraph 1 – subparagraph 1

Text proposed by the Commission

*The Commission shall adopt a list of benchmarks located within the Union which are critical benchmarks, in accordance with the **definition** laid down in Article 3(21).*

Amendment

A benchmark shall be deemed to be a critical benchmark in the following circumstances:

a) the benchmark is used as a reference for financial instruments and financial contracts having an average value of at least EUR 1,000,000,000,000 as measured on a rolling basis over a 1 year period;

b) the majority of the contributors are entities supervised by a member of the European System of Financial Supervisors (ESFS) and

c) more than 50% of the benchmark contributors are supervised in more than one Member State of the EU.

ESMA shall develop draft regulatory standards to:

- specify how the market value of financial instruments other than derivatives and the notional value of

derivatives are assessed in order to be compared with the EUR 1,000,000,000,000 threshold

ESMA shall submit those draft regulatory standards to the Commission by xxx

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Or. en

Justification

No justification has been found for the figure of 500,000,000,000 used by the Commission, however many benchmark providers have expressed concern that this may inappropriately capture certain benchmarks. Until the Commission can provide a list of benchmarks that are captured by the figure it should be raised so as to avoid capturing benchmarks unsuited to the requirements of this regulation. Ensuring that the contributors to critical benchmarks are supervised either by national financial supervisors or an EU financial supervisor will ensure that the requirements of this regulation are fulfilled.

Amendment 438

Marco Valli, Marco Zanni

Proposal for a regulation

Article 13 – paragraph 1 – subparagraph 1

Text proposed by the Commission

The Commission shall adopt a list of benchmarks located within the Union which are critical benchmarks, *in accordance with the definition laid down in Article 3(21).*

Amendment

The Commission shall adopt a list of benchmarks located within the Union which are critical benchmarks.

Under Article 3(1)(21) of this Regulation, ‘critical benchmark’ means a benchmark, the majority of contributors to which are supervised entities and that reference financial instruments having a notional value of at least 500 billion euro.

A benchmark of less than 500 billion euro may be deemed critical by the competent authorities if the supply or cessation of that benchmark could have an adverse impact on financial stability and on the real economy;

Or. it

Amendment 439
Jonás Fernández

Proposal for a regulation
Article 13 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

1a. A national competent authority may wish to describe a benchmark registered and supervised by a competent authority in another Member State as a ‘national benchmark’ or a ‘critical European benchmark’ in line with the definition laid down in Article 3(21). In this case, the authority concerned shall notify the request to the national competent authority responsible for the benchmark, which shall in turn inform EMSA, the remaining national competent authorities and the benchmark administrator. Once all parties have been notified:

(a) If any of the national competent authorities and/or the administrator raise an objection, they shall have 20 calendar days to submit the appropriate documentation substantiating their position to the competent authority responsible for the benchmark. That authority may then, within the same time limit, draw up the required reports that it shall notify to the competent authority that requested that the benchmark be classed as ‘critical’. At the end of this period the competent authority shall make an informed decision within the following

five calendar days.

(b) If a national competent authority (including the one which initiated the procedure challenging the nature of the benchmark) continues to object to the decision, EMSA must take action at the request of the national authority concerned and in accordance with Article 19 of Regulation EU No 1095/2010 and issue a judgment within the following 20 calendar days.

(c) The administrator may also apply to EMSA should he or she disagree with his or her benchmark being classed as critical, once the procedure for informing the competent authority has been exhausted. EMSA shall once again have 20 calendar days within which to issue a binding decision.

Or. es

Amendment 440
Jonás Fernández

Proposal for a regulation
Article 13 – paragraph 1 – subparagraph 1 b (new)

Text proposed by the Commission

Amendment

1b. ESMA may study any benchmark, whether national or European and registered at any time owing to needs detected, and describe it as "critical" in line with the definition laid down in Article 3(21). The remaining national competent authorities and the administrator of that benchmark shall be informed of any such decision. Once all parties have been notified:

(a) If any of the national competent authorities and/or the administrator raise an objection, they shall have 20 calendar days in which to submit the appropriate documentation substantiating their

position to ESMA. At the end of this period ESMA shall make an informed decision within the following five calendar days.

(b) If a national competent authority continues to object to the decision, EMSA must take action at the request of the national authority concerned and in accordance with Article 19 of Regulation EU No 1095/2010 and issue a judgment within the following 20 calendar days.

(c) The administrator may also apply to ESMA should it disagree with its benchmark being classed as critical. ESMA shall once again have 20 calendar days within which to issue a binding decision.

Or. es

Amendment 441

Markus Ferber

Proposal for a regulation

Article 13 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 38(2).

deleted

Or. en

Amendment 442

Burkhard Balz

Proposal for a regulation

Article 13 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

Those implementing acts shall be adopted

ESMA shall develop draft regulatory

in accordance with the examination procedure referred to in Article 38(2).

technical standards to

- specify how the market value of financial instruments other than derivatives and the notional value of derivatives are assessed in order to be compared with the EUR 500 000 000 000 threshold;

- specify the length of time to be used to measure appropriately the value of the benchmark;

- review the EUR 500 000 000 000 threshold, at least every 3 years after the date of the entry into force of this Regulation.

