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DRAFT REPORT

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 (COM(2013)0641 – C7-0301/2013 – 2013/0314(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Sharon Bowles

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ¶ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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 (COM(2013)0641 – C7-0301/2013 – 2013/0314(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2013)0641),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0301/2013),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on Industry, Research and Energy (A7-0000/2013),
1. Adopts its position at first reading hereinafter set out;
 2. Approves its statement annexed to this resolution;
 3. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 4. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

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

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.

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 the benchmark setting process.

Or. en

Amendment 2

Proposal for a regulation Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) Benchmarks provide transparent measurement of the performance of a portfolio, sector, country or individual financial instruments, helping investors make informed choices and provide access to products which reflect their investment strategies. This leads to more efficient capital allocation and supports economic growth. Continual innovation in benchmark design increases choice and meets evolving user demands such as for environmental, social, governance or SME investment.

Or. en

Amendment 3

Proposal for a regulation

Recital 3

Text proposed by the Commission

(3) Benchmarks are vital in pricing cross-border transactions and thereby facilitating the effective functioning of the internal market in a wide variety of financial instruments and services. Many benchmarks used as reference rates in financial contracts, in particular mortgages, are produced in one Member State but used by credit institutions and consumers in other Member States. In addition, these credit institutions often hedge their risks or obtain the funding for granting these financial contracts in the cross border interbank market. **Only** two Member States have adopted national legislation on benchmarks, **but their respective legal frameworks on benchmarks already show divergences regarding aspects such as the scope of application.** In addition, the International Organisation Securities Commissions (IOSCO) has recently agreed principles on benchmarks and, **since** these principles provide **a certain flexibility as to their exact scope and means of their implementation and in relation to certain terms, Member States are likely to adopt legislation at national level which would implement such principles divergently.**

Amendment

(3) Benchmarks are vital in pricing cross-border transactions and thereby facilitating the effective functioning of the internal market in a wide variety of financial instruments and services. Many benchmarks used as reference rates in financial contracts, in particular mortgages, are produced in one Member State but used by credit institutions and consumers in other Member States. In addition, these credit institutions often hedge their risks or obtain the funding for granting these financial contracts in the cross border interbank market. Two Member States have adopted national legislation on benchmarks **in rapid response to the LIBOR and EURIBOR manipulation, but there has been no regulation of EURIBOR.** In addition, the International Organisation Securities Commissions (IOSCO) has recently agreed principles on benchmarks and these provide **a basis on which to pursue a coordinated Union approach preventing fragmentation of rules and enabling smooth functioning of the internal market for the provision of benchmarks.**

Or. en

Amendment 4

Proposal for a regulation

Recital 4

Text proposed by the Commission

(4) These divergent approaches would

Amendment

deleted

result in fragmentation of the internal market since administrators and users of benchmarks would be subject to different rules in different Member States and benchmarks produced in a Member State could be prevented from being used in other Member States. In the absence of a harmonised framework to ensure the accuracy and integrity of benchmarks used in financial instruments and financial contracts in the Union it is therefore likely that differences in Member States legislation will create obstacles to the smooth functioning of the internal market for the provision of benchmarks.

Or. en

Amendment 5

Proposal for a regulation Recital 7

Text proposed by the Commission

(7) It is appropriate and necessary for those rules to take the legislative form of a Regulation in order to ensure that provisions directly imposing obligations on persons involved in benchmark production, contribution and use are applied in a uniform manner throughout the Union. Since a legal framework for the provision of benchmarks necessarily involves measures specifying precise requirements on *all different* aspects *inherent to* the provision of benchmarks, *even small* divergences on the approach taken regarding *one of* these aspects could lead to significant impediments in the cross border provision of benchmarks. Therefore, the use of a Regulation, which is directly applicable without requiring national legislation, should reduce the possibility of divergent measures being

Amendment

(7) It is appropriate and necessary for those rules to take the legislative form of a Regulation in order to ensure that provisions directly imposing obligations on persons involved in benchmark production, contribution and use are applied in a uniform manner throughout the Union. Since a legal framework for the provision of benchmarks necessarily involves measures specifying precise requirements on *a range of* aspects, *in particular for* the provision of *critical and some major or sectoral* benchmarks, divergences on the approach taken regarding these aspects could lead to significant impediments in the cross border provision of benchmarks. Therefore, the use of a Regulation, which is directly applicable without requiring national legislation, should reduce the possibility of divergent measures being

taken at national level, and should ensure a consistent approach, greater legal certainty and prevent the appearance of significant impediments in the cross-border provision of benchmarks.

taken at national level, and should ensure a consistent approach, greater legal certainty and prevent the appearance of significant impediments in the cross-border provision of benchmarks..

Or. en

Amendment 6

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

Amendment

(8) The scope of this Regulation should be as broad as necessary to create a preventive regulatory framework *but should be proportional to the size and risks posed by the benchmarks and the benchmark-setting process.* The production of benchmarks *frequently* 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 *many* benchmarks, and *therefore administrators of critical, major and certain sectoral benchmarks should have* 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 *and criteria should therefore be established to determine when an administrator should be subject to regulation. Competent authorities should also be empowered to subject administrators to regulation where there is concern over the vulnerability of any of its benchmarks to manipulation.*

Or. en

Amendment 7

Proposal for a regulation Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) Administrators of critical or major benchmarks may also be administrators of other benchmarks, which would not, alone, subject the administrator to regulation. Since such administrators are of good repute, it is appropriate for their governance procedures to cover such other benchmarks, with some adjustment for proportionality and the risks posed by the benchmark-setting process. For example, benchmarks based on straightforward publicly available transactional information from regulated markets are less at risk than those with subjective inputs.

Or. en

Amendment 8

Proposal for a regulation Recital 9

Text proposed by the Commission

Amendment

(9) The critical ***determinant*** of the scope of this Regulation should ***be*** whether the output value of the benchmark determines the value of a financial instrument, financial contract or measures the performance of an investment fund. Therefore the scope should not be dependent on the nature of the input data. Benchmarks calculated from economic input data, such as share prices and non-economic number or values such as weather parameters should ***thus*** be

(9) The critical ***determinants*** of the scope of this Regulation should ***reference*** whether the output value of the benchmark determines the value of a financial instrument, financial contract or measures the performance of an investment fund ***or other financial vehicle and the volumetric or sectoral importance of the benchmark.*** Therefore the scope should not be dependent on the nature of the input data. Benchmarks calculated from economic input data, such as share prices and non-

included. *The framework should cover those benchmarks subject to these risks, but should also provide for a proportionate response to the risks that different benchmarks pose. This Regulation should therefore cover all benchmarks which are used to price financial instruments listed or traded on regulated venues.*

economic number or values such as weather parameters should be included *in the criteria for determining whether an administrator is to be subject to* regulation.

Or. en

Amendment 9

Proposal for a regulation Recital 11

Text proposed by the Commission

(11) Many investment indices involve significant conflicts of interest and are used to measure the performance of a fund such as a UCITS fund. Some of these benchmarks are published and others are made available, for free or on payment of a fee, to the public or a section of the public and their manipulation may adversely affect investors. This Regulation should therefore cover indices or reference rates that are used to measure the performance of an investment fund.

Amendment

(11) Many investment indices involve significant conflicts of interest and are used to measure the performance of a fund such as a UCITS fund. Some of these benchmarks are published and others are made available, for free or on payment of a fee, to the public or a section of the public and their manipulation may adversely affect investors. This Regulation should therefore cover *provision of* indices or reference rates that are used to measure the performance of an investment fund *or other investment vehicle*.

