



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Economic and Monetary Affairs

2013/0314(COD)

19.12.2013

AMENDMENTS

130 - 350

Draft report
Sharon Bowles
(PE523.055v01-00)

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

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

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PE526.127v01-00

EN

United in diversity

EN

Amendment 130
Auke Zijlstra

Draft legislative resolution
Paragraph 1

Draft legislative resolution

1. Adopts its position at first reading hereinafter set out;

Amendment

1. Rejects the Commission proposal and calls on the Commission to withdraw it; points out that the way financial benchmarks are set and governed has never been detrimental to the functioning of the internal market, therefore Article 114 of the Treaty on the Functioning of the European Union cannot be used as an appropriate legal basis.

Or. en

Amendment 131
Syed Kamall

Proposal for a regulation
Recital 1

Text proposed by the Commission

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

Amendment

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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*.

consumers and investors and distort the real economy. It is therefore necessary to ensure the accuracy, robustness and integrity of *the benchmark-setting process for certain critical, vulnerable or systemically relevant benchmarks*.

Or. en

Amendment 132

Philippe Lamberts

on behalf of the Greens/EFA Group

Proposal for a regulation

Recital 1

Text proposed by the Commission

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

Amendment

(1) The pricing of many financial instruments and financial contracts depends on the accuracy and integrity of benchmarks. *Staggering cases of intentional and far-reaching manipulation driven mostly by SIFIs* of interest rate benchmarks such as LIBOR and EURIBOR, *causing considerable losses to consumers and investors and further shattering the confidence of citizens in the banking sector*, 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, *are* vulnerable to manipulation. Failures in, or doubts about, the accuracy and integrity of indices used as benchmarks may undermine market confidence, cause losses to consumers and investors and distort the real economy. It is therefore necessary to ensure the accuracy, robustness and integrity of benchmarks and the benchmark setting process.

Or. en

Amendment 133
Markus Ferber

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. 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. ***As yet there has been no adequate legislative response to the manipulation of the Euribor rate. Particularly close supervision of the arrangements for providing interbank benchmark interest rates is essential, however.*** 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.

Or. de

Amendment 134
Syed Kamall

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. Only two Member States have adopted national legislation on *critical* 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 *that should be taken into account to ensure global consistency.*

Or. en

Amendment 135
Emilie Turunen

Proposal for a regulation
Recital 6

Text proposed by the Commission

(6) Therefore to ensure the proper functioning of the internal market and improve the conditions of its functioning, in particular with regard to financial markets, and to ensure a high level of consumer and investor protection, it is therefore appropriate to lay down a regulatory framework for benchmarks at Union level.

Amendment

(6) Therefore to ensure the proper functioning of the internal market and improve the conditions of its functioning, in particular with regard to financial markets, and to ensure a high level of consumer and investor protection, **and ensure adequate supervision of wholesale markets and prevent market abuse**, it is therefore appropriate to lay down a regulatory framework for benchmarks at Union level.

Or. en

Amendment 136
Syed Kamall

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 taken at national level, and should ensure a consistent approach, greater legal certainty and

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 **some** aspects **of** the provision of **critical, vulnerable or systemically relevant** 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 taken at national level, and should ensure a consistent

prevent the appearance of significant impediments in the cross-border provision of benchmarks.

approach, greater legal certainty and prevent the appearance of significant impediments in the cross-border provision of benchmarks.

Or. en

Amendment 137
Syed Kamall

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 ***limited to critical, vulnerable or systemically relevant benchmarks***. The production of ***critical, vulnerable or systemically relevant*** 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 ***those critical, vulnerable or systemically relevant benchmarks, and*** should ***therefore*** be made subject to adequate governance and control requirements.

Or. en

Amendment 138
Sylvie Goulard

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. 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 ***benchmarks may be used in retail markets, restricting the scope by reference to currently important or vulnerable indices would not address the risks that any benchmark may pose to investor protection. Moreover, 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 ***used in retail markets or that are currently not*** widely used may be so used in the future, so that, in their regard, even a minor manipulation may have significant impact

Or. en

Justification

For investor protection reasons, the broad scope of indices contemplated by the regulation must be preserved, notably by continuing to include all types of benchmarks including commodity indices, strategy indices and proprietary indices

Amendment 139

Werner Langen, Burkhard Balz

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. 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, **although the precise form they take depends to a significant degree on the input data used. It should be possible for benchmarks to be** made subject to governance and control requirements, **with the proviso that these must be proportional.** 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.

Or. de

Amendment 140

Olle Schmidt, Nils Torvalds

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

Amendment

(8) The scope of this Regulation should be as **appropriate** 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.

inherently subject to certain types of conflicts of interest, which implies the existence of opportunities and incentives to manipulate those benchmarks. These risk factors **vary among** 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.

Or. en

Justification

The benchmark business is global. An EU regulation needs to recognise this and aim at aligning appropriately with the IOSCO Principles, which were drawn up taking into account the diverse and global features of the benchmark world.

Amendment 141
Sharon Bowles

Proposal for a regulation
Recital 8 a (new)

Text proposed by the Commission

Amendment

(8 a) The application of the criteria for qualifying categories of benchmark administrators falling within the scope of this Regulation should be based on guidelines and draft regulatory technical standards developed by ESMA. In providing for these guidelines and technical standards, ESMA should take into account the circumstances where the application of the qualifying categories can be implemented through a phased-in approach and whether the application of

parts or all of the provisions of this Regulation should be waived or delayed due to the nature of the benchmarks concerned or international developments.

Or. en

Justification

Due to myriad benchmarks in the EU, the tasks conferred onto ESMA will be significant. It is therefore necessary for ESMA to operate a phase-in approach for certain requirements of this Regulation. Like the clearing obligation for OTC derivatives in EMIR, ESMA is best placed to ensure that those benchmarks which have the biggest impact on financial stability, and/or are most prone to conflicts of interest, are tackled in a timely fashion. Those less likely, can be afforded proportionality.

Amendment 142
Sharon Bowles

Proposal for a regulation
Recital 8 b (new)

Text proposed by the Commission

Amendment

(8 b) Administrators of critical or major benchmarks may also be administrators of other benchmarks that of themselves would not have drawn the administrator into regulation. However, such administrators will have a reputation and it is therefore appropriate for their governance procedures to cover all these further 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 143

Sharon Bowles

Proposal for a regulation

Recital 8 c (new)

Text proposed by the Commission

Amendment

(8 c) ESMA will be mandated to establish criteria specifying the implementation and application of the Regulation in terms of governance, input data and methodology, and code of conduct. This should be calibrated according to the nature and extent of the risks posed by each benchmark, the source of the underlying data inputs and the particular benchmark-setting process.

Or. en

Justification

Due to myriad benchmarks in the EU, the tasks conferred onto ESMA will be significant. It is therefore necessary for ESMA to operate a phase-in approach for certain requirements of this Regulation. Like the clearing obligation for OTC derivatives in EMIR, ESMA is best placed to ensure that those benchmarks which have the biggest impact on financial stability, and/or are most prone to conflicts of interest, are tackled in a timely fashion. Those less likely, can be afforded proportionality.

Amendment 144

Syed Kamall

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.**

(9) The determinant of the scope of this Regulation should be **risk-based and proportionate based on the way in which data is inputted into the benchmark setting process since it is at this point that a benchmark is manipulated. This means that a benchmark should only be deemed to be in the scope of this Regulation if it is**

Benchmarks calculated from economic input data, such as share prices and non-economic number or values such as weather parameters should thus be 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.

deemed to be a critical, vulnerable or systemically relevant benchmark.

Or. en

Amendment 145
Sirpa Pietikäinen

Proposal for a regulation
Recital 9

Text proposed by the Commission

(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 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.***

Amendment

(9) The critical determinant of the scope of this Regulation should be whether the output value of the benchmark ***that*** determines the value of a financial instrument, financial contract or measures the performance of an investment fund ***can be manipulated.*** Therefore the scope should be dependent on the nature of the input data. 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.

Or. en

Amendment 146
Olle Schmidt, Nils Torvalds

Proposal for a regulation
Recital 9

Text proposed by the Commission

(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 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.***

Amendment

(9) The critical determinant of the scope of this Regulation should be whether the output value of the benchmark ***that*** determines the value of a financial instrument, financial contract or measures the performance of an investment fund ***can be manipulated.*** Therefore the scope should be dependent on the nature of the input data. 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.

Or. en

Amendment 147
Werner Langen

Proposal for a regulation
Recital 9

Text proposed by the Commission

(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.

Amendment

(9) The critical determinant of the scope of this Regulation should be whether the output value of the benchmark, ***which*** 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 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*.

can be manipulated. Therefore the scope should be dependent on the nature of the input data. 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. ***In the case of commodity benchmarks, however, due account should be taken of the IOSCO Principles for Oil Price Reporting Agencies of 5 October 2012 and of the outcome of the review of those principles by the IOSCO, which is due to be published in May or June 2014.***

Or. de

Amendment 148
Sylvie Goulard

Proposal for a regulation
Recital 9

Text proposed by the Commission

(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 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*

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 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 *and which are published or made available to*

traded on regulated venues.

the public, including those accessible through the internet whether free of charge or not.

Or. en

Justification

The scope of the proposal excludes financial instruments which are not traded on a trading venue or for which no request for admission to trading on a trading venue has been made. This exclusion is not justified and inconsistent with the broad scope deliberately used by IOSCO in its principles for financial benchmarks. The added references to the availability through the internet, whether free of charge or not, is consistent with the recital of the regulation on insider dealing and market manipulation (MAR).

Amendment 149

Philippe Lamberts

on behalf of the Greens/EFA Group

Proposal for a regulation

Recital 9

Text proposed by the Commission

(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 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.*

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 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. en

Amendment 150

Emilie Turunen

Proposal for a regulation

Recital 9

Text proposed by the Commission

(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 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*.

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 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.

Or. en

Amendment 151

Sharon Bowles, Jens Rohde

Proposal for a regulation

Recital 9 a (new)

Text proposed by the Commission

Amendment

(9 a) Physical commodities markets present unique characteristics which must be taken into account in order to avoid undermining the integrity of commodity benchmarks and negatively impacting commodity market transparency,

European security of supply, competitiveness and the interests of consumers. Accordingly, certain articles in this Regulation are not appropriate to apply to commodity benchmarks. Annex III of this Regulation, which closely reflects principles developed for commodities benchmarks by IOSCO in collaboration with the International Energy Agency and the International Energy Forum among others, is specifically designed to apply to all commodity benchmarks which fall within the scope of this Regulation and sets out which of the requirements in the Regulation will not apply to commodity benchmarks.

Or. en

Justification

It is important not to impart unintended consequences through this Regulation by negatively impacting upon commodity market transparency and so closely aligning with IOSCO in Annex III will help in this regard.

Amendment 152
Olle Schmidt

Proposal for a regulation
Recital 11 a (new)

Text proposed by the Commission

Amendment

(11 a) For the purposes of this Regulation, made available to the public does not include customized/bespoke indices created and agreed as a combination and/or modification of existing public indices on the request of one or a very limited number of market participants are not subject to this Regulation.

Or. en

Amendment 153
Syed Kamall

Proposal for a regulation
Recital 12

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 154
Philippe Lamberts
on behalf of the Greens/EFA Group

Proposal for a regulation
Recital 12

Text proposed by the Commission

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

Amendment

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

Amendment 155**Syed Kamall****Proposal for a regulation****Recital 14***Text proposed by the Commission*

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

Amendment

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

Amendment 156**Philippe Lamberts**

on behalf of the Greens/EFA Group

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

*Amendment**deleted*

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

Or. en

Amendment 157
Emilie Turunen

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 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.

Amendment

(16) Benchmarks that are provided by central banks in the Union are subject to control by public authorities and meet principles, standards and procedures which ensure the accuracy, integrity and independence of their benchmarks as provided for by this Regulation. It is therefore not necessary that these benchmarks should be subject to this Regulation. However third country central banks may also provide benchmarks that are used in the Union. It is necessary to determine that only those central banks of ***equivalent*** 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 158
Sylvie Goulard

Proposal for a regulation
Recital 16 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Justification

Benchmark administration by a national authority used for public policy purposes (e.g., labour, economic activity, inflation or consumer price indices) should be excluded as it is outside the scope of the IOSCO principles for financial benchmarks.

Amendment 159
Emilie Turunen

Proposal for a regulation
Recital 16 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 160
Syed Kamall

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 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.

Or. en

Amendment 161
Sharon Bowles

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

Amendment

(17) In order to ensure the integrity of benchmarks, benchmark administrators should be required to implement adequate

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.