ESMA shall submit those draft regulatory technical standards to the Commission by [...].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Or. en

Amendment 443
Kay Swinburne

Proposal for a regulation
Article 13 – paragraph 2

Text proposed by the Commission

Amendment

2. Within 5 working days from the date of application of the decision including a critical benchmark in the list referred to in paragraph 1 of this Article, the administrator of that critical benchmark shall notify the code of conduct to the relevant competent authority. The relevant competent authority shall verify within 30 days whether the content of the

deleted

code of conduct complies with the requirements of this Regulation. In case the relevant competent authority finds elements which do not comply with the requirements of this Regulation, it shall inform the administrator. The administrator shall adjust the code of conduct to ensure that it complies with the requirements of this Regulation within 30 days of such a request.

Or. en

Amendment 444
Markus Ferber

Proposal for a regulation
Article 13 – paragraph 2

Text proposed by the Commission

Amendment

2. Within 5 working days from the date of application of the decision including a critical benchmark in the list referred to in paragraph 1 of this Article, the administrator of that critical benchmark shall notify the code of conduct to the relevant competent authority. The relevant competent authority shall verify within 30 days whether the content of the code of conduct complies with the requirements of this Regulation. In case the relevant competent authority finds elements which do not comply with the requirements of this Regulation, it shall inform the administrator. The administrator shall adjust the code of conduct to ensure that it complies with the requirements of this Regulation within 30 days of such a request.

deleted

Or. en

Amendment 445
Philippe Lamberts
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 13 – paragraph 2

Text proposed by the Commission

2. Within 5 working days from the date of application of the decision including a critical benchmark in the list referred to in paragraph 1 of this Article, the administrator of that critical benchmark shall notify the code of conduct to the relevant competent authority. ***The relevant competent authority*** shall verify within 30 days whether the content of the code of conduct complies with the requirements of this Regulation. In case ***the relevant competent authority*** finds elements which do not comply with the requirements of this Regulation, it shall inform the administrator. The administrator shall adjust the code of conduct to ensure that it complies with the requirements of this Regulation within 30 days of such a request.

Amendment

2. Within 5 working days from the date of application of the decision including a critical benchmark in the list referred to in paragraph 1 of this Article, the administrator of that critical benchmark shall notify the code of conduct to the relevant competent authority ***and ESMA***. ***ESMA*** shall verify within 30 days whether the content of the code of conduct complies with the requirements of this Regulation. In case ***ESMA*** finds elements which do not comply with the requirements of this Regulation, it shall inform the administrator. The administrator shall adjust the code of conduct to ensure that it complies with the requirements of this Regulation within 30 days of such a request.

Or. en

Amendment 446
Burkhard Balz

Proposal for a regulation
Article 13 – paragraph 2

Text proposed by the Commission

2. Within 5 working days from the date of application of the decision including a critical benchmark in the list referred to in paragraph 1 of this Article, the administrator of that critical benchmark shall notify the code of conduct to the relevant competent authority. The

Amendment

2. ESMA shall establish a list of critical benchmarks that are provided and used in the European Union. The list shall be updated on a regular basis.

relevant competent authority shall verify within 30 days whether the content of the code of conduct complies with the requirements of this Regulation. In case the relevant competent authority finds elements which do not comply with the requirements of this Regulation, it shall inform the administrator. The administrator shall adjust the code of conduct to ensure that it complies with the requirements of this Regulation within 30 days of such a request.

Or. en

Amendment 447
Jonás Fernández

Proposal for a regulation
Article 13 – paragraph 2

Text proposed by the Commission

2. Within 5 working days from the date of application of the decision including a critical benchmark in the list referred to in paragraph 1 of this Article, the administrator of that critical benchmark shall notify the code of conduct to the relevant competent authority. The relevant competent authority shall verify within 30 days whether the content of the code of conduct complies with the requirements of this Regulation. In case the relevant competent authority finds elements which do not comply with the requirements of this Regulation, it shall inform the administrator. The administrator shall adjust the code of conduct to ensure that it complies with the requirements of this Regulation within 30 days of such a request.

Amendment

2. Once a benchmark has been defined as "critical", the college of competent authorities shall be formed pursuant to Article 34. The college shall be responsible for supervising compliance with the additional requirements laid down for critical benchmarks and with which the administrator and the contributors shall comply.

The college of competent authorities shall request the information needed in order to grant the authorisation enabling this

benchmark to be provided under the additional conditions imposed by this Regulation on account of the benchmark being a critical one, as laid out in Article 23.

Or. es

Amendment 448
Marco Valli, Marco Zanni

Proposal for a regulation
Article 13 – paragraph 2

Text proposed by the Commission

2. Within 5 working days from the date of application of the decision including a critical benchmark in the list referred to in paragraph 1 of this Article, the administrator of that critical benchmark shall notify the code of conduct to the **relevant** competent authority. The **relevant** competent authority shall verify within **30** days whether the content of the code of conduct complies with the requirements of this Regulation. In case the **relevant** competent authority finds elements which do not comply with the requirements of this Regulation, it shall inform the administrator. The administrator shall adjust the code of conduct to ensure that it complies with the requirements of this Regulation within **30** days of such a request.