Or. en

Amendment 10

Proposal for a regulation Recital 15

Text proposed by the Commission

(15) An index is calculated using a formula or some other methodology on the basis of

Amendment

(15) An index is calculated using a formula or some other methodology on the basis of

underlying values. Discretion exists in constructing this formula, performing the calculation or determining the input data. This discretion creates a risk of manipulation and therefore ***all benchmarks sharing this characteristic should be covered by this Regulation.*** However where a single price or value is used as a reference to a financial instrument, for example where the price of a single security is the reference price for an option, there is no calculation, input data or discretion. Therefore single price or single value reference prices should not be considered benchmarks for the purposes of this Regulation. Reference prices or settlement prices produced by Central Counterparties (CCPs) should not be considered benchmarks because they are used to determine settlement, margins and risk management and thus do not determine the amount payable under a financial instrument or the value of a financial instrument.

underlying values. Discretion exists in constructing this formula, performing the calculation or determining the input data. This discretion creates a risk of manipulation and therefore ***competent authorities should be able to subject an administrator to regulation where it is considered that the risk of manipulation of a benchmark is significant.*** However where a single price or value is used as a reference to a financial instrument, for example where the price of a single security is the reference price for an option, there is no calculation, input data or discretion. Therefore single price or single value reference prices should not be considered benchmarks for the purposes of this Regulation. Reference prices or settlement prices produced by Central Counterparties (CCPs) should not be considered benchmarks because they are used to determine settlement, margins and risk management and thus do not determine the amount payable under a financial instrument or the value of a financial instrument.

Or. en

Amendment 11

Proposal for a regulation Recital 16

Text proposed by the Commission

(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

Amendment

deleted

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.

Or. en

Amendment 12

Proposal for a regulation

Recital 17

Text proposed by the Commission

(17) Vulnerabilities in the process of providing a benchmark that are not subject to adequate governance create the possibility to manipulate a benchmark. Where benchmarks are available to the public the full extent of these risks may not be taken into account and so insufficient controls and governance may be implemented. In order to ensure the integrity of benchmarks, benchmark administrators should be required to implement adequate governance arrangements to control ***these*** conflicts of interest and to safeguard confidence in the integrity of benchmarks. Even where effectively managed, most administrators are subject to some conflicts of interest and may have to make judgements and decisions which affect a diverse group of stakeholders. It is therefore necessary that administrators have an independent function to oversee the implementation and effectiveness of the governance arrangements that provide effective oversight.

Amendment

(17) In order to ensure the integrity of benchmarks, benchmark administrators should be required to implement adequate governance arrangements to control conflicts of interest and to safeguard confidence in the integrity of benchmarks. Even where effectively managed, most administrators are subject to some conflicts of interest and may have to make judgements and decisions which affect a diverse group of stakeholders. It is therefore necessary that administrators have an independent function to oversee the implementation and effectiveness of the governance arrangements that provide effective oversight.

Or. en

Amendment 13

Proposal for a regulation

Recital 20

Text proposed by the Commission

(20) The provision of benchmarks frequently involves the outsourcing of important functions such as calculating the benchmark, gathering the input data and disseminating the benchmark. In order to ensure the effectiveness of the governance arrangements, it is necessary to ensure that any such outsourcing does not relieve a benchmark administrator of any of its obligations and responsibilities, and is done in such a way that it does not interfere with either the administrators ability to meet these obligations or responsibilities, or the relevant competent authority's ability to supervise them.

Amendment

(20) The provision of benchmarks frequently involves the outsourcing of important functions such as calculating the benchmark, gathering the input data and disseminating the benchmark. In order to ensure the effectiveness of the governance arrangements, it is necessary to ensure that any such outsourcing does not relieve a benchmark administrator of any of its obligations and responsibilities, and is done in such a way that it does not interfere with either the administrators ability to meet these obligations or responsibilities, or the relevant competent authority's ability to supervise them. ***Outsourcing of calculation, where there is no discretion in the application of the formula, does not mean the calculator is an administrator for the purposes of this Regulation.***

Or. en

Amendment 14

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

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 contributors can be relied on and are consistent with the benchmark administrator's controls and methodology. It is therefore necessary that the benchmark

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.

administrator produces a code of conduct to specify these requirements and that *as far as is practicable, bearing in mind not all contributors are within the Union but may be needed for an accurate benchmark*, the contributors are bound by that code of conduct.

Or. en

Amendment 15

Proposal for a regulation

Recital 28

Text proposed by the Commission

(28) Contributors may be subject to conflicts of interest and may exercise discretion in the determination of the input data. Therefore it is necessary that contributors *are subject to* governance arrangements to *ensure that these* conflicts *are managed and that the* input data is accurate, conforms to the administrator's requirements and can be validated.

Amendment

(28) Contributors may be subject to conflicts of interest and may exercise discretion in the determination of the input data. Therefore it is necessary that contributors *apply* governance arrangements to *manage and counterbalance* conflicts *providing* input data *that* is accurate, conforms to the administrator's requirements and, *when available*, can be validated.

Or. en

Amendment 16

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

Amendment

(29) Different types of benchmark and different benchmark sectors have different characteristics, vulnerabilities and risks. The *governance* provisions of this Regulation should be further specified for particular benchmark sectors and types. Interbank interest rate benchmarks are

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.

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.

Or. en

Amendment 17

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 serve as a global standard for regulatory requirements for benchmarks. It is necessary for investor protection that an assessment that the supervision and regulation, *which may include reliance on administrator rules*, in any third country *follows IOSCO standards. Given that many third-country benchmarks are in use for international trade involving Union corporates and institutions, it is important that such international trade is not disrupted by the inappropriate application of regulation.*

Or. en

Amendment 18

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 **index and benchmarking activity used** 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 19

Proposal for a regulation Article 2 – paragraph 1

Text proposed by the Commission

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

Amendment

This Regulation shall apply to the provision of benchmarks **within the Union**, the contribution of input data to **certain critical benchmarks** and the use of **some benchmarks** within the Union. **It shall encompass the IOSCO principles and shall be applied proportionately to the size and risks posed by particular benchmarks, their administrators and the benchmark-setting process including the number and types of contributors.**

Or. en

Amendment 20

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 21

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 22

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 ***in accordance with Article 14(2) of Directive 2003/71/EC of the European***

Parliament and of the Council^{18a}, or made available to users, free of charge or for payment,

^{18a} Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJ L 345, 31.12.2003, p. 64).

Or. en

Amendment 23

Proposal for a regulation

Article 3 – paragraph 1 – point 1 – point b

Text proposed by the Commission

(b) that is regularly determined, entirely or partially, by the application of a formula or any other method of calculation, or ***by an assessment***;

Amendment

(b) that is regularly ***or periodically*** determined, entirely or partially, by the application of a formula, ***summation*** or any other method of calculation, or ***assessment of underlying indicators; and***

Or. en

Amendment 24

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 ***or reference value*** of one or more underlying ***indicators including or related to assets,*** prices, including estimated prices, ***interest rates*** or other values ***or surveys.***

Amendment 25

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 *tradable or broadly used commercial* index by reference to which the amount payable under a financial instrument or a financial contract, or the value of a financial instrument *or the price at which it is sold, traded or redeemed* is determined or an index that is used *as the standard* measure of the performance of *the relevant assets or class or group of assets*;

Or. en

Amendment 26

Proposal for a regulation

Article 3 – paragraph 1 – point 3 – point b

Text proposed by the Commission

(b) collecting, analysing or processing input data for the purpose of determining a benchmark; *and*

Amendment

(b) collecting, analysing or processing input data *or other indicators or opinions* for the purpose of determining a benchmark;

Or. en

Amendment 27

Proposal for a regulation

Article 3 – paragraph 1 – point 3 – point c

Text proposed by the Commission

Amendment

(c) determining a benchmark through the application of a formula or other method of calculation or by an assessment of input data provided for that purpose.