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. *The oversight function should be carried out either by a separate committee, or other appropriate governance arrangements. Oversight functions should always be proportionate to the benchmark in question.*

Or. en

Amendment 162
Gay Mitchell

Proposal for a regulation
Recital 22

Text proposed by the Commission

(22) Employees of the administrator may identify possible breaches of this Regulation or potential vulnerabilities that could lead to manipulation or attempted manipulation. This Regulation *should* therefore ensure that adequate arrangements are in place to enable employees to alert administrators confidentially of possible breaches of this Regulation.

Amendment

(22) Employees of the administrator may identify possible breaches of this Regulation or potential vulnerabilities that could lead to manipulation or attempted manipulation. This Regulation *shall* therefore ensure that adequate arrangements are in place, *and, in particular, a whistleblowing procedure*, to enable employees to alert administrators confidentially of possible breaches of this Regulation.

Or. en

Amendment 163
Sylvie Goulard

Proposal for a regulation
Recital 23

Text proposed by the Commission

(23) Any discretion that can be exercised in providing input data creates an opportunity to manipulate a benchmark. Where the input data is transaction based data, there is less discretion and therefore the opportunity to manipulate the data is reduced. As a general rule benchmark administrators should therefore use actual transaction input data where possible but other data may be used in those cases where the transaction data is insufficient to ensure the integrity and accuracy of the benchmark.

Amendment

(23) Any discretion that can be exercised in providing input data creates an opportunity to manipulate a benchmark. Where the input data is transaction based data, there is less discretion and therefore the opportunity to manipulate the data is reduced. As a general rule benchmark administrators should therefore use actual transaction input data where possible but other data may be used in those cases where the transaction data is insufficient to ensure the integrity and accuracy of the benchmark ***or where a benchmark is not designed to represent transactions and the nature of the benchmark is such that data other than transaction data is used to reflect what the benchmark is designed to measure, provided that in all cases such data is verifiable.***

Or. en

Justification

While the new European legislative framework is intended to make benchmarks more reliable, the proposal is more restrictive than the IOSCO principles for financial benchmarks, which expressly acknowledge that some benchmarks are not designed to reflect underlying transactions. Care must be taken to ensure that the proposal does not result in the prohibition of benchmarks using input data that are not necessarily transactional but that are nevertheless derived from verifiable sources.

Amendment 164
Sharon Bowles, Jens Rohde

Proposal for a regulation
Recital 23

Text proposed by the Commission

(23) Any discretion that can be exercised in providing input data creates an opportunity to manipulate a benchmark. Where the input data is transaction based data, there is less discretion and therefore the opportunity to manipulate the data is reduced. As a general rule benchmark administrators should therefore use actual transaction input data where possible but other data may be used in those cases where the transaction data is insufficient to ensure the integrity and accuracy of the benchmark.

Amendment

(23) Any discretion that can be exercised in providing input data creates an opportunity to manipulate a benchmark. Where the input data is transaction based data, there is less discretion and therefore the opportunity to manipulate the data is reduced. As a general rule benchmark administrators should therefore use actual transaction input data where possible but other data may be used in those cases where the transaction data is insufficient to ensure the integrity and accuracy of the benchmark. ***In cases where transaction data is not sufficiently available, the administrator should retain flexibility to use the inputs it believes are appropriate under its methodology to ensure the quality and integrity of the benchmark.***

Or. en

Amendment 165
Sharon Bowles, Jens Rohde

Proposal for a regulation
Recital 26

Text proposed by the Commission

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

Amendment

(26) The integrity and accuracy of benchmarks depends on the integrity and accuracy of the input data provided by contributors. It is essential that the contributors can be relied on and are consistent with the benchmark administrator's controls and methodology. It is therefore necessary that the benchmark administrator produces a code of conduct to specify these requirements and that ***as far as is practicable, bearing in mind not all contributors are within the EU but may be needed for an accurate benchmark***, the contributors are bound by that code of conduct. ***Where it becomes***

evident that a contributor does not comply with the code of conduct administrators should take remedial action which may include, but not be limited to, refusing submissions from that contributor.

Or. en

Justification

Contributors to commodity benchmarks often come from third countries with sometimes little vested interest in the maintenance of the benchmark itself. Imposing a binding code of conduct by the administrator to the contributor may not always be practicable and it is important not to disincentivise submissions where they bring transparency to certain markets.

Amendment 166
Syed Kamall

Proposal for a regulation
Recital 26

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 167
Markus Ferber

Proposal for a regulation

Recital 26

Text proposed by the Commission

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

Amendment

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

Or. de

Amendment 168

Emilie Turunen

Proposal for a regulation

Recital 26

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 169

Philippe Lamberts

on behalf of the Greens/EFA Group

Proposal for a regulation

Recital 27

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 170

Sylvie Goulard

Proposal for a regulation

Recital 27

Text proposed by the Commission

(27) Many benchmarks are determined from input data that is provided by regulated venues, energy exchanges and emission allowance auctions. These venues are subject to regulation and supervision that ensures the integrity of the input data, provides for governance requirements and procedures for the notification of breaches.

Amendment

(27) Many benchmarks are determined from input data that is provided by regulated venues, energy exchanges and emission allowance auctions. These venues are subject to regulation and supervision that ensures the integrity of the input data, provides for governance requirements and procedures for the notification of breaches.

Therefore these benchmarks are released from certain obligations in order to avoid dual regulation and because their supervision ensures the integrity of the input data used.

Therefore, ***provided they are sourced from venues subject to post trade transparency requirements, including a third country market considered as equivalent to a regulated market in the Union***, these benchmarks are released from certain obligations in order to avoid dual regulation and because their supervision ensures the integrity of the input data used.

Or. en

Justification

Only input data that is sourced from venues subject to mandatory post trade transparency requirements can provide the required level of integrity to qualify as “regulated data” and be released from certain obligations of the regulation (as provided by IOSCO in its principles for financial benchmarks). In addition, data contributed from a third country market considered as equivalent to a regulated market should also qualify as “regulated data” under the same condition as mentioned above.

Amendment 171 Emilie Turunen

Proposal for a regulation Recital 27

Text proposed by the Commission

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

Amendment

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

Amendment 172

Syed Kamall

Proposal for a regulation

Recital 29

Text proposed by the Commission

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

Amendment

(29) Different types of ***critical, vulnerable or systemically relevant*** benchmark and different benchmark sectors have different characteristics, vulnerabilities and risks.

Amendment 173

Markus Ferber

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 provisions of this Regulation should be further specified for particular benchmark sectors and types. Interbank interest rate benchmarks are benchmarks

that play an important role in the transmission of monetary policy *and so* it is *necessary to specify how these provisions would apply to these benchmarks in this Regulation*.
Commodity benchmarks are widely used and have sector specific characteristics and so it is necessary to specify how these provisions would apply to these benchmarks in this Regulation.

that play an important role in the transmission of monetary policy. *Given this important role, particular care must be taken when setting interbank benchmark interest rates; it is essential, therefore, that in future the provision of interbank benchmark interest rates should be monitored by the single European banking supervisory authority attached to the European Central Bank*.
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. de

Amendment 174
Philippe Lamberts
on behalf of the Greens/EFA Group

Proposal for a regulation
Recital 29

Text proposed by the Commission

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

Amendment

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

Amendment 175

Werner Langen

Proposal for a regulation

Recital 29

Text proposed by the Commission

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

Amendment

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

Amendment 176

Syed Kamall

Proposal for a regulation

Recital 30

Text proposed by the Commission

(30) The failure of certain critical benchmarks may have a significant impact on financial stability, market orderliness or investors and it is therefore necessary that ***additional*** requirements apply to ensure the

Amendment

(30) The failure of certain critical benchmarks may have a significant impact on financial stability, market orderliness or investors and it is therefore necessary that ***the*** requirements ***in this Regulation*** apply

integrity and robustness of these critical benchmarks. Where a benchmark references a significant value of financial instruments it *will* have such an impact. It is therefore necessary that the Commission determines those benchmarks that *reference financial instruments above a certain threshold and* should be considered critical benchmarks.

to ensure the integrity and robustness of these critical benchmarks. Where a benchmark references a significant value of financial instruments it *may* have such an impact. It is therefore necessary that the Commission determines those benchmarks that should be considered critical benchmarks.

Or. en

Amendment 177
Jean-Paul Gauzès

Proposal for a regulation
Recital 30

Text proposed by the Commission

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

Amendment

(30) The failure of certain critical benchmarks may have a significant impact on financial stability, market orderliness or investors and it is therefore necessary that additional requirements apply to ensure the integrity and robustness of these critical benchmarks. Where a benchmark references a significant value of financial instruments it will have such an impact. It is therefore necessary that *ESMA, in close cooperation with the ECB, EBA, and EIOPA, determines those benchmarks in accordance with defined criteria that* should be considered critical benchmarks.

Or. en

Amendment 178
Emilie Turunen

Proposal for a regulation
Recital 30

Text proposed by the Commission

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

Amendment

(30) The failure of certain critical benchmarks may have a significant impact on financial stability, market orderliness or investors **in Member States or jurisdictions different from the Member State where the benchmark administrator is located.** It is therefore necessary that additional requirements apply to ensure the integrity and robustness of these critical benchmarks. Where a benchmark references a significant value of financial instruments **and is widely used on the international markets** it will have such an impact. It is therefore necessary that the **ESMA in consultation with EBA and EIOPA determines which benchmarks** should be considered critical benchmarks.

Or. en

Amendment 179

Philippe Lamberts

on behalf of the Greens/EFA Group

Proposal for a regulation

Recital 30

Text proposed by the Commission

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

Amendment

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

should have the lead role in the colleges for critical benchmarks, and the review of this regulation should include an assessment of the feasibility of submitting all critical benchmarks to direct supervision by ESMA.

Or. en

Amendment 180
Olle Schmidt, Anne E. Jensen

Proposal for a regulation
Recital 30 a (new)

Text proposed by the Commission

Amendment

(30 a) Benchmarks mainly used within smaller currency areas and with a limited number of contributors, are to be considered as non-critical. These benchmarks are to be supervised by the local authorities, using the IOSCO principles as the common reference. The competent authority will, after consulting ESMA, decide whether a benchmark is to be considered as critical or non-critical.

Or. en

Amendment 181
Jean-Paul Gauzès

Proposal for a regulation
Recital 31

Text proposed by the Commission

Amendment

(31) Contributors ceasing to contribute may undermine the credibility of critical benchmarks. In order to address this vulnerability, it is therefore necessary to include a power for *the relevant competent authority* to require mandatory contributions to critical benchmarks.

(31) Contributors ceasing to contribute may undermine the credibility of critical benchmarks. In order to address this vulnerability, it is therefore necessary to include a power for *ESMA, in close cooperation with the ECB, EBA, and EIOPA when applicable*, to require

mandatory contributions to critical benchmarks.

Or. en

Amendment 182
Emilie Turunen

Proposal for a regulation
Recital 31

Text proposed by the Commission

(31) Contributors ceasing to contribute may undermine the credibility of critical benchmarks. In order to address this vulnerability, it is therefore necessary to include a power for ***the relevant competent authority*** to require mandatory contributions to critical benchmarks.

Amendment

(31) Contributors ceasing to contribute may undermine the credibility of critical benchmarks. In order to address this vulnerability, it is therefore necessary to include a power for ***ESMA*** to require mandatory contributions to critical benchmarks.

Or. en

Amendment 183
Sharon Bowles

Proposal for a regulation
Recital 31 a (new)

Text proposed by the Commission

Amendment

(31 a) More generally, supervised entities have a particular responsibility to support transparency and integrity of the markets in which they are active. Therefore competent authorities should ensure that supervised entities use benchmarks responsibly and contribute where they are participants in the underlying market.

Or. en

Amendment 184
Syed Kamall

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 ***the supervisors and regulation in any third country are compliant with these principles.***

Or. en

Amendment 185
Sharon Bowles, Jens Rohde

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***

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 supervisions and regulation, ***which may include reliance on administrator rules, in any third country follows IOSCO standards. Given that***

before any benchmark provided from that third country can be used in the Union.

many third country benchmarks are in use for international trade involving EU corporates and institutions, it is important that such international trade is not disrupted by premature or inappropriate application of regulation.