Amendment

2. Within 5 working days from the date of application of the decision including a critical benchmark in the list referred to in paragraph 1 of this Article, the administrator of that critical benchmark shall notify the code of conduct to the competent authority and ESMA. The competent authority shall verify within **15 working** days whether the content of the code of conduct complies with the requirements of this Regulation. In case the competent authority finds elements which do not comply with the requirements of this Regulation, it shall inform the administrator. The administrator shall adjust the code of conduct to ensure that it complies with the requirements of this Regulation within **15** days of such a request.

Or. it

Amendment 449
Kay Swinburne

Proposal for a regulation
Article 13 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. A competent authority of a Member State may disapply point (b) of the first subparagraph of paragraph 1 and deem a benchmark administered within its jurisdiction to be critical if it considers that the cessation of that benchmark would have a significant adverse impact on the integrity of markets, financial stability, consumers, the national economy, or the financing of households within its jurisdiction. In such a case, it shall notify ESMA of its decision within five days.

Or. en

Justification

A Member State should be able to apply the critical definition to a benchmark that is not active on an EU wide basis if it considers its own national regulation would best be supplemented by the EU regulation. However in order to ensure proportionality, the size threshold in article 13 paragraph 1 should still be applied as benchmarks or indices that are smaller than this should be subject to proportionate and size specific regulation.

Amendment 450

Jonás Fernández

Proposal for a regulation

Article 13 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. If the contributors of a benchmark defined as critical are non-supervised entities, then the college of competent authorities, established in accordance with Article 34 of this Regulation, shall take on the work of a competent authority for said contributors, and shall be empowered to exact compliance with the requirements of this Regulation.

(b) If non-supervised contributors to a

critical benchmark are located in a third country outside of the European Union, the administrator shall supervise its own contributors on behalf of its college of competent authorities in regard to compliance with the requirements laid down in Article 11, the signature of the legally binding code of conduct, the mandatory contribution to the benchmark itself and all other requirements laid down in this Regulation.

c) In the event that the administrator cannot assume this responsibility, the college of competent bodies shall draw up a special contingency plan to enable provision of the benchmark to be maintained with minimum impact on compliance with the requirements laid down in this Regulation or else its replacement by another benchmark with fewer bureaucratic problems, in line with the model set down in Article 24 for cases where provision of critical benchmarks ceases.

Or. es

Amendment 451
Kay Swinburne

Proposal for a regulation
Article 13 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. In the absence of an agreement between the competent authorities, the requesting competent authority may refer the matter to ESMA for assistance under point (c) of Article 31 of Regulation (EU) No 1095/2010.

Or. en

Justification

to be seen as an amendment to rapporteur's amendment 128 paragraph 2d (new)

Amendment 452

Jonás Fernández

Proposal for a regulation

Article 13 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. The college of competent authorities shall review at least once every two years benchmarks previously classed as critical.

Or. es

Amendment 453

Cora van Nieuwenhuizen

Proposal for a regulation

Article 13 a (new)

Text proposed by the Commission

Amendment

Article 13a

Mandatory Administration

1. If an administrator of a critical benchmark intends to cease producing its critical benchmark, it shall:

(a) immediately notify its competent authority; and

(b) within four weeks of such notification submit an assessment of how the benchmark is to be transitioned to a new administrator; or

(c) within 4 weeks of such notification submit an assessment of how the benchmark is to be ceased to be produced, taking into account the procedure established in Article 17(1).

During this period of time, the administrator shall not cease production of the benchmark.

2. Upon receipt of the assessment of the benchmark administrator referred to in paragraph 1, the competent authority shall within 4 weeks:

(a) inform ESMA; and

(b) make its own assessment of how the benchmark shall be transitioned to a new administrator or be ceased to be produced, taking into account the administrator's procedure for cessation of its benchmark established in accordance with Article 17(1).

During this period of time, the administrator shall not cease production of the benchmark.

3. Following completion of the assessment under paragraph 2, the competent authority shall have the power to compel the administrator to continue publishing the benchmark until such a time:

(a) as the provision of the benchmark has been transferred to a new administrator; or

(b) as the benchmark can be ceased in an orderly fashion; or

(c) as the benchmark is no longer critical.

The competent authority may compel the administrator to continue to publish the benchmark for a limited period of time not exceeding 12 months, which the competent authority may extend where necessary by up to a further 12 months.

Or. en

Justification

Cessation of the production of a critical benchmark can jeopardise the stability of the financial system and the real economy. Competent authorities must thus possess the tools necessary to compel administrators to continue production of a critical benchmark. These

powers of compulsion , however, should not be indefinite and not exceed a total period of 24 months.

Amendment 454
Luděk Niedermayer

Proposal for a regulation
Article 14 – title

Text proposed by the Commission

Amendment

Mandatory contribution

Mandatory contribution *to a critical benchmark*

Or. en

Amendment 455
Kay Swinburne

Proposal for a regulation
Article 14 – paragraph 1

Text proposed by the Commission

Amendment

1. Where contributors, comprising at least 20% of the contributors to a critical benchmark have ceased contributing, or there are sufficient indications that at least 20% of the contributors are likely to cease contributing, in any year, the competent authority of the administrator of a critical benchmark shall have the power to:

deleted

(a) require supervised entities, selected in accordance with paragraphs 2, to contribute input data to the administrator in accordance with the methodology, code of conduct or other rules;

(b) determine the form in which, and the time by which, any input data is to be contributed;

(c) change the code of conduct, methodology or other rules of the critical

benchmark.