(c) determining ***or adjusting*** a benchmark through the application of a formula, ***summation*** or other method of calculation or by an assessment of input data ***or other indicators*** provided for that purpose; ***and***

Or. en

Amendment 28

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(ca) disseminating the benchmark to users, whether directly or through an agent, including any review, adjustment or modification thereof.

Or. en

Amendment 29

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 ***is responsible for*** the provision of a benchmark;

Or. en

Amendment 30

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) ‘user of a benchmark’ means any **natural or legal person, other than a consumer, as referred to in Article 18**, who issues or owns a financial instrument or is party to a financial contract which references a benchmark;

Or. en

Amendment 31

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 data in respect of the value of one or more underlying assets, or prices, including estimated prices, **interest rates**, or other **submitted values or surveys**, used by the administrator to determine the benchmark;

Or. en

Amendment 32

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

Amendment

(11) ‘regulated data’ means input data **representing executed trades or firm quotes**, 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

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/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;

²⁰ OJ L 9, 14.8.2009, p. 112.

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/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;

²⁰ OJ L 9, 14.8.2009, p. 112.

Or. en

Amendment 33

Proposal for a regulation

Article 3 – paragraph 1 – point 20 a (new)

Text proposed by the Commission

Amendment

(20a) 'Union trading venue' means trading venue as defined in Article 2(1)(25) of [MIFIR].

Or. en

Amendment 34

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 a benchmark:

(a) the majority of contributors ***to which*** are supervised entities;

(b) that does not include benchmarks compiled from regulated data as defined in point (11); and

(c) that reference financial instruments admitted to trading or traded on at least one Union trading venue, or other financial assets as defined in international accounting standard IAS 32, having a notional cumulative amount of at least 500 billion euro on such Union trading venues; and

(d) for which there is no reasonable substitute so that cessation of the benchmark would have a significant adverse impact on financial stability, the orderly functioning of the markets, consumers or the real economy.

Or. en

Amendment 35

Proposal for a regulation

Article 3 – paragraph 1 – point 21 a (new)

Text proposed by the Commission

Amendment

(21a) 'major benchmark' means a benchmark that references financial instruments admitted to trading or traded on a Union trading venue, or other financial assets as defined in international accounting standard IAS 32, excluding physical and physically delivered commodities, having a notional cumulative amount of at least EUR 100 billion euro subject to Article 3(2a);

Or. en

Amendment 36

Proposal for a regulation

Article 3 – paragraph 2 – subparagraph 1

Text proposed by the Commission

The Commission shall be empowered to adopt delegated acts in accordance with Article 37 with a view to specify further technical elements of the definitions laid down in paragraph 1, in particular specifying what constitutes making available to the public for the purposes of the definition of an index, and in order to take account of market or technological developments.

Amendment

The Commission shall be empowered to adopt delegated acts in accordance with Article 37 with a view to specify further **additional** technical elements of the definitions laid down in paragraph 1, in particular specifying what constitutes making available to the public for the purposes of the definition of an index, and in order to take account of market or technological developments.

Or. en

Amendment 37

Proposal for a regulation

Article 3 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. ESMA shall develop draft regulatory technical standards to determine:

(a) the definition of the Union trading venue to include any other relevant quoting or trading platforms, and instances where regulated data may include Net Asset Value or data from public filings under the accounting directives and any appropriate corresponding derogation under Article 7(1) of Directive 2013/34/EU of the European Parliament and the Council^{27a};

(b) to update the criteria for major benchmarks as appropriate, taking into account the impact on consumers and the potential threat to market integrity based on:

(i) the number and variety of users of the

benchmark and sub-benchmarks;

(ii) the volume and variety of financial contracts that reference the benchmark and sub-benchmarks;

(iii) the volume of financial contracts referenced or admitted to trading or traded on a Union trading venue, in absolute terms and relative to the volume of transactions in the underlying interest measured by the benchmark;

(iv) whether to include other financial assets as defined in international accounting standard 32 or to adjust the thresholds in points (21) and (22).

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 Articles 10 to 14 of Regulation (EU) No 1095/2010.

^{27b} Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

Or. en

Amendment 38

Proposal for a regulation Article 4 – paragraph 1

Text proposed by the Commission

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).

Amendment

1. This Regulation shall not apply to ***administrators solely by virtue*** of a benchmark provided by ***them*** where ***they are*** 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).

Or. en

Amendment 39

**Proposal for a regulation
Article 4 – paragraph 2**

Text proposed by the Commission

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

Amendment

deleted

Or. en

Amendment 40

**Proposal for a regulation
Article 5 – paragraph -1 (new)**

Text proposed by the Commission

Amendment

-1. Administrators of the following qualifying benchmark categories shall be subject to the requirements of this Regulation:

(a) critical benchmarks;

(b) broadly used commodity benchmarks, as determined and adjusted by ESMA;

(c) major benchmarks;

(d) benchmarks that reference the price of a financial instrument in substantial use in retail markets, as determined and adjusted by ESMA;

(e) IBOR, Overnight Index Swap, Overnight Index Rates or other benchmark that the competent authority deems to be a substitute for, or comparable to, those benchmarks;

(f) benchmarks with relatively few submitters which the competent authority considers to be vulnerable to manipulation;

(g) benchmarks that the competent authority has investigated and concluded by way of a reasoned decision requires supervision due to its vulnerability;

(h) substantial numbers of benchmarks which the competent authority or ESMA considers collectively have significant single market impact;

(i) benchmarks used as the standard measure of the performance of the relevant assets or class or group of assets which is not produced by an arm's length third-party administrator where the competent authority deems it to have high levels of conflicts of interest.

ESMA shall provide guidelines for competent authorities concerning the application of the criteria in points (b) and (d) to (i) and shall provide regulatory technical standards for circumstances when requirements in (b) to (e) can be waived for reasons of proportionality or duplication of supervisory requirements or existing governance controls. Those guidelines shall include lists of exempted types of institutions which shall include identification of the corresponding governance controls.

Or. en

Justification

This last part covers central banks and statistical offices.

Amendment 41

Proposal for a regulation

Article 5 – paragraph 1 – introductory part

Text proposed by the Commission

1. The following governance requirements shall apply to the **administrator**:

Amendment

1. The following governance requirements shall apply to the **administrators referred to in paragraph -1 in respect of all their benchmarks**:

Or. en

Amendment 42

Proposal for a regulation

Article 5 – paragraph 1 – point a

Text proposed by the Commission

(a) the administrator shall have robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent roles and responsibilities for all persons involved in the provision of a benchmark.

Amendment

(a) the administrator shall have robust governance arrangements **ensuring primary responsibility for all aspects of their benchmark determination processes**, which **shall** include a clear organisational structure **ensuring transparency over significant decisions and** with well defined, transparent and consistent roles and responsibilities for all persons involved in the provision of a benchmark.

Or. en

Amendment 43

Proposal for a regulation

Article 5 – paragraph 1 – point c

Text proposed by the Commission

(c) the administrator shall have a control framework that ensures that the benchmark is provided and published or made available in accordance with this Regulation ('Controls');

Amendment

(c) the administrator shall have a control framework that ensures that the benchmark is provided and published or made available in ***a timely and accurate manner, that there are contingency measures for the eventuality of insufficient inputs under market stress or disruption or failure of critical infrastructure and in*** accordance with this Regulation ('Controls');

Or. en

Amendment 44

Proposal for a regulation

Article 5 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) where an administrator provides a range of benchmarks, the controls for individual benchmarks that would not themselves have fallen within the qualifying benchmark categories referred to in paragraph -1 shall be proportionate to the risks and importance of the benchmark in the market.