Or. en

Amendment 186
Jean-Paul Gauzès

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, ***after an appropriate transitional period***, 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. ***It is also necessary that any decision recognising the legal framework and supervisory practices of a third country as equivalent to the demands of this Regulation be accompanied by a mutual recognition requirement.***

Or. en

Amendment 187
Olle Schmidt, Nils Torvalds

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) ***The market for benchmarks is global. Participants, such as administrators, contributors and users, as well as the input data, come from within and outside the European Union.*** 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.

Or. en

Justification

The benchmark business is global. An EU regulation needs to recognise this and aim at aligning appropriately with the IOSCO Principles, which were drawn up taking into account the diverse and global features of the benchmark world.

Amendment 188

Sharon Bowles

Proposal for a regulation

Recital 34 a (new)

Text proposed by the Commission

Amendment

(34 a) In considering whether third country benchmarks can be relied upon as compliant with international standards, ESMA shall take into account any

published independent assurance review of an administrator's adherence to the relevant IOSCO principles, where such an assurance review is required by IOSCO.

Or. en

Amendment 189
Gay Mitchell

Proposal for a regulation
Recital 35

Text proposed by the Commission

(35) The administrator should be authorised and supervised by the competent authority of the Member State where that administrator is located.

Amendment

(35) The administrator should be authorised and supervised by the competent authority of the Member State where that administrator is located. ***ESMA shall be empowered to supervise critical interbank benchmarks. However, when a critical benchmark administrator is located in a Member State where sufficient national regulation and supervision on benchmarks is applicable, ESMA may delegate its supervisory powers to the national competent authority of the Member State where the administrator is located.***

Or. en

Justification

As some critical interbank benchmarks have cross-border implications for administrators, contributors and users, the supervision of certain critical benchmarks by a competent authority of the Member State in which it is located may not be efficient in terms of addressing the risks created by the critical benchmark. However, in circumstances where there is sufficient national regulation and supervision, ESMA can delegate the supervision to the competent authority.

Amendment 190
Sylvie Goulard

Proposal for a regulation

Recital 36

Text proposed by the Commission

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

Amendment

(36) In some circumstances a person may provide an index but be unaware that this index is being used as a reference for a financial instrument. This is particularly the case where the users and benchmark administrator are located in different Member States. It is therefore necessary that **entities**, whenever they **intend to use an index as** a benchmark, **verify with ESMA, acting as** central coordinating authority, **whether the provider of the index is an authorised or registered administrator and, if not**, notify the **provider of the index**.

Or. en

Justification

The notification requirements contained in the proposal is a source of complexity for competent authorities, administrators and users of benchmarks. The alternative should be to require users to verify beforehand whether the relevant index provider is already registered on the ESMA website as an authorised or registered administrator. If not, the user must notify the index provider to seek its prior consent before using the index as a benchmark.

Amendment 191

Emilie Turunen

Proposal for a regulation

Recital 36

Text proposed by the Commission

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

Amendment

(36) In some circumstances a person may provide an index but be unaware that this index is being used as a reference for a financial instrument. This is particularly the case where the users and benchmark administrator are located in different Member States. It is therefore necessary that **supervised entities shall only use a**

become aware of the use of a benchmark in a financial instrument, notify a central coordinating authority such as ESMA, who should notify the administrator.

benchmark if this is provided by an authorised or registered administrator. If the administrator is not authorised or registered, the supervised entity shall have the consent of the administrator in order to make use of the benchmark.

Or. en

Amendment 192

Philippe Lamberts

on behalf of the Greens/EFA Group

Proposal for a regulation

Recital 36

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 193

Sharon Bowles

Proposal for a regulation

Recital 37 a (new)

Text proposed by the Commission

Amendment

(37 a) In the cases where this Regulation captures or potentially captures supervised entities and markets covered by Regulation 1227/2011 on wholesale

energy market integrity and transparency (REMIT), the Agency for the Cooperation of Energy Regulators (ACER) should be fully consulted by ESMA in order to draw on ACER's expertise in energy markets and to mitigate dual-regulation.

Or. en

Justification

ACER, as the European Energy Regulator, should be fully consulted by ESMA where this Regulation impacts upon European energy markets. It is ESMA that has legislative authority for RTS but it needs to utilise ACER's expertise.

Amendment 194

Philippe Lamberts

on behalf of the Greens/EFA Group

Proposal for a regulation

Recital 38

Text proposed by the Commission

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

Amendment

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

judicial authority of the Member State concerned, in accordance with national law, such power for access into premises shall be used after having obtained that prior judicial authorisation.

prior authorisation is needed from the judicial authority of the Member State concerned, in accordance with national law, such power for access into premises shall be used after having obtained that prior judicial authorisation.

Or. en

Amendment 195
Jean-Paul Gauzès

Proposal for a regulation
Recital 39

Text proposed by the Commission

(39) Existing recordings of telephone conversations and data traffic records from *supervised* entities may constitute crucial, and sometimes the only evidence to detect and prove the existence of breaches of this Regulation, notably the compliance with governance and control requirements. Such records and recordings can help to verify the identity of the person responsible for the submission, those responsible for its approval, and whether physical separation of employees is maintained. Therefore, competent authorities should be able to require existing recordings of telephone conversations, electronic communications and data traffic records held by *supervised* entities, in those cases where a reasonable suspicion exists that such recordings or records related to the subject-matter of the inspection or investigation may be relevant to prove a breach of this Regulation.

Amendment

(39) Existing recordings of telephone conversations and data traffic records from entities may constitute crucial, and sometimes the only evidence to detect and prove the existence of breaches of this Regulation, notably the compliance with governance and control requirements. Such records and recordings can help to verify the identity of the person responsible for the submission, those responsible for its approval, and whether physical separation of employees is maintained. Therefore, competent authorities should be able to require existing recordings of telephone conversations, electronic communications and data traffic records held by entities, in those cases where a reasonable suspicion exists that such recordings or records related to the subject-matter of the inspection or investigation may be relevant to prove a breach of this Regulation.

Or. en

Amendment 196
Syed Kamall

Proposal for a regulation

Recital 41

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 197

Emilie Turunen

Proposal for a regulation

Recital 45

Text proposed by the Commission

(45) Therefore, a set of administrative measures, sanctions and fines should be provided for to ensure a common approach in Member States and to enhance their deterrent effect. Sanctions applied in specific cases should be determined taking into account where appropriate factors such

Amendment

(45) Therefore, a set of administrative measures, sanctions and fines should be provided for to ensure a common approach in Member States and to enhance their deterrent effect. Sanctions applied in specific cases should be determined taking into account where appropriate factors such

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

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

Or. en

Amendment 198
Jean-Paul Gauzès

Proposal for a regulation
Recital 47

Text proposed by the Commission

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

Amendment

(47) Critical benchmarks may involve contributors, administrators and users in more than one Member State. Thus, the cessation of the provision of such a benchmark or any events that may significantly undermine its integrity may have an impact in more than one Member State meaning that the supervision of such a benchmark *may be ensured by ESMA, in close cooperation with the ECB, EBA, and EIOPA*. Benchmarks may reference financial instruments and financial

critical benchmark poses. To ensure the effective exchange of supervisory information among competent authorities, coordination of their activities and supervisory measures, colleges of competent authorities should be formed. The activities of the colleges should contribute to the harmonised application of rules under this Regulation and to the convergence of supervisory practices. ESMA's legally binding mediation is a key element of the achievement of coordination, supervisory consistency and convergence of supervisory practices.

Benchmarks may reference financial instruments and financial contracts that have a long duration. In certain cases such benchmarks may no longer be permitted to be provided once this Regulation comes into effect because they have characteristics that cannot be adjusted to conform to the requirements of this Regulation. However, prohibiting the continued provision of such a benchmark may result in the termination or frustration of the financial instruments or financial contracts and so harm investors. It is therefore necessary to make provision to allow for the continued provision of such benchmarks for a transitional period.

contracts that have a long duration. In certain cases such benchmarks may no longer be permitted to be provided once this Regulation comes into effect because they have characteristics that cannot be adjusted to conform to the requirements of this Regulation. However, prohibiting the continued provision of such a benchmark may result in the termination or frustration of the financial instruments or financial contracts and so harm investors. It is therefore necessary to make provision to allow for the continued provision of such benchmarks for a transitional period.

Or. en

Amendment 199
Emilie Turunen

Proposal for a regulation
Recital 47

Text proposed by the Commission

(47) Critical benchmarks *may involve* contributors, administrators *and* users in more than one Member State. Thus, the cessation of the provision of such a benchmark or any events that may significantly undermine its integrity may

Amendment

(47) Critical benchmarks *involves* contributors, administrators *or* users in more than one Member State. Thus, the cessation of the provision of such a benchmark or any events that may significantly undermine its integrity may

have an impact in more than one Member State meaning that the supervision of such a benchmark *by the competent authority of the Member State in which it is located alone will not be efficient and effective in terms of addressing* the risks that the critical benchmark poses. To ensure the effective exchange of supervisory information among competent authorities, coordination of their activities and supervisory measures, colleges of competent authorities should be formed. The activities of the colleges should contribute to the harmonised application of rules under this Regulation and to the convergence of supervisory practices. ESMA's legally binding mediation is a key element of the achievement of coordination, supervisory consistency and convergence of supervisory practices. Benchmarks may reference financial instruments and financial contracts that have a long duration. In certain cases such benchmarks may no longer be permitted to be provided once this Regulation comes into effect because they have characteristics that cannot be adjusted to conform to the requirements of this Regulation. However, prohibiting the continued provision of such a benchmark may result in the termination or frustration of the financial instruments or financial contracts and so harm investors. It is therefore necessary to make provision to allow for the continued provision of such benchmarks for a transitional period.

have an impact in more than one Member State meaning that the supervision of such a benchmark *shall be guaranteed by ESMA in consultation with EIOPA, EBA and the relevant competent authorities in order to address* the risks that the critical benchmark poses. To ensure the effective exchange of supervisory information among competent authorities, coordination of their activities and supervisory measures, colleges of competent authorities should be formed. The activities of the colleges should contribute to the harmonised application of rules under this Regulation and to the convergence of supervisory practices. ESMA's legally binding mediation is a key element of the achievement of coordination, supervisory consistency and convergence of supervisory practices. Benchmarks may reference financial instruments and financial contracts that have a long duration. In certain cases such benchmarks may no longer be permitted to be provided once this Regulation comes into effect because they have characteristics that cannot be adjusted to conform to the requirements of this Regulation. However, prohibiting the continued provision of such a benchmark may result in the termination or frustration of the financial instruments or financial contracts and so harm investors. It is therefore necessary to make provision to allow for the continued provision of such benchmarks for a transitional period.

Or. en

Amendment 200
Philippe Lamberts
on behalf of the Greens/EFA Group

Proposal for a regulation
Recital 47

Text proposed by the Commission

(47) Critical benchmarks may involve contributors, administrators and users in more than one Member State. Thus, the cessation of the provision of such a benchmark or any events that may significantly undermine its integrity may have an impact in more than one Member State meaning that the supervision of such a benchmark by the competent authority of the Member State in which it is located alone will not be efficient and effective in terms of addressing the risks that the critical benchmark poses. To ensure the effective exchange of supervisory information among competent authorities, coordination of their activities and supervisory measures, colleges of competent authorities should be formed. The activities of the colleges should contribute to the harmonised application of rules under this Regulation and to the convergence of supervisory practices. ESMA's legally binding mediation is a key element of the achievement of coordination, supervisory consistency and convergence of supervisory practices. Benchmarks may reference financial instruments and financial contracts that have a long duration. In certain cases such benchmarks may no longer be permitted to be provided once this Regulation comes into effect because they have characteristics that cannot be adjusted to conform to the requirements of this Regulation. However, prohibiting the continued provision of such a benchmark may result in the termination or frustration of the financial instruments or financial contracts and so harm investors. It is therefore necessary to make provision to allow for the continued provision of such benchmarks for a transitional period.

Amendment

(47) Critical benchmarks may involve contributors, administrators and users in more than one Member State. Thus, the cessation of the provision of such a benchmark or any events that may significantly undermine its integrity may have an impact in more than one Member State meaning that the supervision of such a benchmark by the competent authority of the Member State in which it is located alone will not be efficient and effective in terms of addressing the risks that the critical benchmark poses. To ensure the effective exchange of supervisory information among competent authorities, coordination of their activities and supervisory measures, colleges of competent authorities **with ESMA in the lead** should be formed. The activities of the colleges should contribute to the harmonised application of rules under this Regulation and to the convergence of supervisory practices. ESMA's legally binding mediation is a key element of the achievement of coordination, supervisory consistency and convergence of supervisory practices. Benchmarks may reference financial instruments and financial contracts that have a long duration. In certain cases such benchmarks may no longer be permitted to be provided once this Regulation comes into effect because they have characteristics that cannot be adjusted to conform to the requirements of this Regulation. However, prohibiting the continued provision of such a benchmark may result in the termination or frustration of the financial instruments or financial contracts and so harm investors. It is therefore necessary to make provision to allow for the continued provision of such benchmarks for a transitional period.