Or. en

Amendment 456

Jonás Fernández

Proposal for a regulation

Article 14 – paragraph 1 – introductory part

Text proposed by the Commission

1. *Where contributors, comprising at least 20% of the contributors to a critical benchmark have ceased contributing, or there are sufficient indications that at least 20% of the contributors are likely to cease contributing, in any year, the competent authority of the administrator of a critical benchmark shall have the power to:*

Amendment

1. *Every two years the administrator of a critical benchmark shall provide its college of competent authorities with a report analysing the representativeness of its benchmark's market.*

Or. es

Amendment 457

Fulvio Martusciello, Lara Comi, Elisabetta Gardini, Antonio Tajani

Proposal for a regulation

Article 14 – paragraph 1 – introductory part

Text proposed by the Commission

1. *Where contributors, comprising at least 20% of the contributors to a critical benchmark have ceased contributing, or there are sufficient indications that at least 20% of the contributors are likely to cease contributing, in any year, the competent authority of the administrator of a critical benchmark shall have the power to:*

Amendment

1. *If one or more contributors to a critical benchmark intend to cease contributing input data, they shall promptly notify the benchmark administration in writing, which shall inform ESMA without delay and submit to it an assessment of the implications of the capability of the benchmark to measure the underlying market or economic reality. In case ESA considers that the representativeness or the continuity of a critical benchmark is put at risk, it, shall have the power to:*

Justification

The 20% threshold for imposing mandatory contribution of input data to a critical benchmark does not represent the most appropriate criterion to determine whether the discontinuity of contributions is likely to produce adverse effects to referenced financial instruments or contracts. The amendment aims at ensuring that the reliability and the continuity of the benchmark is properly assessed by ESMA before a contributor leaves.

Amendment 458

Marisa Matias, Matt Carthy

Proposal for a regulation

Article 14 – paragraph 1 – introductory part

Text proposed by the Commission

1. Where contributors, comprising at least 20% of the contributors to a **critical** benchmark have ceased contributing, or there are sufficient indications that at least 20% of the contributors are likely to cease contributing, in any year, the competent authority of the administrator of a **critical** benchmark shall have the power to:

Amendment

1. Where contributors, comprising at least 20% of the contributors to a benchmark have ceased contributing, or there are sufficient indications that at least 20% of the contributors are likely to cease contributing, in any year, the competent authority of the administrator of a benchmark shall have the power to:

Or. en

Amendment 459

Marco Valli, Marco Zanni

Proposal for a regulation

Article 14 – paragraph 1 – introductory part

Text proposed by the Commission

1. Where contributors, **comprising at least 20% of the contributors to a critical** benchmark have ceased contributing, the competent authority **of the administrator of a critical benchmark** shall have the power to:

Amendment

1. Where **one or more** contributors to **any** benchmark have ceased contributing, the competent authority shall have the power to:

Amendment 460
Jonás Fernández

Proposal for a regulation
Article 14 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) require supervised entities, selected in accordance with paragraphs 2, to contribute input data to the administrator in accordance with the methodology, code of conduct or other rules;

deleted

Or. es

Amendment 461
Fulvio Martusciello, Lara Comi, Elisabetta Gardini, Antonio Tajani

Proposal for a regulation
Article 14 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) require supervised entities, *selected in accordance with paragraphs 2*, to contribute input data to the administrator in accordance with the methodology, code of conduct or other rules;

(a) require supervised entities, to contribute input data to the administrator in accordance with the methodology, code of conduct or other rules;

Or. en

Amendment 462
Fulvio Martusciello, Lara Comi, Elisabetta Gardini, Antonio Tajani

Proposal for a regulation
Article 14 – paragraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(aa) require supervised entities which are not already contributors to the relevant critical benchmark, selected in accordance with paragraph 2, to contribute input data to the administrator in accordance with the methodology, code of conduct or other rules;

Or. en

Amendment 463

Jonás Fernández

Proposal for a regulation

Article 14 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) determine the form in which, and the time by which, any input data is to be contributed;

deleted

Or. es

Amendment 464

Luděk Niedermayer

Proposal for a regulation

Article 14 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) determine the form in which, and the time by which, any input data is to be contributed;

(b) determine the form in which, and the time by which, any input data is to be contributed, *without incurring an obligation to either trade or commit trade;*

Or. en

Amendment 465

Fulvio Martusciello, Lara Comi, Elisabetta Gardini, Antonio Tajani

Proposal for a regulation

Article 14 – paragraph 1 – point b

Text proposed by the Commission

(b) determine the form in which, and the time by which, any input data is to be contributed;

Amendment

(b) determine the form in which, and the time by which, any input data is to be contributed, ***without incurring an obligation to either trade or commit trade;***

Or. en

Amendment 466

Jonás Fernández

Proposal for a regulation

Article 14 – paragraph 1 – point c

Text proposed by the Commission

(c) change the code of conduct, methodology or other rules of the critical benchmark.