Or. en

Amendment 45

Proposal for a regulation

Article 5 – paragraph 3 – point c a (new)

Text proposed by the Commission

Amendment

(ca) the proportionality of the scope of this Regulation.

Amendment 46

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 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 **administrator**.

Or. en

Amendment 47

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, **which includes all forms of indicators, methodology and privacy**:

Or. en

Amendment 48

Proposal for a regulation

Article 7 – paragraph 1 – point a – paragraph 2

Text proposed by the Commission

The input data shall be transaction data. If available transaction data is not sufficient

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.

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 ***or publicly sourced from regulatory filings.***

Or. en

Amendment 49

Proposal for a regulation

Article 7 – paragraph 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 reliable, representative panel ***and adequate*** 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').

Or. en

Amendment 50

Proposal for a regulation

Article 7 – paragraph 3 – point c a (new)

Text proposed by the Commission

Amendment

(ca) the proportionality of scope of the Regulation.

Or. en

Amendment 51

Proposal for a regulation

Article 8 – paragraph 2 – introductory part

Text proposed by the Commission

2. The administrator shall monitor the input data **and contributors** in order to identify breaches of the [Market Abuse Regulation] and any conduct that may involve manipulation or attempted manipulation of the benchmark **and notify the relevant competent authority** in accordance with Article 11(2) of the [Market Abuse Regulation] and provide all relevant information where it suspects that, in relation to the benchmark, there has been:

Amendment

2. The administrator shall monitor the input data **within the context of their methodology** in order to identify breaches of the [Market Abuse Regulation] and **shall notify the relevant competent authority of** any conduct that may involve manipulation or attempted manipulation of the benchmark in accordance with Article 11(2) of the [Market Abuse Regulation] and provide all relevant information where it suspects that, in relation to the benchmark, there has been:

Or. en

Amendment 52

Proposal for a regulation

Article 8 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

ESMA may develop guidelines concerning the nature of systems and controls in the context of methodologies and the nature and volume of contributors.

Or. en

Amendment 53

Proposal for a regulation

Article 9 – paragraph 1

Text proposed by the Commission

Amendment

1. The administrator shall adopt a code of

1. The administrator shall adopt a **general**

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.

code of conduct, *tightened, as appropriate, for benchmarks in the qualifying benchmark categories referred to in Article 5(-1)* 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 54

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 and *insofar as practicable with regard to the nature and location of the contributor* shall be legally binding on all parties to it.

Or. en

Amendment 55

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, the risks of input data being manipulated and international convergence of supervisory practices in relation to benchmarks *and the*

proportionality of this Regulation.

Or. en

Amendment 56

Proposal for a regulation

Article 9 – paragraph 3 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

ESMA shall provide guidelines with regard to applicability of legally binding codes of conduct in particular with regard to non-regulated entities and price reporting agencies within the Union.

Or. en

Amendment 57

Proposal for a regulation

Article 10 – paragraph 2

Text proposed by the Commission

Amendment

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.***

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.

Or. en

Amendment 58

Proposal for a regulation

Article 11 – paragraph 1 – introductory part

Text proposed by the Commission

1. The following governance and control requirements shall apply to a supervised contributor:

Amendment

1. The following governance and control requirements shall apply to **submissions made by** a supervised contributor **in respect of at least the qualifying benchmark categories referred to in Article 5(-1)**:

Or. en

Amendment 59

Proposal for a regulation

Article 11 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) The supervised contributor shall have in place procedures for the managers, employees and any other natural persons whose services are placed at its disposal or under its control to report breaches of this Regulation internally through a specific, autonomous channel.

Or. en

Amendment 60

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

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.

developments in benchmarks and financial markets in light of international convergence of supervisory practices in relation to benchmarks ***and the proportionality of this Regulation.***

Or. en

Amendment 61

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

2. In addition to the requirements of the Title II, the specific requirements set out in Annex III shall apply to commodity benchmarks ***falling within the qualifying benchmark categories referred to in Article 5(-1).***

Or. en

Amendment 62

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. The competent authority of the administrator of a critical benchmark shall have the power to:

Or. en

Amendment 63

Proposal for a regulation

Article 14 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) require the administrator of the critical benchmark to continue compiling and publishing the benchmark;

Or. en

Amendment 64

Proposal for a regulation

Article 14 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) the need for the contribution, having regard to the scale and distribution of other contributors;

Or. en

Amendment 65

Proposal for a regulation

Article 14 – paragraph 4 – point a

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 66

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 67

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 participation has been revoked.

(a) there is 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; or

Or. en

Amendment 68

Proposal for a regulation

Article 14 – paragraph 4 – point b

Text proposed by the Commission

Amendment

(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

(b) the competent authority 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

the administrator detailing the means of transition to a substitute benchmark and the ability and costs to users of transferring to this benchmark.

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 69

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 the relevant competent authority in the event that ***it considers the number of contributors or their distribution risk to have become inadequate, and in any event when 20 % of the contributors have ceased, or are likely to cease, to make contributions.***

Or. en

Amendment 70

Proposal for a regulation Article 15 – paragraph 1 – introductory part

Text proposed by the Commission

1. An administrator shall publish a benchmark statement ***for*** each benchmark which:

Amendment

1. An administrator shall publish a benchmark statement ***covering*** each benchmark which:

Or. en

Amendment 71

Proposal for a regulation

Article 15 – paragraph 1 – point c

Text proposed by the Commission

(c) lays down technical specifications that clearly and unambiguously identify the elements of the calculation in relation to which discretion may be exercised, the criteria applicable to the exercise of such discretion and the persons by whom discretion is exercised, and how such discretion ***may be subsequently evaluated***;

Amendment

(c) lays down technical specifications that clearly and unambiguously identify the elements of the calculation in relation to which discretion may be exercised, the criteria applicable to the exercise of such discretion and the persons by whom discretion is exercised, and ***whether, and, if so, how, it is possible to evaluate*** such discretion;

Or. en

Amendment 72

Proposal for a regulation

Article 15 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. For qualifying benchmark categories referred to in Article 5(-1)(i), administrators should also specify the procedures in place to ensure objectivity and their fiduciary duty when producing the benchmark.

Or. en

Amendment 73

Proposal for a regulation

Article 15 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. Where appropriate, the benchmark statements may be part of disclosed methodology. ESMA shall develop

guidelines to establish how general benchmark statements can be used for related benchmarks.

Or. en

Amendment 74

Proposal for a regulation Article 16 – paragraph 1

Text proposed by the Commission

1. An administrator shall publish the input data used to determine the benchmark ***immediately after publication of the benchmark*** except where publication would have serious adverse consequences for the contributors or adversely affect the reliability or integrity of the benchmark. ***In such cases publication may be delayed for a period that significantly diminishes these consequences. Any personal data included in input data shall not be published.***

Amendment

1. An administrator shall publish the input data ***or the methodology*** used to determine the benchmark ***at appropriate intervals*** except where publication would have serious adverse consequences for the contributors or adversely affect the reliability or integrity of the benchmark. ***Personal data included in input data shall not be published.***

All input data and methodology for critical and major benchmarks and benchmarks used for substantial retail investment shall be published in the public interest.

Administrators shall publish their pricing and royalty policy in sufficient detail to show no undue cross-subsidy on revenue generation.

Or. en

Amendment 75

Proposal for a regulation Article 16 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Upon the request of a competent authority or ESMA, administrators shall provide the competent authority or ESMA with the input data, methodology and judgmental decisions made in relation to a benchmark. This requirement may be exercised as a general requirement or for a specific period or purpose.