Or. en

Amendment 201
Philippe Lamberts
on behalf of the Greens/EFA Group

Proposal for a regulation
Recital 48 a (new)

Text proposed by the Commission

Amendment

(48 a) Competent authorities or ESMA in case of an interbank interest rate and foreign exchange rate benchmarks should monitor the use of benchmarks in contracts in order to ensure that such use is appropriate and that users do not have to bear disproportional basis risks.

Or. en

Amendment 202
Sharon Bowles

Proposal for a regulation
Article 1 – paragraph 1

Text proposed by the Commission

Amendment

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.

This Regulation introduces a common framework to ***enhance*** the accuracy and integrity of ***index and benchmarking activity the output of which is 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 203
Emilie Turunen

Proposal for a regulation

Article 1 – paragraph 1

Text proposed by the Commission

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

Amendment

This Regulation introduces a common framework to **enhance** the accuracy and integrity of indices used as benchmarks in 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 204

Syed Kamall

Proposal for a regulation

Article 2 – paragraph 1

Text proposed by the Commission

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

Amendment

1. This Regulation shall apply to the provision of **the following** benchmarks:

- a) **critical benchmarks;**
 - b) **benchmarks that the competent authority has investigated and concluded by way of a reasoned decision requires supervision due to its vulnerability**
- ESMA shall develop draft regulatory technical standards, taking into account the different characteristics of benchmarks and contributors, in terms of differences in input data and methodologies, whether the contributions are voluntary, the risks of input data being manipulated, the need to ensure international convergence of supervisory practices and the need for proportionality, to determine the specific criteria for determining whether a benchmark is**

defined as laid out in paragraphs a) and b)

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 205

Emilie Turunen

Proposal for a regulation

Article 2 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 206

Philippe Lamberts

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 2 – paragraph 2

Text proposed by the Commission

2. This Regulation shall not apply to:
(a) Members of the European System of Central Banks (ESCB).
(b) Central banks of third countries whose legal framework is recognised by the

Amendment

deleted

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 207
Slawomir Nitras

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

Text proposed by the Commission

Amendment

(ba) National statistical institutes designated in accordance with Regulation (EC) No 223/2009.

Or. pl

Amendment 208
Emilie Turunen

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

Text proposed by the Commission

Amendment

(b a) National statistical authorities in the Union.

Or. en

Amendment 209
Sylvie Goulard

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

Text proposed by the Commission

Amendment

(b a) National statistical authorities in the Union.

Or. en

Amendment 210
Gay Mitchell

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

Text proposed by the Commission

Amendment

2 a. National Statistic Authorities of European Union Member States

Or. en

Justification

Such bodies are overseen by EUROSTAT and therefore already subject to stringent standards pertaining to methodology and transparency.

Amendment 211
Gay Mitchell

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

Text proposed by the Commission

Amendment

2 b. National Statistic Authorities of third countries

Or. en

Justification

For consistency with Amendment 3

Amendment 212
Syed Kamall

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

Text proposed by the Commission

Amendment

(b a) the press, other media and journalists in the conduct of their journalistic activities, including the provision of information relating to or used as indices or benchmarks.

Or. en

Justification

This regulation would have a detrimental impact on press freedom, editorial independence and the protection of sources because it would impose on publishers and journalists many requirements and obligations which would directly infringe those fundamental rights and principles.

Amendment 213
Werner Langen, Burkhard Balz

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

Text proposed by the Commission

Amendment

(ba) reference prices or settlement prices produced by Central Counterparties (CCPs)

Or. de

Amendment 214
Sirpa Pietikäinen

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

Text proposed by the Commission

Amendment

(b a) 'Regulated data' as defined in 3(1)(11) of this Regulation.

Or. en

Justification

Exchange indices and benchmarks are calculated on the basis of a regulated trading venue's transparent data. The regulated data is also subject to extensive market surveillance. In particular, regulated markets are required to comply with stringent regulation concerning market integrity, orderly and transparent price formation, the operation of efficient markets and are not permitted to have any trading exposure in their indices or related financial products. The proposal is also in line with the IOSCO principles.

Amendment 215
Werner Langen

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

Text proposed by the Commission

Amendment

(bb) commodity benchmarks within the meaning of Article 3(1)(20) which are consistent with the IOSCO Principles for Oil Price Reporting Agencies of 5 October 2012 or the IOSCO Principles for Financial Benchmarks of 17 July 2013 for the period until ESMA has, on the basis of the outcome of the review of the IOSCO Principles for Oil Price Reporting Agencies which is due to be published in May or June 2014 and on the basis of Annex III to this Regulation, has determined whether and how commodity benchmarks can be included in the scope of this Regulation or whether separate rules would be appropriate and necessary.

Or. de

Amendment 216
Philippe Lamberts
on behalf of the Greens/EFA Group

Proposal for a regulation
Article 2 – paragraph 3

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 217
Slawomir Nitras

Proposal for a regulation
Article 3 – paragraph 1 – point 1 – introductory part

Text proposed by the Commission

Amendment

1) ‘index’ means any figure:

1) ‘index’ means any figure *that fulfils all of the conditions below*:

Or. pl

Justification

The way in which the definition is formulated may give rise to ambiguity. There is no clear reference as to whether the parts of the definition are to be treated together or separately. It seems that the applicant’s intention was for the conditions set out in points (a), (b) and (c) of Article 3(1)(1) to be treated together. However, a literal reading of the text allows for the separate treatment of these conditions.

Amendment 218
Philippe Lamberts
on behalf of the Greens/EFA Group

Proposal for a regulation

Article 3 – paragraph 1 – point 1 – introductory part

Text proposed by the Commission

Amendment

(1) ‘index’ means any figure:

(1) ‘index’ means any **rate or** figure:

Or. en

Amendment 219

Sylvie Goulard

Proposal for a regulation

Article 3 – paragraph 1 – point 1 – introductory part

Text proposed by the Commission

Amendment

(1) ‘index’ means any figure:

(1) ‘index’ means any **rate or** figure:

Or. en

Justification

For consistency purposes, the definition of “index” should be aligned with the definition used in the regulation on insider dealing and market manipulation (MAR).

Amendment 220

Philippe Lamberts

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 3 – paragraph 1 – point 1 – point a

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 221

Sylvie Goulard

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; **and**

Or. en

Justification

The criteria should be cumulative.

Amendment 222

Sylvie Goulard

Proposal for a regulation

Article 3 – paragraph 1 – point 1 – point b

Text proposed by the Commission

Amendment

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

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

Or. en

Justification

The definition of “index” should be aligned with the definition used in the regulation on insider dealing and market manipulation (MAR). Also, the criteria are cumulative.

Amendment 223

Philippe Lamberts

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 3 – paragraph 1 – point 1 – point c

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 224

Sylvie Goulard

Proposal for a regulation

Article 3 – paragraph 1 – point 1 – point c

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

For consistency purposes, the definition of “index” should be aligned with the definition used in the regulation on insider dealing and market manipulation (MAR).

Amendment 225

Sharon Bowles

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

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

used *to* measure the performance of *an investment fund*;

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*. *The administrator of the index has clearly indicated is suitable for such purposes in its benchmark statement made under Article 15*;

For the purposes of this Regulation, the following should not be considered as a 'benchmark':

(i) reference prices or settlement prices produced by Central Counterparties (CCPs) as defined in Article 3(1)(14)(g) of this Regulation, provided that they are produced solely for the purposes of risk management and settlement.

(ii) prices of single financial instruments, as defined in Article 3(1)(13);

Or. en

Amendment 226
Sylvie Goulard

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

Text proposed by the Commission

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

Amendment

(2) 'benchmark' means any index by reference to which the amount payable under a financial instrument or a financial contract, or the value of a financial instrument is determined or an index that is used to measure *the performance of an investment fund and which is mentioned in the marketing or legal documentation or in the investment objective or used as a trigger for a manager to calculate fees linked to* the performance of an investment fund;

Or. en

Justification

The definition of “benchmark” should be more precise regarding the meaning of an index that is used to measure the performance of an investment fund. The regulation should specify that it aims to capture an index mentioned in the marketing or legal documentation or investment objective, or that is used as a trigger to calculate fees linked to the performance of an investment fund.

Amendment 227

Olle Schmidt

Proposal for a regulation

Article 3 – paragraph 1 – point 2

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

To ensure the scope captures investment funds which seek to track or replicate an index, rather than all funds with any reference to any index.

Amendment 228

Sari Essayah, Eija-Riitta Korhola, Nils Torvalds

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***

Amendment

(2) benchmark’ means any ***tradable or widely used commercial*** index by reference to which the amount payable under a financial instrument or a financial contract, or the value of a financial

investment fund;

instrument is determined

Or. en

Justification

The specification of index as tradable or widely used commercial index is justified due to the fact that the regulation should focus on critical indices and leave minor or bespoke indices (= indices calculated by a bank/investment fund etc. for a very limited amount of clients) out of the scope. For the reasons of level playing field investment funds should be in the scope of the regulation on the same grounds as other financial instruments.

Amendment 229

Werner Langen, Burkhard Balz

Proposal for a regulation

Article 3 – paragraph 1 – point 2

Text proposed by the Commission

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

Amendment

2. ‘benchmark’ means any index by reference to which the amount payable under a financial instrument or a financial contract, or the value of a financial instrument is determined or an index that is used to measure the performance of an investment fund; ***this shall not apply to reference prices or settlement prices produced by Central Counterparties (CCPs) within the meaning of Article 2(1) of Regulation (EU) No 648/2012 or to financial instruments within the meaning of Article 3(1)(13).***

Or. de

Amendment 230

Gay Mitchell

Proposal for a regulation

Article 3 – paragraph 1 – point 2 a (new)

(2 a) 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 ^{18a};

(b) an updated list of 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.

^{18a} 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 231

Sari Essayah, Eija-Riitta Korhola, Nils Torvalds

Proposal for a regulation

Article 3 – paragraph 1 – point 4

Text proposed by the Commission

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

Amendment

(4) ‘administrator’ means the natural or legal person that has control over the provision of a **critical** benchmark;

Or. en

Justification

The regulation should focus on critical benchmarks. Without this limitation there is a risk that even small benchmarks would be caught by this wide regulation targeted primarily to IBOR-rates.

Amendment 232

Sharon Bowles

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

Amendment

(5) ‘user of a benchmark’ means any **natural or legal** person, **other than consumers, who is a client or licensee of**

contract which references *a* benchmark;

the benchmark administrator for the relevant benchmark and who issues or owns a financial instrument or *who is a client or licensee of the benchmark administrator for the relevant benchmark and who* is party to a financial contract which references *the relevant* benchmark;

Or. en

Amendment 233
Werner Langen, Burkhard Balz

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

Text proposed by the Commission

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

Amendment

5. ‘user of a benchmark’ means any person who *holds an active position in a financial instrument which references a benchmark* *or* who issues a financial instrument which references a benchmark;

Or. de

Amendment 234
Sari Essayah, Eija-Riitta Korhola, Nils Torvalds

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 person who issues or owns a financial instrument or is party to a financial contract which references a *critical* benchmark;

Or. en

Amendment 235
Sirpa Pietikäinen

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

Text proposed by the Commission

(7) ‘contributor’ means a natural or legal person contributing input data;

Amendment

(7) ‘contributor’ means a natural or legal person contributing input data, ***excluding input data sourced from ‘regulated data’ as defined in Article 3(1)(11) of this Regulation and subject to [MiFIR] and [MAR];***

Or. en

Justification

Those trading venues whose ‘regulated data’ is used by another benchmark administrator - separate to the trading venue - to provide an index and subsequent benchmark should not be considered ‘contributors’ under this Regulation. The suggestion is in line with the definition of “Submissions” as included in the IOSCO Principles for Financial Benchmarks which explicitly excludes data sourced from regulated trading venues.