Amendment

deleted

Or. es

Amendment 467

Fulvio Martusciello, Lara Comi, Elisabetta Gardini, Antonio Tajani

Proposal for a regulation

Article 14 – paragraph 1 – point c

Text proposed by the Commission

(c) change the code of conduct, methodology or other rules of the critical benchmark.

Amendment

(c) change the code of conduct, methodology or other rules of the critical benchmark; ***contributors which notified their intention to cease contributing input data shall continue contributing input data until ESMA has finished its assessment.***

Justification

The concerned contributor should not be allowed to leave the panel before ESMA terminates its assessment.

Amendment 468
Luděk Niedermayer

Proposal for a regulation
Article 14 – paragraph 1 – point c

Text proposed by the Commission

(c) change the code of conduct, **methodology** or other rules of **the critical** benchmark.

Amendment

(c) **request administrator to** change the code of conduct or other rules of **this** benchmark, **to increase its representativeness and robustness;**

Justification

Administrator should be the key subject responsible for soundness and robustness of the benchmark process. Thus it should not be the supervisor but the administrator, who is asked to propose the changes of the Code of Conduct.

Amendment 469
Luděk Niedermayer

Proposal for a regulation
Article 14 – paragraph 1 – point c a (new)

Text proposed by the Commission

(ca) **request administrator to provide and make available to benchmark users the written report on measures that he intends to adopt, to increase its representativeness and robustness.**

Amendment 470
Jonás Fernández

Proposal for a regulation
Article 14 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Any contributor to a critical benchmark wishing to cease contributing shall notify the college of competent authorities and the administrator thereof. The college shall examine the impact the loss of said contributor will have on the representativeness of the critical benchmark and shall request for this a relevant report from the administrator, irrespective of the studies drawn up by the college of competent authorities itself.

Or. es

Amendment 471
Jonás Fernández

Proposal for a regulation
Article 14 – paragraph 1 – subparagraph 1 b (new)

Text proposed by the Commission

Amendment

1b. If the college of competent authorities considers that this loss will affect the representativeness of the benchmark it shall be able to:

(a) require all potential contributors to contribute input data to the administrator in accordance with the methodology, code of conduct or other rules;

(b) determine the form in which, and the time by which, these input data are to be contributed to the administrator;

(c) change the code of conduct, methodology or other rules of the critical

benchmark.

Or. es

Amendment 472
Jonás Fernández

Proposal for a regulation
Article 14 – paragraph 1 – subparagraph 1 c (new)

Text proposed by the Commission

Amendment

1c. If the contributor is not located within the European Union, its potential departure from the panel shall be subject to the contingency plan provided for in Article 13(2)(a), and drawn up by the college of competent authorities.

Or. es

Amendment 473
Kay Swinburne

Proposal for a regulation
Article 14 – paragraph 2

Text proposed by the Commission

Amendment

2. For a critical benchmark, the supervised entities that are required to contribute in accordance with paragraph 1 shall be determined by the competent authority of the administrator on the basis of the following criteria:

2. If one or more supervised contributors to a critical benchmark intends to cease contributing input data, they shall promptly notify the benchmark administrator in writing, as well as the competent authority responsible for its oversight. The administrator shall immediately inform its competent authority and, within 15 working days of receipt of such notification, and shall provide them with an assessment of the implications of the cessation on the capability of the benchmark to measure the underlying market or economic reality.

(a) the size of the supervised entity's actual and potential participation in the market that the benchmark seeks to measure;

(b) the supervised entity's expertise and ability to provide input data of the necessary quality.

Or. en

Amendment 474

Fulvio Martusciello, Lara Comi, Elisabetta Gardini, Antonio Tajani

Proposal for a regulation

Article 14 – paragraph 2 – introductory part

Text proposed by the Commission

2. *For a critical benchmark*, the supervised entities that are required to contribute in accordance with paragraph 1 shall be determined by *the competent authority of the administrator* on the basis of the following criteria:

Amendment

2. The supervised entities that are required to contribute in accordance with paragraph 1 *point a a (new)* shall be determined by *ESMA* on the basis of the following criteria:

Or. en

Amendment 475

Marisa Matias, Matt Carthy

Proposal for a regulation

Article 14 – paragraph 2 – introductory part

Text proposed by the Commission

2. *For a critical benchmark*, the supervised entities that are required to contribute in accordance with paragraph 1 shall be determined by the competent authority of the administrator on the basis of the following criteria:

Amendment

2. The supervised entities that are required to contribute in accordance with paragraph 1 shall be determined by the competent authority of the administrator on the basis of the following criteria:

Or. en

Amendment 476
Jonás Fernández

Proposal for a regulation
Article 14 – paragraph 2 – introductory part

Text proposed by the Commission

2. For a critical benchmark, the *supervised* entities that are required to contribute in accordance with paragraph *1* shall be determined by the competent *authority of the administrator* on the basis of the following criteria:

Amendment

2. For a critical benchmark, the entities that are required to contribute in accordance with paragraph *1b* shall be determined by the *college of competent authorities* on the basis of the following criteria:

Or. es

Amendment 477
Jonás Fernández

Proposal for a regulation
Article 14 – paragraph 2 – point a

Text proposed by the Commission

(a) the size of the *supervised entity's* actual and potential participation in the market that the benchmark seeks to measure;

Amendment

(a) the size of the *contributor's* actual and potential participation in the market that the benchmark seeks to measure;

Or. es

Amendment 478
Jonás Fernández

Proposal for a regulation
Article 14 – paragraph 2 – point b

Text proposed by the Commission

(b) the *supervised entity's* expertise and ability to provide input data of the

Amendment

(b) the *contributor's* expertise and ability to provide input data of the necessary

necessary quality.

quality.