Or. en

Amendment 76

Proposal for a regulation Article 16 – paragraph 2

Text proposed by the Commission

Amendment

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 37 concerning measures to further specify the information to be disclosed in accordance with paragraph 1, the means of publication as well as the circumstances when publication may be delayed and the means by which it shall be transmitted.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 37 concerning measures to further specify the ***appropriate intervals and*** information to be disclosed in accordance with paragraph 1, the means of publication as well as the circumstances when publication may be delayed and the means by which it shall be transmitted.

Or. en

Amendment 77

Proposal for a regulation Article 17 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Administrators of benchmarks shall continue to publish their benchmark until there is an orderly transition to an alternative benchmark(s) if there is a risk

*to financial stability of the abrupt
cessation of that benchmark.*

Or. en

Amendment 78

Proposal for a regulation

Article 17 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

*ESMA shall establish guidelines for the
criteria, consultation and information
appropriate prior to the cessation of a
benchmark and encompassing the IOSCO
principles.*

Or. en

Amendment 79

Proposal for a regulation

Article 19

Text proposed by the Commission

Amendment

A supervised entity may use a benchmark in the Union as a reference in a financial instrument or financial contract or to measure the performance of an investment fund if it is provided by an administrator **authorised** in accordance with Article 23 or an administrator located in a third country that is registered in accordance with Article 21

A supervised entity may use a benchmark in the Union as a reference in a financial instrument or financial contract or to measure the performance of an investment fund if it is provided by an administrator **recognised** in accordance with Article 23 or an administrator located in a third country that is registered in accordance with Article 21.

Or. en

Amendment 80

Proposal for a regulation

Article 20 – paragraph 1 – introductory part

Text proposed by the Commission

1. Benchmarks provided by an administrator established in a third country may be used by supervised entities in the Union provided that the *following conditions are complied with:*

Amendment

1. Benchmarks provided by an administrator established in a third country may be used by supervised entities in the Union. *Where such benchmarks would have, by analogy, fallen within the qualifying benchmark categories referred to in Article 5(-1), they may be used provided that the legal framework, supervisory practice, or rules of the producer or administrator of the benchmark in that third country comply with IOSCO principles for financial benchmarks or other international standards for benchmarks.*

The supervised entity shall notify its competent authority and ESMA of the actual or prospective benchmarks and of the basis on which it relies to demonstrate compliance with IOSCO or international standards for benchmarks.

ESMA shall maintain a register of third countries and benchmark providers that it considers can be relied upon as a basis for compliance with international standards without further evidence. ESMA shall update that list using its own information and in consideration of evidence submitted by supervised entities. In the event of a dispute between competent authorities of Member States concerning the use of a third-country benchmark by a supervised entity that has extensive cross-border use, ESMA may conduct binding mediation.

*By ... * [OJ please insert date: Six months before the date of application of this Regulation] ESMA shall produce a report on the implementation of IOSCO principles.*

Amendment 81

Proposal for a regulation

Article 20 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) the Commission has adopted an equivalence decision in accordance with paragraph 2, recognising the legal framework and supervisory practice of that third country as equivalent to the requirements of this Regulation;

deleted

Or. en

Amendment 82

Proposal for a regulation

Article 20 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) the administrator is authorised or registered in, and is subject to supervision in, that third country;

deleted

Or. en

Amendment 83

Proposal for a regulation

Article 20 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) the administrator has notified ESMA of its consent that its actual or prospective benchmarks may be used by supervised entities in the Union, the list of the benchmarks which may be used in the

deleted

regulatory convergence.

Or. en

Amendment 87

Proposal for a regulation

Article 20 – paragraph 2 – subparagraph 1 – point a

Text proposed by the Commission

(a) administrators authorised or registered in that third country comply with ***binding requirements which are equivalent to the requirements resulting from this Regulation, in particular taking into account if the legal framework and supervisory practice of a third country*** ensures compliance with the IOSCO principles on financial benchmarks published on 17 July 2013; and

Amendment

(a) administrators authorised or registered in that third country comply with ***national legislation, rules or measures, including the rules of the administrator, that*** ensures compliance with the IOSCO principles on financial benchmarks published on 17 July 2013 ***or other international standards***; and

Or. en

Amendment 88

Proposal for a regulation

Article 20 – paragraph 2 – subparagraph 1 – point b

Text proposed by the Commission

(b) the ***binding requirements*** are subject to effective supervision and enforcement on an on-going basis in that third country.

Amendment

(b) the ***national rules or measures*** are subject to effective supervision and enforcement on an on-going basis in that third country.

Or. en

Amendment 89

Proposal for a regulation

Article 20 – paragraph 3 – introductory part

Text proposed by the Commission

3. ESMA shall establish cooperation arrangements with the competent authorities of third countries whose legal framework **and** supervisory practice have been recognised as **equivalent** in accordance with paragraph 2. Such arrangements shall specify at least:

Amendment

3. ESMA shall establish cooperation arrangements with the competent authorities of third countries whose legal framework, supervisory practice **or measures** have been recognised as **ensuring compliance with IOSCO principles for financial benchmarks or other international standards** in accordance with paragraph 2. Such arrangements shall specify at least:

Or. en

Amendment 90

Proposal for a regulation

Article 20 – paragraph 3 – point b

Text proposed by the Commission

(b) the mechanism for prompt notification to ESMA where a third country competent authority deems that the administrator authorised in that third country that it is supervising is in breach of the **conditions of its authorisation or other national legislation;**

Amendment

(b) the mechanism for prompt notification to ESMA where a third country competent authority deems that the administrator authorised in that third country that it is supervising is in breach of the **national legislation, rules or measures**

Or. en

Amendment 91

Proposal for a regulation

Article 21 – paragraph 1

Text proposed by the Commission

1. **ESMA shall register the administrators that have notified it of their consent** referred to in Article 20(1)(c). **The register** shall be publicly accessible on the website

Amendment

1. **The register** referred to in Article 20 shall be publicly accessible on the website of ESMA and shall contain information on the benchmarks which the relevant

of ESMA and shall contain information on the benchmarks which the relevant administrators are permitted to provide and the competent authority responsible for their supervision in the third country.

administrators are permitted to provide and, *where existing*, the competent authority responsible for their supervision in the third country *or the other relevant conduct and governance provisions that are relied upon*.

Or. en

Amendment 92

Proposal for a regulation

Article 21 – paragraph 2 – point b

Text proposed by the Commission

(b) ESMA has well-founded reasons, based on documented evidence, to consider that the administrator has seriously infringed the national legislation or other provisions applicable to it in the third country and on the basis of which the Commission has adopted the decision in accordance with Article 20(2).

Amendment

(b) ESMA has well-founded reasons, based on documented evidence, to consider that the administrator has seriously infringed the national legislation or other provisions applicable to it in the third country and on the basis of which the Commission has adopted the decision in accordance with Article 20(2) *or is the basis of the reliance that the supervised entity has notified to its competent authority or ESMA pursuant to Article 20(1)*.

Or. en

Amendment 93

Proposal for a regulation

Article 21 – paragraph 3 – point -a (new)

Text proposed by the Commission

Amendment

(-a) with regard to Article 20(1), ESMA has notified the administrator concerned, the supervised entity and its competent authority and appropriate measures have not been taken by the administrator.