Amendment 236
Sharon Bowles

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

Text proposed by the Commission

(7) ‘contributor’ means a natural or legal person contributing input data;

Amendment

(7) ‘contributor’ means a natural or legal person contributing input data ***excluding input data sourced from ‘regulated data’ as defined in Article 3(1), point (11), of this Regulation;***

Or. en

Amendment 237
Werner Langen, Burkhard Balz

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

Text proposed by the Commission

7. ‘contributor’ means a natural or legal person contributing input data;

Amendment

7. ‘contributor’ means a natural or legal person contributing input data ***which are not regarded as regulated data within the meaning of Article 3(1)(11)***;

Or. de

Amendment 238
Sharon Bowles

Proposal for a regulation
Article 3 – paragraph 1 – point 8

Text proposed by the Commission

(8) ‘supervised contributor’ means a supervised entity that contributes input data to an administrator located in the Union;

Amendment

(8) ‘supervised contributor’ means a supervised entity ***in the union*** that contributes input data to an administrator located in the Union;

Or. en

Amendment 239
Sharon Bowles

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

Text proposed by the Commission

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

Amendment

(11) ‘regulated data’ means input data ***representing executed trades or firm quotes or transactional data*** contributed directly from a trading venue as defined in point (25) of paragraph 1 of Article 2 of [MIFIR] or ***any regulated exchange outside the Union*** or an electricity exchange as referred to in point (j) of paragraph 1 of Article 37 of Directive 2009/72/EC¹⁹ or a natural gas exchange as referred to in point (j) of paragraph 1 of Article 41 of Directive 2009/73/EC²⁰ or an

paragraph 1 of Article 37 of Directive 2009/72/EC¹⁹ or a natural gas exchange as referred to in point (j) of paragraph 1 of Article 41 of Directive 2009/73/EC²⁰ or an auction platform referred to in Article 26 or in Article 30 of Regulation (EU) No 1031/2010 of the European Parliament and of the Council;

¹⁹ OJ L 211, 14.8.2009, p. 55.

²⁰ OJ L 9, 14.8.2009, p. 112.

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

¹⁹ OJ L 211, 14.8.2009, p. 55.

²⁰ OJ L 9, 14.8.2009, p. 112.

Or. en

Amendment 240 **Sirpa Pietikäinen**

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

Text proposed by the Commission

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

¹⁹ OJ L 211, 14.8.2009, p. 55.

Amendment

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

¹⁹ OJ L 211, 14.8.2009, p. 55.

Justification

A clear distinction should be made under this Regulation between transaction data that comes from regulated trading venues on the one hand and bilateral OTC transactions on the other, as OTC data is not subject to the same regulatory obligations as data coming from regulated trading venues.

Amendment 241

Philippe Lamberts

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 3 – paragraph 1 – point 11

Text proposed by the Commission

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

Amendment

(11) ‘regulated data’ means input data that is **sourced from venues subject to mandatory post trade transparency requirements and that is** contributed directly from a trading venue as defined in point (25) of paragraph 1 of Article 2 of [MIFIR] or approved publication arrangement as defined in point (18) of paragraph 1 of Article 2 of [MIFIR] or an approved reporting arrangement as defined in point (20) of paragraph 1 of Article 2 of [MIFIR] in accordance with mandatory post trade data requirements or an electricity exchange as referred to in point (j) of paragraph 1 of Article 37 of Directive 2009/72/EC¹⁹ or a natural gas exchange as referred to in point (j) of paragraph 1 of Article 41 of Directive 2009/73/EC²⁰ or an auction platform referred to in Article 26 or in Article 30 of Regulation (EU) No 1031/2010 of the European Parliament and of the Council; **or from a third country market considered as equivalent to a regulated market in accordance with Article 19(6) of Directive 2004/39/EC;**

¹⁹ OJ L 211, 14.8.2009, p. 55.

²⁰ OJ L 9, 14.8.2009, p. 112.

¹⁹ OJ L 211, 14.8.2009, p. 55.

²⁰ OJ L 9, 14.8.2009, p. 112.

Or. en

Amendment 242
Sylvie Goulard

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

Text proposed by the Commission

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

¹⁹ OJ L 211, 14.8.2009, p. 55.

²⁰ OJ L 9, 14.8.2009, p. 112.

Amendment

(11) 'regulated data' means input data that is ***sourced from venues subject to mandatory post trade transparency requirements and that is*** contributed directly from a trading venue as defined in point (25) of paragraph 1 of Article 2 of [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] or an electricity exchange as referred to in point (j) of paragraph 1 of Article 37 of Directive 2009/72/EC¹⁹ or a natural gas exchange as referred to in point (j) of paragraph 1 of Article 41 of Directive 2009/73/EC²⁰ or an auction platform referred to in Article 26 or in Article 30 of Regulation (EU) No 1031/2010 of the European Parliament and of the Council, ***or from a third country market considered as equivalent to a regulated market in accordance with Article 19(6) of Directive 2004/39/EC;***

¹⁹ OJ L 211, 14.8.2009, p. 55.

²⁰ OJ L 9, 14.8.2009, p. 112.

Or. en

Justification

Only input data that is sourced from venues subject to mandatory post trade transparency requirements can provide the required level of integrity to qualify as “regulated data” and be released from certain obligations of the regulation (as provided by IOSCO in its principles for financial benchmarks). Data contributed from a third country market considered as equivalent to a regulated market should also be considered as “regulated data” under the same condition as mentioned above.

Amendment 243 **Emilie Turunen**

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

Text proposed by the Commission

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

¹⁹ OJ L 211, 14.8.2009, p. 55.

²⁰ OJ L 9, 14.8.2009, p. 112.

Amendment

(11) ‘regulated data’ means input data that is **sourced from venues subject to mandatory post-trade transparency requirements and that is** contributed directly from a trading venue as defined in point (25) of paragraph 1 of Article 2 of [MIFIR] or approved publication arrangement as defined in point (18) of paragraph 1 of Article 2 of [MIFIR] or an approved reporting arrangement as defined in point (20) of paragraph 1 of Article 2 of [MIFIR] in accordance with mandatory post trade data requirements or an electricity exchange as referred to in point (j) of paragraph 1 of Article 37 of Directive 2009/72/EC¹⁹ or a natural gas exchange as referred to in point (j) of paragraph 1 of Article 41 of Directive 2009/73/EC²⁰ or an auction platform referred to in Article 26 or in Article 30 of Regulation (EU) No 1031/2010 of the European Parliament and of the Council, **or from a third country market considered as equivalent to a regulated market in accordance with Article 19(6) of Directive 2004/39/EC;**

¹⁹ OJ L 211, 14.8.2009, p. 55.

²⁰ OJ L 9, 14.8.2009, p. 112.

Amendment 244
Werner Langen, Burkhard Balz

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

Text proposed by the Commission

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

²⁰ OJ L 9, 14.8.2009, p. 112.

Amendment

11. ‘regulated data’ means input data that is contributed directly from a trading venue as defined in point (25) of paragraph 1 of Article 2 of [MIFIR] or approved publication arrangement as defined in point (18) of paragraph 1 of Article 2 of [MIFIR] **or another regulated trading venue outside the European Union** or an approved reporting arrangement as defined in point (20) of paragraph 1 of Article 2 of [MIFIR] in accordance with mandatory post trade data requirements or an electricity exchange as referred to in point (j) of paragraph 1 of Article 37 of Directive 2009/72/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; **the data may take the form of transaction data and, in exceptional cases, bids and offers.**

²⁰ OJ L 9, 14.8.2009, p. 112.

Or. de

Amendment 245
Olle Schmidt

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

Text proposed by the Commission

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

Amendment

(11) ‘regulated data’ means input data that is contributed directly from:

(a) a trading venue as defined in point (25) of paragraph 1 of Article 2 of [MIFIR]; **or**

(b) approved publication arrangement as defined in point (18) of paragraph 1 of Article 2 of [MIFIR] or an approved reporting arrangement as defined in point (20) of paragraph 1 of Article 2 of [MIFIR] in accordance with mandatory post trade data requirements; **or**

(c) *a central counterparty, as defined in and authorized in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (EMIR); or*

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

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

(f) an auction platform referred to in Article 26 or in Article 30 of Regulation

¹⁹ OJ L 211, 14.8.2009, p. 55.

²⁰ OJ L 9, 14.8.2009, p. 112.

¹⁹ OJ L 211, 14.8.2009, p. 55.

²⁰ OJ L 9, 14.8.2009, p. 112.

Or. en

Justification

To ensure data from market infrastructure is treated consistently as “regulated data”.

Amendment 246

Slawomir Nitras

Proposal for a regulation

Article 3 – paragraph 1 – point 11

Text proposed by the Commission

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

¹⁹ OJ L 211, 14.8.2009, p. 55.

Amendment

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

¹⁹ OJ L 211, 14.8.2009, p. 55.

Or. pl

Justification

The way in which the issuers execute their information obligations is thoroughly regulated and subject to the supervision of the competent monitoring agencies. Furthermore, the data in question are of a public nature. In such a situation there is no justification for the requirement for administrators to establish additional systems and controls or codes of conduct aimed at ensuring the accuracy of source data.

Amendment 247
Sirpa Pietikäinen

Proposal for a regulation
Article 3 – paragraph 1 – point 11 a (new)

Text proposed by the Commission

Amendment

(11 a) 'OTC data' means input data that is contributed directly from an approved publication arrangement as defined in point (18) of paragraph 1 of Article 2 of [MIFIR] or an approved reporting arrangement as defined in point (20) of paragraph 1 of Article 2 of [MIFIR] in accordance with mandatory post trade data requirements

Or. en

Justification

A clear distinction should be made under this Regulation between transaction data that comes from regulated trading venues on the one hand and bilateral OTC transactions on the other, as OTC data is not subject to the same regulatory obligations as data coming from regulated trading venues.

Amendment 248
Sharon Bowles

Proposal for a regulation
Article 3 – paragraph 1 – point 11 a (new)

Text proposed by the Commission

Amendment

(11 a) 'Reported data' means input data that is contributed directly from an approved publication arrangement as defined in point (18) of paragraph 1 of Article 2 of [MIFIR] or an approved reporting arrangement as defined in point (20) of paragraph 1 of Article 2 of [MIFIR] in accordance with mandatory post trade data requirements;

Or. en

Amendment 249
Sharon Bowles

Proposal for a regulation
Article 3 – paragraph 1 – point 12

Text proposed by the Commission

Amendment

(12) 'transaction data' means observable prices, rates, indices or values representing transactions between unaffiliated counterparties in an active market subject to **competitive** supply and demand forces;

(12) 'transaction data' means observable prices **(including binding quotes)**, rates, indices or values representing transactions between unaffiliated counterparties in an active market subject to supply and demand forces;

Or. en

Amendment 250
Philippe Lamberts
on behalf of the Greens/EFA Group

Proposal for a regulation
Article 3 – paragraph 1 – point 13

Text proposed by the Commission

Amendment

(13) 'financial instrument' means any of the instruments listed in Section C of Annex I to Directive 2004/39/EC **for which a request for admission to trading**

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

on a trading venue has been made or which are traded on a trading venue;

Or. en

Amendment 251
Sylvie Goulard

Proposal for a regulation
Article 3 – paragraph 1 – point 13

Text proposed by the Commission

Amendment

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

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

Or. en

Justification

The scope of the proposal excludes financial instruments which are not traded on a trading venue or for which no request for admission to trading on a trading venue has been made. This exclusion is not justified and inconsistent with the broad scope deliberately used by IOSCO in its principles for financial benchmarks.

Amendment 252
Emilie Turunen

Proposal for a regulation
Article 3 – paragraph 1 – point 13

Text proposed by the Commission

Amendment

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

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

Amendment 253
Jean-Paul Gauzès

Proposal for a regulation
Article 3 – paragraph 1 – point 14 – point b a (new)

Text proposed by the Commission

Amendment

(b a) market operators as defined in point (13) of paragraph 1 of Article 4 of Directive 2004/39/EC;

Or. en

Amendment 254
Jean-Paul Gauzès

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

Text proposed by the Commission

Amendment

(e) undertakings for collective investment in transferable securities (UCITS) as defined in Article 1(2) of Directive 2009/65/EU²³ ;

(e) **managers of** undertakings for collective investment in transferable securities (UCITS) as defined in Article 1(2) of Directive 2009/65/EU²³ ;

²³ OJ L 302, 17.11.2009, p. 32.

²³ OJ L 302, 17.11.2009, p. 32.

Or. en

Amendment 255
Jean-Paul Gauzès

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

Text proposed by the Commission

Amendment

(f) alternative investment fund managers (AIFMs) as defined in point (b) of Article

(f) alternative investment fund managers (AIFMs) as defined in point (b) of Article

4(1) of Directive 2011/61/EU of the European Parliament and of the Council²⁴ ;

4(1) of Directive 2011/61/EU of the European Parliament and of the Council²⁴ ***including managers referred to in Article 3 of Directive 2011/61/EU of the European Parliament and of the Council;***

²⁴ OJ L 174, 1.7.2011, p. 1.