Or. es

Amendment 479

Fulvio Martusciello, Lara Comi, Elisabetta Gardini, Antonio Tajani

Proposal for a regulation

Article 14 – paragraph 2 – point b

Text proposed by the Commission

(b) the supervised entity's expertise and ability to provide input data of the necessary quality.

Amendment

(b) the supervised entity's expertise and ability to provide input data of the necessary quality. ***New contributors which are required to contribute input data in accordance with paragraph 1 point a a (new) shall have a period of time of at least 1 year to set up the necessary arrangements to make such contribution.***

Or. en

Justification

The scope of the mandatory contribution power should be extended to include contributors other than the existing ones. In such cases, they should be given an appropriate period of time for setting up the arrangements necessary to submit data to a panel.

Amendment 480

Kay Swinburne

Proposal for a regulation

Article 14 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. The administrator shall also inform the remaining supervised contributors to the critical benchmark of the notice to cease contributions and seek to determine whether others intend to cease contributing.

Justification

First mover advantage needs to be neutralised in order to preserve overall market stability.

Amendment 481

Fulvio Martusciello, Lara Comi, Elisabetta Gardini, Antonio Tajani

Proposal for a regulation

Article 14 – paragraph 3

Text proposed by the Commission

3. The competent authority of a supervised contributor that has been required to contribute to a benchmark through measures taken in accordance with ***points (a) and (b) of paragraph 1*** shall ***assist the competent authority of the administrator*** in the enforcement of such measures.

Amendment

3. The competent authority of a supervised contributor that has been required to contribute to a benchmark through measures taken in accordance with paragraph 1 shall ***support ESMA*** in the enforcement of such measures.

Amendment 482

Jonás Fernández

Proposal for a regulation

Article 14 – paragraph 3

Text proposed by the Commission

3. The competent authority of a supervised contributor that has been required to contribute to a benchmark through measures taken in accordance with points (a) and (b) of paragraph ***1*** shall assist the competent authority of the administrator in the enforcement of such measures.

Amendment

3. The competent authority of a supervised contributor that has been required to contribute to a benchmark through measures taken in accordance with points (a) and (b) of paragraph ***1b*** shall assist the competent authority of the administrator in the enforcement of such measures.

Amendment 483
Cora van Nieuwenhuizen

Proposal for a regulation
Article 14 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3 a. The competent authority shall have the power to require the contributors which made the notification intending to cease contributing input data to continue to contribute input data until such time as the competent authority has completed its assessment and made a decision on taking a measure under paragraph 4a. The competent authority shall complete the assessment in no more than four weeks from the date that the notification to the competent authority was made.

Or. en

Justification

Replacing AM136 of draft report

Amendment 484
Kay Swinburne

Proposal for a regulation
Article 14 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The competent authority shall have the power to require the contributor which made the notification intending to cease contributing input data to continue to contribute data until such time as the competent authority has completed its assessment.

Or. en

Justification

to be read alongside rapporteur's amendment 136. There should be no time limit to the competent authority to make a decision as in complex benchmarks this make take more time.

Amendment 485
Kay Swinburne

Proposal for a regulation
Article 14 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3b. The supervised entities referred to in paragraph 4a shall be determined by the competent authority of the administrator, with the assistance of the competent authority of the supervised entities, on the basis of the size of the supervised entity's participation in the market that the benchmark seeks to measure, as well as its expertise in that market and ability to contribute accurate input data based on that expertise.

Due consideration should be taken of the existence of appropriate alternative benchmarks to which financial contracts and financial instruments referencing the critical benchmark could transition to.

Or. en

Justification

Should the rapporteur's amendment regarding including previously non-contributing supervised entities be adopted, the criteria for selection should be strengthened to ensure that the most appropriate additional contributors are considered by the competent authority.

Amendment 486
Kay Swinburne

Proposal for a regulation
Article 14 – paragraph 4

4. The competent authority of the administrator shall review each measure adopted under paragraph 1 one year following its adoption. It shall revoke it if:

deleted

(a) judges that the contributors are likely to continue contributing input data for at least 1 year if the power were revoked which shall be evidenced by at least:

(1) a written commitment by the contributors to the administrator and the competent authority to continue contributing input data to the critical benchmark for at least one year if the mandatory contribution power were revoked;

(2) a written report by the administrator to the competent authority providing evidence for its assessment that the critical benchmark's continued viability can be assured once mandatory participation has been revoked.

(b) judges that an acceptable substitute benchmark is available and users of the critical benchmark can switch to this substitute at minimal costs which shall be evidenced by at least a written report by the administrator detailing the means of transition to a substitute benchmark and the ability and costs to users of transferring to this benchmark.