Or. en

Amendment 94

Proposal for a regulation

Article 21 – paragraph 3 – point a and point b

Text proposed by the Commission

(a) ESMA has referred the matter to the competent authority of the third country and that competent authority has not taken the appropriate measures needed to protect investors and the proper functioning of the markets in the Union, or has failed to demonstrate that the administrator concerned complies with the requirements applicable to it in the third country;

(b) ESMA has informed the competent authority of the third country of its intention to withdraw the registration of the administrator, at least 30 days before the withdrawal.

Amendment

(-aa) with regard to a Commission decision pursuant to Article 20(2):

(i) ESMA has referred the matter to the competent authority of the third country and that competent authority has not taken the appropriate measures needed to protect investors and the proper functioning of the markets in the Union, or has failed to demonstrate that the administrator concerned complies with the requirements applicable to it in the third country;

(ii) ESMA has informed the competent authority of the third country of its intention to withdraw the registration of the administrator, at least 30 days before the withdrawal.

Or. en

Amendment 95

Proposal for a regulation

Article 21 – paragraph 4

Text proposed by the Commission

4. ESMA shall inform the other competent authorities of any measure adopted in accordance with paragraph 2 without delay and shall publish its decision on its website.

Amendment

4. ESMA shall inform the other competent authorities of any measure adopted in accordance with paragraph 2 without delay and shall publish its decision on its website. ***Under those circumstances, no new use of the relevant benchmark shall be commenced and steps to discontinue use without disruption to markets or consumers shall be commenced.***

Amendment 96

Proposal for a regulation Article 22 – paragraph 1

Text proposed by the Commission

1. An administrator shall apply for authorisation to provide benchmarks *if it provides indices which are used or intended to be used to reference financial instruments or financial contracts or to measure the performance of an investment fund.*

Amendment

1. An administrator shall apply for authorisation to provide benchmarks *falling within the qualifying benchmark categories referred to in Article 5(-1) or that have been notified as such by the relevant competent authority.*

Or. en

Amendment 97

Proposal for a regulation Article 23 – paragraph 1

Text proposed by the Commission

1. The administrator shall submit an application for authorisation to the competent authority of the Member State in which the administrator is located.

Amendment

1. The administrator shall submit an application for authorisation to the competent authority of the Member State in which the administrator is located *within 30 days of becoming aware of the application of the benchmark categories referred to in Article 5(-1).*

Or. en

Amendment 98

Proposal for a regulation Article 23 – paragraph 2

Text proposed by the Commission

Amendment

2. The application for authorisation in accordance with paragraph 1 shall be made:

deleted

(a) within 30 working days of any agreement entered into by a supervised entity to use an index provided by that administrator as a reference to a financial instrument or financial contract or to measure the performance of an investment fund;

(b) within 30 working days of the administrator giving its consent in accordance with paragraph 2 of Article 25 to the referencing of the index in the financial instrument referred to in paragraph 1 of Article 25.

Or. en

Amendment 99

Proposal for a regulation Article 23 – paragraph 3

Text proposed by the Commission

Amendment

3. The applicant administrator shall provide all information necessary to satisfy the competent authority that the applicant administrator has established, at the time of authorisation, all the necessary arrangements to meet the requirements laid down in this Regulation.

3. The applicant administrator shall provide all information necessary to satisfy the competent authority that the applicant administrator has established, at the time of authorisation, all the necessary arrangements to meet the requirements laid down in this Regulation. ***Where relevant the applicant administrator shall also indicate the benchmarks that it provides that do not fall within the qualifying benchmark categories of themselves and for which any proportionality adjustments or de minimis exemption of the requirements of this regulation is considered appropriate.***

Amendment 100

Proposal for a regulation

Article 24 – paragraph 1 – point a

Text proposed by the Commission

(a) expressly renounces the authorisation or has provided no benchmarks for the preceding twelve months;

Amendment

(a) expressly renounces the authorisation or has provided no benchmarks for the preceding twelve months ***or has not provided benchmarks within the qualifying benchmark categories of Article 5(-1) for 12 months. This will be granted only if there are suitable arrangements for the orderly transition to alternative benchmark(s);***

Or. en

Amendment 101

Proposal for a regulation

Article 25

Text proposed by the Commission

Article 25

Notification to ESMA of use of an index in a financial instrument

1. Whenever a competent authority becomes aware that an index is being used as a reference to a financial instrument, or that a request for admission to trading has been made to a trading venue supervised by that competent authority in respect of a financial instrument that references an index, that competent authority shall notify ESMA within 10 working days.

2. Within 10 working days of any notification ESMA shall notify the

Amendment

deleted

relevant administrator of the benchmark providing full details of its use and requesting the administrator to confirm that it consents to this use of the benchmark within 10 working days.

3. Without prejudice to Article 30 [MIFIR], where the administrator does not confirm to ESMA its consent within the time limit set out in paragraph 2, ESMA shall notify the relevant competent authority which shall request that the trading venue withdraw the listing of that financial instrument or refuse its admission to trading within 10 working days.

4. ESMA shall publish on its website a list of all notifications under paragraphs 1, 2 and 3.

ESMA shall develop draft implementing technical standards to determine the procedures and forms for exchange of information referred to in paragraph 1 and 2.

ESMA shall submit the draft implementing technical standards referred to in the first subparagraphs to the Commission by [XXXX].

Power is conferred to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation 1095/2010.

Or. en

Amendment 102

Proposal for a regulation Article 30 a (new)

Text proposed by the Commission

Amendment

Article 30a

Powers and tasks of ESMA

1. ESMA may provide guidelines relating to international convergence.

2. Any decision by ESMA to accept a delegation of tasks from national competent authorities in Article 26(2), can take place only if ESMA explicitly decide that they have the resources to accept such a delegation.

3. ESMA may produce a report *on* Article 20(1).

Or. en

Amendment 103

Proposal for a regulation

Article 31 – paragraph 1 – point a

Text proposed by the Commission

(a) the breaches of Articles **5(1)**, 6, 7(1), 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 22 and 23 of this Regulation; and

Amendment

(a) the breaches of Articles **5(-1)**, **5(1)**, **5(2)**, 6, 7(1), 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 22 and 23 of this Regulation; and

Or. en

Amendment 104

Proposal for a regulation

Article 34 – paragraph 1

Text proposed by the Commission

1. Within 30 working days from the entry into force of the decision referred to in Article 13(1) determining a benchmark as critical benchmark, the competent authority shall establish a college of competent authorities.

Amendment

1. Within 30 working days from the entry into force of the decision referred to in Article 13(1) determining a benchmark as critical benchmark, the competent authority shall establish a college of competent authorities **to ensure efficient information-sharing.**

Amendment 105

Proposal for a regulation Article 34 – paragraph 5

Text proposed by the Commission

5. The competent authority of the administrator shall chair the meetings of the college, coordinate the actions of the college and ensure efficient exchange of information among members of the college.

Amendment

5. The competent authority of the administrator shall chair the meetings of the college, coordinate the actions of the college and ensure efficient exchange of information among members of the college. ***ESMA shall also be responsible for ensuring the efficient exchange of information among members of the college.***

Or. en

Amendment 106

Proposal for a regulation Article 34 – paragraph 6 – subparagraph 1 – point b

Text proposed by the Commission

(b) the decision-making process between the competent authorities;

Amendment

deleted

Or. en

Amendment 107

Proposal for a regulation Article 34 – paragraph 8 – subparagraph 1

Text proposed by the Commission

Before taking any measures referred to Article 14, 23, 24 and 31 the competent authority of the administrator shall ***consult***

Amendment

Before taking any measures referred to Article 14, 23, 24 and 31 the competent authority of the administrator shall ***share***

the members of the college. The members of the college *shall do everything reasonable within their power to reach an agreement.*

its plans with the members of the college *unless urgency of action makes that impractical.*

Or. en

Amendment 108

Proposal for a regulation Article 34 – paragraph 9

Text proposed by the Commission

9. In the *absence of agreement* between the members of the college on *whether to take any* measures referred to in paragraph 8, within 15 working days after the *matter was* notified to the college, the competent authority of the administrator *may adopt a* decision. Any deviation of that decision from the opinions expressed by the other members of the college and, where appropriate, ESMA shall be fully reasoned. The competent authority of the administrator shall notify its decision, without undue delay, to the college and ESMA.