²⁴ OJ L 174, 1.7.2011, p. 1.

Or. en

Amendment 256
Jean-Paul Gauzès

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

Text proposed by the Commission

Amendment

(i a) market participants as defined in Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency.

Or. en

Amendment 257
Philippe Lamberts
on behalf of the Greens/EFA Group

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

Text proposed by the Commission

Amendment

(19 a) 'Foreign exchange rate benchmark' means a benchmark whose value is determined in relation to the price, expressed in one currency, of one or a basket of other currencies;

Or. en

Amendment 258
Philippe Lamberts
on behalf of the Greens/EFA Group

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

Text proposed by the Commission

Amendment

(19 b) basis risk related to a financial contract is the risk that the value of this contract differs from the underlying economic reality that this contract represents. An appropriate benchmark reduces basis risk related to a given financial contract to the minimum.

Or. en

Justification

a financial contract could be for example a mortgage, and the underlying economic reality that this contract represents could be for example housing prices. Input Finance Watch

Amendment 259
Syed Kamall

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

Text proposed by the Commission

Amendment

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

deleted

²⁷ OJ L 241, 2.9.2006, p. 1.

Justification

Deleted as Annex 3 has been deleted.

Amendment 260

Philippe Lamberts

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 3 – paragraph 1 – point 20

Text proposed by the Commission

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

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

²⁷ OJ L 241, 2.9.2006, p. 1.

Amendment

(20) 'commodity benchmark' means a benchmark where the underlying asset for the purposes of point (1)(c) of this Article is a commodity within the meaning of point (2) of Article 2 of Commission Regulation (EC) No 1287/2006[**I**]; ;

²⁷ OJ L 241, 2.9.2006, p. 1.

Justification

MIFID II defines emission allowances as financial instruments. However, emission allowances are similar to commodities in particular in terms of the relationship between allowances' markets and energy markets, which justifies the same treatment of emission allowances and commodities for the purposes of the this regulation.

Amendment 261

Werner Langen

Proposal for a regulation

Article 3 – paragraph 1 – point 20

Text proposed by the Commission

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

²⁷ OJ L 241, 2.9.2006, p. 1.

Amendment

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

²⁷ OJ L 241, 2.9.2006, p. 1.

Or. de

Justification

Correction of the faulty reference to Regulation (EC) No 1287/2006 in the Commission proposal.

Amendment 262

Philippe Lamberts

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 3 – paragraph 1 – point 21

Text proposed by the Commission

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

Amendment

(21) 'critical benchmark' means a benchmark *with reference financial instruments having a notional value of at least 100 billion euro; or a benchmark that in the event it were to be provided or were provided using an unrepresentative set of contributors or input data, this would have a significant adverse impact on financial stability, the orderly functioning of the markets, consumers or the real economy, in one or more Member States or States or other jurisdiction which are different to the Member State where the benchmark's administrator is*

located;

Or. en

Amendment 263
Markus Ferber

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

Text proposed by the Commission

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

Amendment

21. ‘critical benchmark’ means a benchmark, the majority of contributors to which are supervised entities and that reference financial instruments having a notional value of at least **250** billion euro **and whose non-availability would have serious repercussions for financial market stability and the functioning of the market;**

Or. de

Amendment 264
Syed Kamall

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

Text proposed by the Commission

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

Amendment

(21) ‘critical benchmark’ means a benchmark the majority of contributors to which are supervised entities, **is systemically-relevant and/or 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

Justification

This regulation aims to strengthen the integrity of certain critical benchmarks, namely LIBOR and EURIBOR, and certain commodities benchmarks. It is important to clarify that a figure of 500 billion euro does not necessarily make a benchmark critical.

Amendment 265 **Jean-Paul Gauzès**

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

Text proposed by the Commission

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

Amendment

(21) ‘critical benchmark’ means a benchmark, the majority of contributors to which are *located in more than one Member State or in a different Member State to the administrator* and that, *in the event that it were to cease to be provided or were provided using an unrepresentative set of contributors or input data, this would have a significant adverse impact on financial stability, the orderly functioning of the markets, consumers or the real economy in one or more Member States or States or other jurisdictions which are different to the Member State where the benchmark's administrator is located. Critical benchmarks should not only be defined as regards the notional value of the financial instruments they reference but also taking into account their potential impact on price formation for the physical markets (commodities benchmarks).*

Or. en

Amendment 266 **Sharon Bowles**

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

Text proposed by the Commission

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

Amendment

(21) ‘critical benchmark’ means a benchmark:

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

(b) that does not include benchmarks compiled from regulated data as defined in Article 3(1) (11) of this Regulation; and

(c) that reference financial instruments admitted to trading or traded on at least one EU trading venue as defined in point (25) of paragraph 1 of Article 2 of [MIFIR] or other financial asset as defined in IAS 32 having a notional cumulative amount of at least 500 billion euro on such EU venues or, when such determination is not straightforward, is otherwise deemed by ESMA to have wide use on international markets and 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 267

Olle Schmidt, Anne E. Jensen, Nils Torvalds

Proposal for a regulation

Article 3 – paragraph 1 – point 21

Text proposed by the Commission

(21) ‘critical benchmark’ means a benchmark, the majority of contributors to which are supervised entities *and* that reference financial instruments having a

Amendment

(21) ‘critical benchmark’ means a benchmark:

notional *value* of at least 500 billion euro;

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;

(d) that is widely used on the international markets and

(e) 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

Justification

The definition of critical benchmarks should be limited and focus on those benchmarks which are widely used on international financial markets. Despite this modification most provisions of the Regulation will be applicable also to other benchmarks. But benchmarks used mainly in smaller currency areas will be supervised by the competent national authorities. This way the principles of subsidiarity and proportionality will be respected.

Amendment 268 Emilie Turunen

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

Text proposed by the Commission

(21) ‘critical benchmark’ means a benchmark, the majority of contributors to which are supervised entities and that

Amendment

(21) ‘critical benchmark’ means a benchmark:

reference financial instruments having a notional value of at least 500 billion euro;

1) the majority of contributors to which are supervised entities and that reference financial instruments having a notional value of at least 500 billion euro; and

2) that is widely used on the international markets;

ESMA shall assess which benchmarks are widely used on the international markets taking into account whether:

a) the benchmark is significantly used to reference financial instruments in Member States or jurisdictions different from the Member State where the benchmark administrator is located;

b) in the event that the benchmark were to cease to be provided, it would have significant adverse impact on the financial stability, or the orderly functioning of markets, or consumers, or the real economy in Member States or jurisdictions different from the Member State where the benchmark administrator is located;

Or. en

Amendment 269
Werner Langen, Burkhard Balz

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

Text proposed by the Commission

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

Amendment

21. ‘critical benchmark’ means a benchmark *which does not meet the criteria for an objective benchmark within the meaning of point 21a (new)* and that reference financial instruments having a notional value of at least 500 billion euro;

Or. de

Amendment 270
Gay Mitchell

Proposal for a regulation
Article 3 – paragraph 1 – point 21 a (new)

Text proposed by the Commission

Amendment

(21 a) '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 standards IAS 32, excluding physical and physically delivered commodities, having a large impact on retail markets, consumers and the potential to threaten market integrity, as provided in ESMA's draft regulatory standards under Article 3 paragraph 2 a

Or. en

Justification

The benchmark industry is in constant fluctuation, therefore the Regulation needs to allow for more benchmarks to be brought under its remit going forward, depending on their impact on consumers and market integrity

Amendment 271
Sharon Bowles

Proposal for a regulation
Article 3 – paragraph 1 – point 21 a (new)

Text proposed by the Commission

Amendment

(21 a) 'major benchmark' means a benchmark that references financial instruments admitted to trading or traded on an EU trading venue as defined in point (25) of paragraph 1 of Article 2 of [MIFIR] or other financial asset as defined in IAS 32, excluding physical and physically delivered commodities, having

a large impact on consumers or the potential to threaten market integrity;

Or. en

Amendment 272
Werner Langen, Burkhard Balz

Proposal for a regulation
Article 3 – paragraph 1 – point 21 a (new)

Text proposed by the Commission

Amendment

21a. 'objective benchmark' means a benchmark which uses only regulated input data and a strictly rule-based methodology;

Or. de

Amendment 273
Sharon Bowles

Proposal for a regulation
Article 3 – paragraph 1 – point 21 b (new)

Text proposed by the Commission

Amendment

(21 b) 'an index series' is a set of indices derived from the same data and calculated using the same methodology, in which the indices differ only according to one or more of:

b) their constituent eligibility criteria determined by screening for country/industry/size/liquidity/ESG;

c) the currency in which they are calculated;

d) the incorporation of any currency hedge;

e) adjustments made for the taxation of distributions and capital gains.

Amendment 274

Syed Kamall

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(22 a) 'expert judgement' means "the exercise of discretion by an Administrator or Submitter with respect to the use of data in determining a Benchmark. Expert Judgment includes extrapolating values from prior or related transactions, adjusting values for factors that might influence the quality of data such as market events or impairment of a buyer or seller's credit quality, or weighting firm bids or offers greater than a particular concluded transaction."

Or. en

Justification

A definition of 'expert judgement' is necessary, as it is referred to in Article 7 on input data. The IOSCO definition is used.

Amendment 275

Sharon Bowles

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(22 a) 'expert judgement' means the exercise of discretion by an Administrator or Submitter with respect to the use of data in determining a Benchmark. Expert Judgment includes extrapolating values from prior or related transactions, adjusting values for factors that might

influence the quality of data such as market events or impairment of a buyer or seller's credit quality, or weighting firm bids or offers greater than a particular concluded transaction.

Or. en

Amendment 276
Olle Schmidt

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 technical elements of the definitions laid down in paragraph 1, in particular specifying:

(a) what constitutes making available to the public for the purposes of the definition of an index; and

(b) excluding regulated data based on a single security which acts as a reference price for settlement purposes only.

These shall be updated annually in order to take account of market, **regulatory** or technological developments.

Or. en

Justification

To ensure appropriate treatment of settlement prices which are based on calculations and produced using regulated data.

Amendment 277
Sharon Bowles

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

Text proposed by the Commission

Amendment

The Commission shall also be empowered to adopt delegated acts in accordance with Article 37 to determine the calibrated application of the regulation in relation to:

(i) the types and sources of data used in the calculation and determination of the benchmark;

(ii) the benchmark methodology;

(iii) the potential risks posed by the benchmark to market integrity and its vulnerability to manipulation; and

(iv) whether the benchmark is a critical benchmark.

Or. en

Amendment 278
Sharon Bowles

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

Text proposed by the Commission

Amendment

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

(a) the definition of 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 exemption under Art 7.1b.

(b) and as required to update the criteria

for major benchmarks, 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 any dependent sub-benchmark;

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

(iii) the volume of financial contracts referenced or admitted to trading or traded on an EU venue as defined in point (25) of paragraph 1 of Article 2 of [MiFIR] both in absolute number 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 IAS 32 or to adjust the thresholds in paragraph (21) and (22).

Or. en

Amendment 279
Syed Kamall

Proposal for a regulation
Article 4

Text proposed by the Commission

Amendment

Article 4

deleted

Exclusion of administrators unaware of the use of benchmarks provided by them and non consenting administrators

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).

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

Or. en

Justification

This article is unnecessary since the scope of the regulation will only cover benchmarks that are systemically relevant and/or important.

Amendment 280

Philippe Lamberts

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 4 – paragraph 2

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 281

Sylvie Goulard

Proposal for a regulation

Article 4 – paragraph 2

Text proposed by the Commission

Amendment

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

deleted

Or. en

Justification

Deletion of Article 25.3. The notification requirements contained in Article 25 of the proposal is a source of complexity for competent authorities, administrators and users of benchmarks.. The alternative should be to require users to verify beforehand whether the relevant index provider is already registered on the ESMA website as an authorised or registered administrator. If not, the user must notify the index provider to seek its prior consent before using the index as a benchmark.