Or. en

**Amendment 487
Luděk Niedermayer**

**Proposal for a regulation
Article 14 – paragraph 4 – introductory part**

Text proposed by the Commission

Amendment

4. The competent authority of the administrator shall review each measure adopted under paragraph 1 one year following its adoption. It shall revoke it if:

deleted

Or. en

Amendment 488
Jonás Fernández

Proposal for a regulation
Article 14 – paragraph 4 – introductory part

Text proposed by the Commission

Amendment

4. The competent authority of the administrator shall review each measure adopted under paragraph 1 one year following its adoption. It shall revoke it if:

4. The college of competent authorities for the critical benchmark shall review each measure adopted under paragraph 1b one year following its adoption. It shall revoke it if:

Or. es

Amendment 489
Fulvio Martusciello, Lara Comi, Elisabetta Gardini, Antonio Tajani

Proposal for a regulation
Article 14 – paragraph 4 – introductory part

Text proposed by the Commission

Amendment

4. The competent authority of the administrator shall review each measure adopted under paragraph 1 one year following its adoption. It shall revoke it if:

4. ESMA shall annually review each measure adopted under paragraph 1. It shall revoke it if:

Or. en

Amendment 490
Fulvio Martusciello, Lara Comi, Elisabetta Gardini, Antonio Tajani

Proposal for a regulation

Article 14 – paragraph 4 – point a – introductory part

Text proposed by the Commission

Amendment

(a) judges that the contributors are likely to continue contributing input data for at least 1 year if the power were revoked which shall be evidenced by at least: **deleted**

Or. en

Amendment 491

Fulvio Martusciello, Lara Comi, Elisabetta Gardini, Antonio Tajani

Proposal for a regulation

Article 14 – paragraph 4 – point a – point 1

Text proposed by the Commission

Amendment

(1) a written commitment by the contributors to the administrator and the competent authority to continue contributing input data to the critical benchmark for at least one year if the mandatory contribution power were revoked; **deleted**

Or. en

Amendment 492

Fulvio Martusciello, Lara Comi, Elisabetta Gardini, Antonio Tajani

Proposal for a regulation

Article 14 – paragraph 4 – point a – point 2

Text proposed by the Commission

Amendment

(2) a written report by the administrator to the competent authority providing evidence for its assessment that the critical benchmark's continued viability can be assured once mandatory

(a) judges that the benchmark's continued viability can be assured once mandatory participation has been revoked which shall be evidenced by a written report provided by the administrator.

participation has been revoked.

Or. en

Justification

In any event, the mandatory contribution decision can be revoked in a number of circumstances in which the continuity and the reliability of the benchmark would be preserved. However, the administrator should not be required to produce an assessment of the acceptability of a benchmark as a substitute benchmark as it would have all the tools to perform it.

Amendment 493

Fulvio Martusciello, Lara Comi, Elisabetta Gardini, Antonio Tajani

Proposal for a regulation

Article 14 – paragraph 4 – point b

Text proposed by the Commission

(b) judges that an acceptable substitute benchmark is available and users of the critical benchmark can switch to this substitute at minimal costs ***which shall be evidenced by at least a written report by the administrator detailing the means of transition to a substitute benchmark and the ability and costs to users of transferring to this benchmark.***

Amendment

(b) judges that an acceptable substitute benchmark is available and users of the critical benchmark can switch to this substitute at minimal costs.

Or. en

Amendment 494

Marco Valli, Marco Zanni

Proposal for a regulation

Article 14 – paragraph 4 – point b

Text proposed by the Commission

(b) judges that an ***acceptable*** substitute benchmark is available and users of the critical benchmark can switch to this

Amendment

(b) judges that an ***equivalent*** substitute benchmark is available and users of the critical benchmark can switch to this

substitute at minimal costs which shall be evidenced by at least a written report by the administrator detailing the means of transition to a substitute benchmark and the ability and costs to users of transferring to this benchmark.

substitute at minimal costs which shall be evidenced by at least a written report by the administrator detailing the means of transition to a substitute benchmark and the ability and costs to users of transferring to this benchmark.

Or. it

Amendment 495
Kay Swinburne

Proposal for a regulation
Article 14 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. In the event that the competent authority considers that the representativeness of a critical benchmark is put at risk, it shall have the power to:

a) require supervised entities in accordance with paragraph 5, to contribute input data to the administrator in accordance with the methodology, code of conduct or other rules for an appropriate transition period dependent upon the average length of contract based on the relevant benchmark;

b) determine the time by which input data shall be contributed, without obliging supervised entities to trade or commit to trade;

c) change the code of conduct, methodology or other rules of the critical benchmark after discussion with the administrator.

Or. en

Justification

Previously not contributing supervised entities should not be forced to contribute to a benchmark in which they have no prior contractual obligation. Where mandatory contributions are necessary for market integrity, the transition period should reflect the

average length of contract based upon the benchmark for example; the mortgage market would require longer periods.

Amendment 496
Luděk Niedermayer

Proposal for a regulation
Article 14 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. In order to preserve the representativeness and robustness of the benchmark in case the contributors ceased or intend to cease contributing of input data:

(a) the contributor that has notified its intention to cease the contribution of input data, have to contribute the data for the period of 4 weeks, from the date of the notification, unless the administrator instructs him to provide the input data for a shorter time;

(b) the earliest time to start the contribution according to point (a) of paragraph 1 is 4 weeks from the decision of competent authority;

(c) the maximum period for contribution based on point (a) of paragraph 1 is 1 year and can be extended for each contributor by competent authority once for another 1 year period;

(d) the contributors which are requested to contribute according to point (a) of paragraph 1 shall make effort to comply with requirements of this regulation as soon as possible at reasonable cost, and must comply with all requirements of this regulation after 6 months at the latest.