Amendment

9. In the *event of disagreement* between the members of the college on measures referred to in paragraph 8, within 15 working days after the *plans were* notified to the college, *any member of the college may issue an opinion to* the competent authority of the administrator *which shall take its decision taking into account any opinion it has received* Any deviation of that decision from the opinions expressed by the other members of the college and, where appropriate, ESMA shall be fully reasoned. The competent authority of the administrator shall notify its decision, without undue delay, to the college and ESMA.

Or. en

Amendment 109

Proposal for a regulation Article 38 – paragraph 1

Text proposed by the Commission

1. The Commission shall be assisted by the European Securities Committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

Amendment

1. The Commission shall be assisted by the European Securities Committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

As a co-legislator, the European Parliament, through its competent committee, shall be provided with copies of advice and shall be informed of and entitled to attend any meetings between the European Securities Committee representatives and the Commission.

Or. en

Amendment 110

Proposal for a regulation Article 39 – paragraph 1

Text proposed by the Commission

1. An administrator providing a benchmark on [the date of entry into force of this Regulation] shall apply for authorisation under Article 23 within [24 months after the date of application].

Amendment

1. An administrator providing a benchmark ***falling within the qualifying benchmark categories referred to in Article 5(-1)*** on [the date of entry into force of this Regulation] shall apply for authorisation under Article 23 within [24 months after the date of application].

Or. en

Amendment 111

Proposal for a regulation Article 39 – paragraph 2

Text proposed by the Commission

2. An administrator that submitted an application for authorisation in accordance with paragraph 1 may continue to produce an existing benchmark unless and until such authorisation is refused.

Amendment

2. An administrator that submitted an application for authorisation in accordance with paragraph 1 may continue to produce an existing benchmark unless and until such authorisation is refused ***or withdrawn in connection with any specific benchmark provided by the administrator.***

Or. en

Amendment 112

Proposal for a regulation Article 39 – paragraph 3

Text proposed by the Commission

3. Where an existing benchmark does not meet the requirements of this Regulation, but changing that benchmark to conform with the requirements of this Regulation **would** result in a force majeure event, frustrate or otherwise breach the terms of any financial contract or financial instrument which references that benchmark, paragraph 4 of this Article shall apply.

Amendment

3. Where an existing benchmark does not meet the requirements of this Regulation, but changing that benchmark to conform with the requirements of this Regulation **could reasonably be expected to** result in a force majeure event, frustrate or otherwise breach the terms of any financial contract or financial instrument which references that benchmark, paragraph 4 of this Article shall apply.

Or. en

Amendment 113

Proposal for a regulation Article 39 – paragraph 4

Text proposed by the Commission

4. The use of a benchmark shall be permitted by the relevant competent authority of the Member State where the administrator is located until ***such time as the benchmark references financial instruments and financial contracts worth no more than 5% by value*** of the financial instruments and financial contracts that referenced this benchmark at the time of entry into force of this Regulation. No financial instruments or financial contracts shall reference such an existing benchmark after the entry into application of this Regulation.

Amendment

4. The use of a benchmark shall be permitted by the relevant competent authority of the Member State where the administrator is located until ***the termination*** of the financial instruments and financial contracts that referenced this benchmark at the time of entry into force of this Regulation. No financial instruments or financial contracts shall reference such an existing benchmark after the entry into application of this Regulation.

Or. en

Amendment 114

Proposal for a regulation

Article 39 – paragraph 4 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

ESMA shall develop draft regulatory technical standards to specify:

(a) the information that is to be provided by an administrator in the application for authorisation when demonstrating that frustration, force majeure or breach of a contract is likely;

(b) the circumstances in which frustration, force majeure or breach of the terms of any financial contract are considered to have occurred in accordance with this Regulation;

(c) calibrated and proportional transitional procedures for critical and sectoral benchmarks in particular for interest rates and commodities.

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 Articles 10 to 14 of Regulation (EU) No 1095/2010.

Or. en

Amendment 115

Proposal for a regulation

Article 39 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Supervised entities may, subject to

compliance with the second subparagraph of Article 20(1), continue to use benchmarks provided by third-country administrators until ... [OJ please insert date: 30 months after the date of entry into force of this Regulation] which may be extended by the Commission in the light of financial stability considerations and progress in international standards for benchmarks.*

ESMA and competent authorities may establish lists or notify supervised entities of benchmarks that they consider should not be used.

Or. en

Amendment 116

Proposal for a regulation Annex I – Section A – title

Text proposed by the Commission

Governance and Control Requirements to ensure compliance with Article 5(1)

Amendment

Governance and Control Requirements to ensure compliance with Article 5(2)

Or. en

Amendment 117

Proposal for a regulation Annex I – Section A – title I – title

Text proposed by the Commission

I. Governance and conflicts of interest requirements to ensure compliance with Article 5(1)(a)

Amendment

I. Governance and conflicts of interest requirements to ensure compliance with Article 5(2)(a)

Or. en

Amendment 118

Proposal for a regulation

Annex I – Section A – title I – point 1

Text proposed by the Commission

1. The provision of a benchmark shall be operationally and functionally separated from any part of the administrator's business that may create an actual or potential conflict of interest. ***If these conflicts cannot be managed, the benchmark operator shall cease any activities or relationships that create these conflicts or cease producing the benchmark.***

Amendment

1. The provision of a benchmark shall be operationally and functionally separated from any part of the administrator's business that may create an actual or potential conflict of interest. ***Where conflicts of interests may arise in the administrator due to its ownership structures, controlling interests or other activities conducted by any entity owning or controlling the administrator or by the administrator or any of its affiliates, the administrator shall establish an independent oversight function which includes a balanced representation of a range of stakeholders where known, subscribers and contributors/submitters, which is chosen to counterbalance the relevant conflict of interest.***

Or. en

Amendment 119

Proposal for a regulation

Annex I – Section A – title I – point 2

Text proposed by the Commission

2. An administrator shall publish, or disclose all existing or potential conflicts of interest to ***the contributors and*** users of the benchmark and the relevant competent authority, including conflicts of interest arising from the ownership or control of the administrator.

Amendment

2. An administrator shall publish, or disclose all existing or potential conflicts of interest to users of the benchmark and the relevant competent authority, ***and, where relevant, to contributors,*** including conflicts of interest arising from the ownership or control of the administrator.

Or. en

Amendment 120

Proposal for a regulation

Annex I – Section A – title I – point 5

Text proposed by the Commission

5. An administrator shall establish specific internal control procedures to ensure the integrity and reliability of the employee or person determining the benchmark, including **at least** internal sign-off by management before the dissemination of the benchmark.

Amendment

5. An administrator shall establish specific internal control procedures to ensure the integrity and reliability of the employee or person determining the benchmark, including **appropriate** internal sign-off by management before the dissemination of the benchmark. ***The appropriate measures shall take account of the frequency of publication and nature of the benchmark.***

Or. en

Amendment 121

Proposal for a regulation

Annex I – Section A – title I – point 7

Text proposed by the Commission

7. Where Administrators receive input data from employees of a front office function, the Administrator shall obtain data from other sources that can corroborate that input data.