Amendment 282 **Sharon Bowles**

Proposal for a regulation **Article 5 – paragraph 1 – subparagraph 1 – introductory part**

Text proposed by the Commission

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

Amendment

Administrators of the following qualifying benchmark categories shall be subject to the requirements of this regulation:

- a) administrators of critical benchmarks;***
- b) administrators of broadly used commodity benchmarks, as defined and updated by ESMA after close consultation with ACER;***
- c) administrators of major benchmarks;***
- d) administrators of exclusively licensed benchmarks as defined and updated by ESMA;***
- e) administrators of an IBOR, Overnight Index Swap, Overnight Index Rates or other benchmark that the competent authority deems a substitute or comparable to those benchmarks and which are widely used;***
- f) administrators of a benchmark with relatively few submitters and which the competent authority considers 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) administrators of 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 application of the criteria in (b), to (i) and shall provide regulatory technical standards for circumstances when requirements in (a) to (i) can be phased, waived or any provisions of this Regulation dis-applied for reasons of proportionality or duplication of supervisory requirements or existing governance controls. This shall also include lists of exempted types of institutions which shall include identification of the corresponding governance controls.

In establishing guidelines and regulatory technical standards, ESMA shall take into account:

(i) the exemptions normally provided to Members of the European System of Central Banks (ESCB), Central banks of third countries, National statistic authorities of member states and National statistical authorities of third countries;

(ii) whether to exempt, wholly or partly, regulated markets, or, after close consultation with ACER, any entities regulated under REMIT;

(iii) whether the provisions as specified in Annex III should be the only part of this Regulation applied to price reporting agencies;

(iv) where there should be proportionality of application, including a phasing-in of

the application of the Regulation;
(v) how the regulatory framework interacts with third countries and international trade.

Or. en

Amendment 283
Emilie Turunen

Proposal for a regulation
Article 5 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

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

The following governance requirements shall apply to the *all administrators of benchmarks in the Union*:

Or. en

Amendment 284
Olle Schmidt

Proposal for a regulation
Article 5 – paragraph 1 – subparagraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(d a) the extent to which governance requirements are proportionate to achieve the aims of this Regulation.

Or. en

Justification

Requirements should be able to apply proportionately depending on the nature and importance of benchmark.

Amendment 285
Gay Mitchell

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

Text proposed by the Commission

Amendment

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

(a) critical benchmarks;

(b) major benchmarks as per ESMA's draft regulatory standards under Article 3 paragraph 2 (a);

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

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

ESMA shall provide guidelines for competent authorities concerning the application of the criteria in points (b) (c) and (d). Those guidelines shall include lists of exempted types of institutions which shall include identification of the corresponding governance controls.

Or. en

Justification

Maintaining a broad scope allows national or European regulators to widen the scope in future. This is in line with capturing benchmarks based on their impact of consumers and market integrity.

Amendment 286
Syed Kamall

Proposal for a regulation
Article 5 – paragraph 2

Text proposed by the Commission

Amendment

2. An administrator shall comply with the governance and control requirements set out in Section A of Annex 1.

deleted

Or. en

Justification

The level of detail in the annexes is more appropriate for level 2 and therefore this reference is unnecessary.

Amendment 287

Olle Schmidt

Proposal for a regulation

Article 5 – paragraph 2

Text proposed by the Commission

Amendment

2. An administrator shall comply with the governance and control requirements set out in Section A of Annex 1.

2. An administrator shall comply with the governance and control requirements set out in Section A of Annex 1, ***in a manner that is proportionate to the nature and significance of each benchmark.***

Or. en

Justification

Requirements should be able to apply proportionately depending on the nature and importance of benchmark.

Amendment 288

Syed Kamall

Proposal for a regulation

Article 5 – paragraph 3 – introductory part

Text proposed by the Commission

Amendment

3. The Commission shall be empowered to

3. ESMA shall develop draft regulatory

adopt delegated acts in accordance with Article 37 to further specify the governance and control requirements under Section A of Annex 1. The Commission shall take account of the following:

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

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

(c) existing or potential conflicts of interest in the provision of benchmarks, the vulnerability of the benchmarks to manipulation and the importance of benchmarks to financial stability, markets and investors.

technical standards, taking into account the different characteristics of benchmarks and contributors, in terms of differences in input data and methodologies, whether the contributions are voluntary, the risks of input data being manipulated, the need to ensure international convergence of supervisory practices and the need for proportionality, to further specify the governance and control requirements laid down in paragraph 1. ESMA shall focus specifically on requirements for governance and conflicts of interest management, oversight, control and accountability.

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 289
Sylvie Goulard

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

Text proposed by the Commission

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

Amendment

(b) specific features of different types of benchmarks and administrators *taking into account in particular any authorisations*

the administrators may have;

Or. en

Justification

The specific governance and control requirements of administrators should take into account the possible existing regulatory status and resulting obligations of the administrator.

Amendment 290

Olle Schmidt, Nils Torvalds

Proposal for a regulation

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

Text proposed by the Commission

Amendment

***(c a) already existing legislation
applicable to certain administrators.***

Or. en

Justification

It is appropriate that ESMA takes into account already existing legislation for certain entities, such as exchanges and CCPs, in order to avoid unnecessary double regulation.

Amendment 291

Olle Schmidt, Nils Torvalds

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(c b) the IOSCO principles.

Or. en

Justification

ESMA should take into account the IOSCO principles, in order to ensure a globally harmonised regulatory framework for the benchmark world, which is global in nature.

Amendment 292

Syed Kamall

Proposal for a regulation

Article 6 – paragraph 2

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 293

Philippe Lamberts

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 6 – paragraph 2

Text proposed by the Commission

Amendment

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

2. Where outsourcing takes place:

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

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

Or. en

Amendment 294

Sylvie Goulard

Proposal for a regulation

Article 6 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Where outsourcing takes place:

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

- a contributor shall define an internal control process to guarantee the effective availability of data which have to be stored.

Or. en

Justification

It is important to add an outsourcing component regarding the contributor as well to make sure that a relevant control process is in place.

**Amendment 295
Sharon Bowles**

**Proposal for a regulation
Article 6 – paragraph 2**

Text proposed by the Commission

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

Amendment

2. Where outsourcing takes place, an administrator shall ensure that the outsourcing requirements set out in Section B of Annex 1 ***or Annex III as applicable*** are satisfied. ***These requirements shall not apply in relation to a service provider from whom an administrator sources data if this service provider is a regulated market as defined in point (5) of paragraph 1 of Article 2 of [MiFIR].***

Or. en

Amendment 296
Syed Kamall

Proposal for a regulation
Article 6 – paragraph 3

Text proposed by the Commission

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

Amendment

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

ESMA shall develop draft regulatory technical standards, taking into account the different characteristics of benchmarks and contributors, in terms of differences in input data and methodologies, whether the contributions are voluntary, the risks of input data being manipulated, the need to ensure international convergence of supervisory practices and the need for proportionality, to determine the specific requirements on administrators where outsourcing takes place.

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 297
Emilie Turunen

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, **methodology and privacy**:

Or. en

Amendment 298
Syed Kamall

Proposal for a regulation

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

Text proposed by the Commission

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

Amendment

The input data shall be transaction data. If available transaction data is not sufficient to represent accurately and reliably the market or economic reality that the benchmark is intended to measure, input data which is not transaction data may be used provided that such data is verifiable **or if expert judgement as defined in Article 3 paragraph 1 – point 21 b (new) is considered by the administrator to be necessary or publicly sourced from regulatory filings**.

Or. en

Amendment 299
Sharon Bowles

Proposal for a regulation

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

Text proposed by the Commission

The input data shall be transaction data. If available transaction data is not sufficient to represent accurately and reliably the market or economic reality that the

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.

benchmark is intended to measure, input data which is not transaction data may be used provided that such data is verifiable **or if expert judgement, as defined in Article 3 (1), point 21b (new) is considered by the administrator to be necessary. In the case of interest rate benchmarks this must be in line with Annex II paragraph 5 or publicly sourced from regulatory filings.**

Or. en

Amendment 300
Sylvie Goulard

Proposal for a regulation

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

Text proposed by the Commission

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

Amendment

The input data shall be transaction data. If available transaction data is not sufficient to represent accurately and reliably the market or economic reality that the benchmark is intended to measure, input data which is not transaction data may be used provided that such data is verifiable. ***An administrator is not prohibited from using data other than transaction data for a benchmark that is not designed to represent transactions and where the nature of the benchmark is such that data other than transaction data is used to reflect what the benchmark is designed to measure, provided that such data is verifiable.***

Or. en

Justification

While the new European legislative framework is intended to make benchmarks more reliable, the proposal is more restrictive than the IOSCO principles for financial benchmarks, which expressly acknowledge that some benchmarks are not designed to reflect underlying transactions. Care must be taken to ensure that the proposal does not result in the prohibition

of benchmarks using input data that are not necessarily transactional but that are nevertheless derived from verifiable sources.

Amendment 301

Olle Schmidt, Nils Torvalds

Proposal for a regulation

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

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

There are benchmarks for which non-transaction data is the best available. This shall not prevent the benchmark from existing, as there may be high demand for such a benchmark and it may be very useful. When data is not verifiable, it should be allowed, provided the administrator publishes information about input data not being verifiable. Further, the supervisor already has the power to ask for information about this, as part of its supervisory duties.

Amendment 302

Philippe Lamberts

on behalf of the Greens/EFA Group

Proposal for a regulation

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

Text proposed by the Commission

Amendment

An administrator may seek authorisation from the relevant competent authority to use data other than transaction data for a

benchmark that is not designed to represent transactions and where the nature of the benchmark is such that data other than transaction data is used to reflect what the benchmark is designed to measure, provided that such data is verifiable.

Or. en

Amendment 303
Marisa Matias

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

Text proposed by the Commission

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

Amendment

(b) The administrator shall obtain the input data from a reliable and representative panel or sample of contributors so as to ensure that the resultant benchmark is reliable and representative of the market or economic reality that the benchmark is intended to measure ('Representative contributors'). ***In case of transactional based benchmarks the administrator shall obtain the data in an aggregated form from trade repositories and regulators according to the Markets in Financial Instruments Directive (MiFID), the Regulation on Energy Market Integrity and Transparency (REMIT) and the Regulation on OTC Derivatives, Central Counterparties and Trade Repositories (EMIR)***

Or. en

Amendment 304
Werner Langen, Burkhard Balz

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

Text proposed by the Commission

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

Amendment

(b) The administrator shall obtain the input data from a reliable and representative panel or sample of contributors so as to ensure that the resultant benchmark is reliable and representative of the market or economic reality that the benchmark is intended to measure ('Representative contributors'). ***In the case of benchmarks which are based on transactions, the administrator shall receive the input data in aggregated and anonymised form from transaction registers and regulatory authorities, in accordance with the provisions of Directive 2004/39/EC, Regulation (EU) No 1227/2011 and Regulation (EU) No 648/2012.***

Or. de

Amendment 305
Sharon Bowles

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

Text proposed by the Commission

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

Amendment

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

Amendment 306**Philippe Lamberts**

on behalf of the Greens/EFA Group

Proposal for a regulation**Article 7 – paragraph 1 – subparagraph 1 – point c***Text proposed by the Commission*

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

Amendment

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

Amendment 307**Sharon Bowles****Proposal for a regulation****Article 7 – paragraph 1 – subparagraph 1 – point e***Text proposed by the Commission*

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

Amendment

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

and methodology transparently
(‘Transparency’).

and methodology transparently *and, in
accordance with Articles 15 and 16*
(‘Transparency’).

Or. en

Amendment 308
Syed Kamall

Proposal for a regulation
Article 7 – paragraph 2

Text proposed by the Commission

Amendment

*2. An administrator shall comply with the
requirements concerning input data and
methodology set out in Section C of
Annex I.*

deleted

Or. en

Amendment 309
Sharon Bowles, Jens Rohde

Proposal for a regulation
Article 7 – paragraph 2

Text proposed by the Commission

Amendment

2. An administrator shall comply with the
requirements concerning input data and
methodology set out in Section C of Annex
I.

2. An administrator shall comply with the
requirements concerning input data and
methodology set out in Section C of Annex
I *or Annex III as applicable.*

Or. en

Amendment 310
Syed Kamall

Proposal for a regulation
Article 7 – paragraph 3 – introductory part

Text proposed by the Commission

Amendment

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

3. ESMA shall develop draft regulatory technical standards, taking into account the different characteristics of benchmarks and contributors, in terms of differences in input data and methodologies, whether the contributions are voluntary, the risks of input data being manipulated, the need to ensure international convergence of supervisory practices and the need for proportionality, to specify requirements to ensure:

(a) Sufficient and accurate data and representative contribution requirements

(b) Robust and reliable methodologies

(c) Transparency of the methodology

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 311
Syed Kamall**

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

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 312
Syed Kamall

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

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 313
Syed Kamall

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

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 314
Sharon Bowles

Proposal for a regulation
Article 8 – paragraph 1

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 315

Olle Schmidt, Anne E. Jensen, Nils Torvalds

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 **ensure that the contributors have adequate systems and effective controls** in order to identify breaches of the [Market Abuse Regulation] and **systems to 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

Justification

In practice it is impossible for an administrator or a calculating agent collecting figures from submitters to identify breaches of the MAR on a continuous basis. The administrator would then have to engage private personnel to sit alongside the submitter each day when the submitter is deciding on the input data to deliver to the calculating agent. The contributors have to comply with the MAR and are therefore already obliged to identify and report any breaches of that regulation.