Or. en

Justification

In case the subject does not want to contribute, there is a risk that representativeness of benchmark can decline dramatically. 4 weeks period is used both as a period for “mandatory contribution” for contributor, who intends to leave, and also, as period, during which new “mandatory contributor” must start reporting. The contributor should have some time to fully respect the rules imposed on contributors. At the same time, there must be a limit, after which the supervisor cannot require against the will of contributor, to provide data.

Amendment 497 Luděk Niedermayer

Proposal for a regulation Article 14 – paragraph 4 b (new)

Text proposed by the Commission

Amendment

4b. If administrator or the competent authority judges, that the regime of mandatory contribution of at least one contributor, providing input data according to point (a) of paragraph 1, will last for longer time than 18 month, or if more than third contributors provide data according to point (a) of paragraph 1 for longer than 3 month, than:

(a) the administrator must without a delay provide a written proposal to the competent authority proposing measures, that will eliminate the need to use point (a) of paragraph 1 for securing the representative input data;

(b) if the competent authority, after consulting ESMA, considers this measures to be sufficient , than in order to allow smooth implementation of proposed measures, can extend the period from 1 (c) of this Article once more for 6 month for any contributor;

(c) any such a change shall not be considered as a breach of any financial contract or financial instrument which refers to that benchmark;

(d) in case that proposed changes will not assure representativeness and robustness

of the benchmark, the competent authority has to decide on a date, after which the benchmark cannot be used by supervised entities for new financial instruments or contracts. Limits for contribution according to point (a) of paragraph 1, that are stated in point (d) of paragraph 1, do not apply after such a decision.

Or. en

Justification

The balance between the demand for robust benchmark and the right of the financial institution not to contribute must be found. Benchmarks, that can be provided only if many contributors provide the data against their will, or some contributors will have to provide the data for a long time, is clear sign of unsustainability of such a benchmark. If the benchmark has clearly lost its functionality, it should be gradually replaced by “better benchmark” or just gradually cease to exist.

Amendment 498

Fulvio Martusciello, Lara Comi, Elisabetta Gardini, Antonio Tajani

Proposal for a regulation

Article 14 – paragraph 5

Text proposed by the Commission

5. The administrator shall notify *the relevant competent authority* in the event that any contributors breach the requirements of paragraph 1 of this Article as soon as is technically possible.

Amendment

5. The administrator shall notify **ESMA** in the event that any contributors breach the requirements of paragraph 1 of this Article as soon as is technically possible.

Or. en

Amendment 499

Kay Swinburne

Proposal for a regulation

Article 14 – paragraph 5 a (new)

5a. Following the transition period, those supervised entities which still intend to cease contributing may apply to the competent authority of the administrator to have the measures adopted under paragraph 4a revoked. The competent authority of the administrator shall revoke the measures if;

a) it judges that the benchmark can continue once the contributors mandated to contribute input data have ceased contributing; or

b) it judges, following consultation with contributors and users that an acceptable substitute benchmark is available and users of the critical benchmark are able to switch to that substitute at minimal costs; or

c) it judges that no appropriate alternative contributors can be identified and the cessation of contributions from the relevant supervised entities would weaken the benchmark sufficiently to require the winding down of the benchmark.

In the case of points a) and b) the supervised entities intending to cease contributing must do so on the same date to be determined by the competent authority of the administrator.

Or. en

Justification

Should be read as an amendment to rapporteur's amendment 141. An orderly exit needs to be ensured that does not disenfranchise other contributors or end users.

Amendment 500
Kay Swinburne

Proposal for a regulation
Article 14 – paragraph 5 b (new)

Text proposed by the Commission

Amendment

5b. In the event that a critical benchmark should be wound down each supervised contributor to the critical benchmark shall continue to contribute input data until the date that the benchmark ceases following an appropriate transition period as determined by the competent authority.

Or. en

Amendment 501
Kay Swinburne

Proposal for a regulation
Article 14 – paragraph 5 c (new)

Text proposed by the Commission

Amendment

5c. ESMA shall develop draft regulatory technical standards to further specify:

- a) the time period in which the competent authority shall complete an assessment of how representative each critical benchmark referred to in paragraph 3 is;***
- b) the duration of the transition periods for mandatory contributions referred to in paragraphs 4a and 5b, taking into account the following criteria:***
 - i) volume of contracts outstanding;***
 - ii) number and diversity of users especially retail users;***
 - iii) weighted average maturity of the contracts;***
 - iv) existence and robustness of alternative benchmarks;***
 - v) liquidity of the underlying interest that the benchmark represents;***

c) the format and content of the review under paragraph 5a;

d) what constitutes a supervised entity's expertise in the market in accordance with paragraph 5b.

ESMA shall submit those draft regulatory technical standards to the Commission by [...].

Power is delegate to the Commission to adopt the regulatory technical standards referred to in the first sub-paragraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Or. en