Amendment

7. Where Administrators receive input data from employees of a front office function, the Administrator shall, **where available**, obtain data from other sources that can corroborate that input data. ***The Administrator shall publish information concerning the extent to which the data used was able to be corroborated with data from other sources.***

Or. en

Amendment 122

Proposal for a regulation

Annex I – Section A – title I – point 8 – point c a (new)

Text proposed by the Commission

Amendment

(ca) Notwithstanding points (a), (b) and (c), it is recognised, for the purposes of Annex III, that for price reporting agencies and commodities the contributors do not necessarily have the functional separation of front and back offices that exist in financial services sector.

Or. en

Amendment 123

Proposal for a regulation Annex I – Section A – title II – title

Text proposed by the Commission

Amendment

II. Oversight requirements to ensure compliance with Article 5(1)(b)

II. Oversight requirements to ensure compliance with Article 5(2)(b)

Or. en

Amendment 124

Proposal for a regulation Annex I – Section A – title III – point 13 – point a

Text proposed by the Commission

Amendment

(a) establish ***measures to ensure that that*** contributors comply with the code of conduct and the applicable standards for the input data;

(a) establish ***knowledge of the contributor's credentials and awareness of how*** contributors comply with the code of conduct and the applicable standards for the input data;

Or. en

Amendment 125

Proposal for a regulation

Annex I – Section A – title IV – point 18 – point f

Text proposed by the Commission

(f) the recording of telephone conversations or electronic communications between any person employed by the administrator and the contributors in respect of the benchmark.

Amendment

(f) the recording of telephone conversations or electronic communications between any person employed by the administrator and the contributors in respect of **submissions to** the benchmark.

Or. en

Amendment 126

Proposal for a regulation

Annex I – Section 1 – title IV – point 19

Text proposed by the Commission

19. The administrator shall keep the records set out in point 1 for at least five years in such 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 conversation or electronic communications recorded in accordance with point 18(f) shall be provided to the persons involved in the conversation or communication upon request and shall be kept for a period of **three** years.

Amendment

19. The administrator shall keep the records set out in point 1 for at least five years in such 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 **shall be kept for at least 10 years where financial instruments of long duration rely on the benchmark. Records** of telephone conversation or electronic communications recorded in accordance with point 18(f) shall be provided to the persons involved in the conversation or communication upon request and shall be kept for a period of **five** years.

Or. en

Amendment 127

Proposal for a regulation

Annex I – Section C – title I – point 1 – point c

Text proposed by the Commission

(c) a process for validating the input data, including against other indicators or data, to **ensure** its integrity and accuracy.

Amendment

(c) a process for validating the input data, including against other indicators or data, to **assure** its integrity and accuracy.

Or. en

Amendment 128

Proposal for a regulation

Annex I – Section C – title I – point 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) a process for reporting potential breaches of the [Market Abuse Regulation or Directive] and a whistleblowing procedure.

Or. en

Amendment 129

Proposal for a regulation

Annex I – Section D – point 1 – introductory part

Text proposed by the Commission

Amendment

1. The code of conduct produced pursuant to Article 9 shall **include at least** the following elements:

1. The code of conduct produced pursuant to Article 9 shall **be based on** the following elements:

Or. en

EXPLANATORY STATEMENT

The alleged manipulation of the LIBOR and EURIBOR interest rate benchmarks have highlighted the importance of benchmarks and their vulnerabilities. Allegations of attempted manipulation of commodity price assessments provided by commodity price reporting agencies (PRAs) are also under investigation by the competent authorities and IOSCO has carried out a review of oil price assessments by PRAs.

The first part of the European response to the alleged manipulation of LIBOR and EURIBOR was to amend the existing proposals for a market abuse Regulation (MAR) and criminal sanctions for market abuse Directive (MAD) to clarify that any manipulation of benchmarks is clearly and unequivocally illegal and subject to administrative or criminal sanctions.

This new proposal compliments those pieces of legislation, as well as others which touch upon more generally the usage, and provision, of financial benchmarks and indices in Europe.

This proposal aims to improve the governance and controls over the benchmark process, to improve the quality and transparency of the input data and methodologies used by benchmark administrators and to ensure that contributors to benchmarks are subject to adequate controls, in particular to avoid any potential conflicts of interest.

Overall, benchmarks are a huge volume and the resources of national competent authorities are required for the coordinated European task.

Your rapporteur commends the Commission in tackling this issue, and in the intention to inact IOSCO principles in EU legislation. The following improvements are proposed to provide a more workable starting framework in this evolving area of legislation.

Scope

The scope of the proposal is very wide in that every conceivable index used as a benchmark to value a financial instrument, contract or to measure the performance of an investment fund is covered by the requirements of the proposal. Your rapporteur has sought to direct the scope of the Regulation to the administrators of benchmarks who are covered by the Regulation if they administer a benchmark that falls within a series of categories.

These categories are much wider than just those which are deemed critical to EU financial markets, such as LIBOR and EURIBOR but do not necessarily seek to include every benchmark in existence. There are, however, provisions for Competent Authorities to call an administrator of a benchmark into the scope of the Regulation if they consider it necessary.

Administrators of benchmarks that fall within the scope will almost certainly have a reputation which could impact how their non-qualifying benchmarks are viewed and so are expected to have governance standards for all their benchmarks. However, these can be applied proportionately or with *de-minimis* provisions.

When this proportionality is required it is submitted with the application for authorisation

stage. This notification of the proportionality applied also replaces any other benchmark notification.

Supervision

The role of ESMA has been strengthened throughout, drawing further on their expertise to provide guidelines, calibrate technical standards and mediate between national competent authorities. ESMA are in a unique position to provide a horizontal viewpoint on the usage, and provision, of financial benchmarks in Europe to the extent that national competent authorities can delegate tasks to them where there is perceived added value from their involvement. As with any delegation of power to the European Supervisory Authorities, it is vitally important that they have the resources to cope.

National competent authorities have also been given greater flexibility in particular through the power to call administrators into this regulation and mandating contribution to critical benchmarks.

Third country provisions

The third country provisions are changed to reflect that, when it comes to regulating the administrators of financial benchmarks, it is very much still a work in progress. Third country jurisdictions have not yet decided to regulate benchmarks or indices, based on IOSCO standards, like the EU has and so this fact needs to be considered when it comes to third country equivalence assessments.

The compliance with IOSCO standards, or indeed any future internationally agreed standards, should therefore be the basis on which third country benchmarks are measured and national competent authorities and ESMA should play an integral role in the notification procedure and developing lists of allowed benchmark providers.

The Commission should of course still adopt decisions alongside the notification process when it considers third country benchmark providers as equivalent.

All third country benchmarks can be used for 30 months after the Regulation comes into effect and can be extended by the commission. This is proportional to the time period, 24 months, after which registration in the EU commences.

Transparency

Transparency of the data used or the methodology applied when producing a benchmark is a useful tool for investors and supervisors. Therefore, all input data and methodologies used in the production of critical or major benchmarks used for substantial retail investment should be made public.

Financial Stability

The cessation of a benchmark could have negative consequences for the financial stability of EU markets and so the procedures that administrators follow when this may occur need to be consistent across the EU. ESMA should inform and consult administrators and seek to follow

IOSCO principles as much as possible.

We have also seen in recent months the steady reductions of submissions to LIBOR and EURIBOR in the wake of the manipulation scandals and so the power to ensure mandatory contribution to critical benchmarks, such as these, by competent authorities is integral to financial stability as they are used to reference myriad financial contracts across the EU.

The Commission's usage of a 20% threshold to trigger this requirement may be too inflexible and so it is therefore sensible to give national competent authorities more general powers here.