Amendment 316

Emilie Turunen

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

Amendment

2. The administrator shall monitor the input data **and ensure that the contributors have adequate systems and effective controls** in order to identify breaches of the [Market Abuse Regulation] and any conduct that

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:

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:

Or. en

Amendment 317
Syed Kamall

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 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 *the administrator has a reasonable suspicion* that, in relation to the *administrator's* benchmark, there has been:

Or. en

Justification

This aligns the regulation with MAD.

Amendment 318
Sharon Bowles

Proposal for a regulation
Article 8 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) conduct that **may** involve manipulation or attempted manipulation of a benchmark; or

(b) conduct that **appears to** involve manipulation or attempted manipulation of a benchmark; or

Or. en

Amendment 319
Olle Schmidt, Sharon Bowles

Proposal for a regulation
Article 8 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3 a. In accordance with Article 29(1) of the [Market Abuse Regulation], employees can report actual or potential breaches of this Regulation through a mechanism of the national competent authorities.

Or. en

Justification

In accordance with MAR (Art 29), CRD IV (Art 71) and MiFID II (Art 77), employees need to be able to report potential or actual breaches directly to competent authorities, not only through the administrator, and be protected from adverse treatment internally. If potential or actual wrong-doings occur at management level in a company, then solely having internal reporting systems are not sufficient.

Amendment 320
Gay Mitchell

Proposal for a regulation
Article 8 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3 a. A comprehensive external process for reporting potential breaches shall be put in place, including breaches of the

*[Market Abuse Regulation or Directive]
and a whistleblowing procedure for
benchmarking, whereby whistleblowers
may report directly to ESMA or the
relevant Member State competent
authority without fear of retaliation. This
Regulation shall therefore ensure that
adequate arrangements are in place to
enable whistleblowers to alert ESMA or
the relevant Member State competent
authority to possible breaches of this
Regulation and to protect them from
retaliation.*

Or. en

Amendment 321
Sharon Bowles

Proposal for a regulation
Article 9 – paragraph 1

Text proposed by the Commission

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

Amendment

1. The administrator shall adopt a **general** code of conduct, **adjusted as appropriate for benchmarks in the qualifying benchmark categories 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, **for non-commodity benchmarks**, at least the elements set out in Section D of Annex I **and for commodity benchmarks as provided for in Annex III**.

Or. en

Amendment 322
Werner Langen

Proposal for a regulation
Article 9 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. de

Amendment 323
Marisa Matias

Proposal for a regulation
Article 9 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 324
Emilie Turunen

Proposal for a regulation
Article 9 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 325
Werner Langen

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, **provided that administrators and a number of contributors which is properly representative of the market have given their agreement**, shall be legally binding on all parties to it.

Or. de

Amendment 326
Syed Kamall

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 **provided** by the administrator and the contributors and, **insofar as is practicable with regard to the nature and location of the**

contributors, shall be legally binding on all parties to it.

Or. en

Amendment 327
Gay Mitchell

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 shall be legally binding on all parties to it ***insofar as it is practicable. The administrator shall demonstrate to the competent authority that a code of conduct is in place for its contributors and shall explain to the satisfaction of the competent authority circumstances where the contributors claim it is not practicable.***

Or. en

Justification

Some benchmark administrators will have difficulties in imposing binding requirements on their contributors.

Amendment 328
Sharon Bowles

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 ***by*** the contributors ***insofar as is practicable with regard to the nature and location of the contributor. The administrator shall be responsible for***

ensuring that each contributor is properly aware of the terms of the code of conduct and will take appropriate action, including but not limited to removal of a contributor, when it is evident that the contributor does not comply.

Or. en

Amendment 329
Olle Schmidt, Anne E. Jensen, Nils Torvalds

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 administrator and the contributors shall *publish a confirmation of compliance with the Code of conduct.*

Or. en

Justification

A Code of Conduct is normally a voluntary self-regulation within an industry and not a legally binding contract as stated in the proposed regulation.

Amendment 330
Emilie Turunen

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 shall, *regardless of where they are incorporated*, be legally binding on all parties to it.

Or. en

Amendment 331
Gay Mitchell

Proposal for a regulation
Article 9 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. The code of conduct shall be legally binding for submitters of critical benchmarks.

Or. en

Justification

Given the mandatory contribution provisions for critical benchmarks, the above does not apply to critical benchmarks.

Amendment 332
Sharon Bowles

Proposal for a regulation
Article 9 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. The code of conduct shall be legally binding when relating to critical benchmarks.

Or. en

Amendment 333
Syed Kamall

Proposal for a regulation
Article 9 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Amendment

The Commission shall be empowered to adopt delegated acts in accordance with

ESMA shall develop draft regulatory technical standards, taking into account

Article 37 concerning measures to further specify the terms of the code of conduct in Section D of Annex I for different types of benchmarks, and in order to take account of developments in benchmarks and financial markets.

the different characteristics of benchmarks and contributors, in terms of differences in input data and methodologies, whether the contributions are voluntary, the risks of input data being manipulated, the need to ensure international convergence of supervisory practices and the need for proportionality, to specify the terms of the code of conduct for critical or vulnerable benchmarks.

Or. en

Amendment 334
Syed Kamall

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

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

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

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

Or. en

Justification

If participation in a benchmark is voluntary, this must be taken into account when the code is

being developed since it may result in the contributors ceasing their participation.

Amendment 335

Sharon Bowles

Proposal for a regulation

Article 9 – paragraph 3 – subparagraph 2

Text proposed by the Commission

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

Amendment

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

ESMA shall provide guidelines, after close consultation with ACER, with regard to applicability of legally binding codes of conduct in particular with regard to non-regulated entities and price reporting agencies within the EU.

Or. en

Amendment 336

Olle Schmidt

Proposal for a regulation

Article 10 – paragraph 1

Text proposed by the Commission

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

Amendment

1. When the input data contributed to a benchmark is regulated data, Articles 7(1)(b), 8(1), 8(2), ***Article 9 and Annex I, section A, points 6-8*** shall not apply.

Or. en

Justification

To ensure proportionate internal controls where input data is already regulated data.

Amendment 337

Slawomir Nitras

Proposal for a regulation

Article 10 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Articles 7(1)(b), 8(1), 8(2) and 9 of this Regulation shall not apply if the administrator is an entity administering a regulated trading venue which, while making benchmarks available, utilises data from an internal transaction system and uses financial instruments for which the designated index is a reference and which are traded on a regulated market administered by that administrator.

Or. pl

Justification

Pursuant to Article 10, in the case of input data made available through regulated trading venues, there are many requirements that do not apply. There is a presumption that data obtained in this way are accurate. At the same time, administrators monitoring the publication of benchmarks designated on the basis of those input data are subject to all of the Regulation's obligations. In some cases, this approach seems to be excessively rigorous.

Amendment 338

Jean-Paul Gauzès

Proposal for a regulation

Article 11 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 339
Jean-Paul Gauzès

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

Text proposed by the Commission

(a) The **supervised** contributor shall ensure that the provision of input data is not affected by any existing or potential conflict of interest and that, where any discretion is required, it is independently and honestly exercised based on relevant information in accordance with the code of conduct ('Conflicts of interest').

Amendment

(a) The contributor shall ensure that the provision of input data is not affected by any existing or potential conflict of interest and that, where any discretion is required, it is independently and honestly exercised based on relevant information in accordance with the code of conduct ('Conflicts of interest').

Or. en

Amendment 340
Sharon Bowles

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

Text proposed by the Commission

(a) The supervised contributor shall ensure that the provision of input data is not affected by any existing or potential conflict of interest and that, where any discretion is required, it is independently and honestly exercised based on relevant information in accordance with the code of conduct ('Conflicts of interest').

Amendment

(a) The supervised contributor shall ensure that the provision of input data is not affected by any existing or potential conflict of interest and that, where any discretion is required, it is independently and honestly exercised based on relevant information in accordance with the **relevant** code of conduct ('Conflicts of interest').

Or. en

Amendment 341
Jean-Paul Gauzès

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

Text proposed by the Commission

(b) The **supervised** contributor shall have a control framework that ensures the integrity, accuracy and reliability of the input data and that the input data is provided in accordance with the provisions of this Regulation and the code of conduct ('Adequate controls').

Amendment

(b) The contributor shall have a control framework that ensures the integrity, accuracy and reliability of the input data and that the input data is provided in accordance with the provisions of this Regulation and the code of conduct ('Adequate controls').

Or. en

Amendment 342
Sharon Bowles

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

Text proposed by the Commission

(b) The supervised contributor shall have a control framework that ensures the integrity, accuracy and reliability of the input data and that the input data is provided in accordance with the provisions of this Regulation and the code of conduct ('Adequate controls').

Amendment

(b) The supervised contributor shall have a control framework that ensures the integrity, accuracy and reliability of the input data and that the input data is provided in accordance with the provisions of this Regulation and the **relevant** code of conduct ('Adequate controls').

Or. en

Amendment 343
Syed Kamall

Proposal for a regulation
Article 11 – paragraph 2

Text proposed by the Commission

2. A supervised contributor shall comply with the requirements concerning systems and controls **set out in Section E of Annex I**.

Amendment

2. A supervised contributor shall comply with the requirements concerning systems and controls **to be specified by ESMA, subject to paragraph 4**.

Amendment 344
Jean-Paul Gauzès

Proposal for a regulation
Article 11 – paragraph 2

Text proposed by the Commission

2. A **supervised** contributor shall comply with the requirements concerning systems and controls set out in Section E of Annex I.

Amendment

2. A contributor shall comply with the requirements concerning systems and controls set out in Section E of Annex I.

Or. en

Amendment 345
Syed Kamall

Proposal for a regulation
Article 11 – paragraph 3

Text proposed by the Commission

3. A supervised contributor shall fully cooperate with the administrator and the relevant competent authority in the auditing and supervision of the provision of a benchmark and make available the information and records kept in accordance with **Section E of Annex 1**.

Amendment

3. A supervised contributor shall fully cooperate with the administrator and the relevant competent authority in the auditing and supervision of the provision of a benchmark and make available the information and records kept in accordance with **standards to be specified by ESMA, subject to paragraph 4**.

Or. en

Amendment 346
Jean-Paul Gauzès

Proposal for a regulation
Article 11 – paragraph 3

Text proposed by the Commission

3. A **supervised** contributor shall fully cooperate with the administrator and the relevant competent authority in the auditing and supervision of the provision of a benchmark and make available the information and records kept in accordance with Section E of Annex 1.

Amendment

3. A contributor shall fully cooperate with the administrator and the relevant competent authority in the auditing and supervision of the provision of a benchmark and make available the information and records kept in accordance with Section E of Annex 1.

Or. en

Amendment 347
Syed Kamall

Proposal for a regulation
Article 11 – paragraph 4 – subparagraph 1

Text proposed by the Commission

The Commission shall be empowered to adopt delegated acts in accordance with Article 37 concerning measures to further specify the requirements concerning systems and controls set out in Section E of Annex I for different types of benchmarks.

Amendment

ESMA shall develop draft regulatory technical standards, taking into account the different characteristics of benchmarks and contributors, in terms of differences in input data and methodologies, whether the contributions are voluntary, the risks of input data being manipulated, the need to ensure international convergence of supervisory practices and the need for proportionality, to specify requirements concerning systems and controls for supervised contributors as laid down in paragraphs 2 and 3.

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 348
Syed Kamall

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

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 349
Jean-Paul Gauzès

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

Text proposed by the Commission

Amendment

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

The Commission shall take into account the different characteristics of benchmarks and 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 ***contributors***, and the developments in benchmarks and financial markets in light of international convergence of supervisory practices in relation to benchmarks.

Or. en

Amendment 350

Emilie Turunen

Proposal for a regulation

Article 11 – paragraph 4 – subparagraph 2

Text proposed by the Commission

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

Amendment

The Commission shall 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 *as well as technological developments*.

Or. en