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Committee on Economic and Monetary Affairs

2013/0314(COD)

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DRAFT REPORT

on the proposal for a regulation of the European Parliament and of the Council on indices used as benchmarks in financial instruments and financial contracts (COM(2013)0641 – C7-0301/2013 – 2013/0314(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Cora van Nieuwenhuizen

Symbols for procedures

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

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

Amendments to a draft act

Amendments by Parliament set out in two columns

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

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

Amendments by Parliament in the form of a consolidated text

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

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

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council on indices used as benchmarks in financial instruments and financial contracts (COM(2013)0641 – C8-0301/2013 – 2013/0314(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2013)0641),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0301/2013),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the reasoned opinion submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the United Kingdom House of Commons, asserting that the draft legislative act does not comply with the principle of subsidiarity,
 - having regard to the opinion of the European Central Bank of 7 January 2014¹,
 - having regard to the opinion of the European Economic and Social Committee of 21 January 2014²,
 - having regard to Rules 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on Industry, Research and Energy (A8-0000/2014),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ OJ C 113, 15.4.2014, p. 1.

² OJ C 177, 11.6.2014, p. 42.

Amendment 1

Proposal for a regulation

Recital 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 2

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,

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. 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.

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) agreed principles on benchmarks *in 2013* and, since *those* principles provide a certain flexibility as to their exact scope and means of implementation, Member States are likely to adopt legislation at national level which would implement such principles divergently.

Or. en

Amendment 3

Proposal for a regulation

Recital 4

Text proposed by the Commission

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

Amendment

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

for the provision of benchmarks.

for the provision of benchmarks.

Or. en

Amendment 4

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

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

Or. en

Amendment 5

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 ***and appropriate*** 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

Amendment 6

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

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 ***or*** financial contract. 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

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.

those benchmarks subject to these risks, but ***should also recognise the large number of benchmarks provided around the world and the different impacts that they have on financial stability and the real economy.*** ***This Regulation*** 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. ***All references to days in this Regulation should mean calendar days.***

Or. en

Amendment 7

Proposal for a regulation Recital 11

Text proposed by the Commission

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

Amendment

(11) ***An index or combination of existing indices in which no new input data is included and which is used to measure the performance of a fund or of a financial product is to be considered as use of a benchmark.***

Or. en

Amendment 8

Proposal for a regulation Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) The use of financial benchmarks is not limited to the issuance and manufacturing of financial instruments and contracts. The financial industry also relies on benchmarks for assessing the performance of an investment fund with the purposes of return tracking, or of determining the asset allocation of a portfolio, or of computing the performance fees. The setting and review of the weights to be assigned to various indices within a combination for the purpose of determining the pay-out or the value of a financial instrument or a financial contract, or measuring the performance of an investment fund, also amounts to use, as such an activity does not involve any discretion as opposed to the activity of the provision of benchmarks. The holding of financial instruments referencing a certain benchmark is not to be considered as use of the benchmark.

Or. en

Amendment 9

Proposal for a regulation

Recital 12

Text proposed by the Commission

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.

(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 ***or registration*** and supervision of administrators is the most effective way of ensuring the integrity of benchmarks.

Amendment 10**Proposal for a regulation****Recital 13***Text proposed by the Commission*

(13) Contributors are subject to potential conflicts of interest, exercise discretion and so may be the source of manipulation. Contributing to a benchmark is a voluntary activity. If any initiative requires contributors to significantly change their business models, they may cease to contribute. However, for entities already subject to regulation and supervision, requiring good governance and control systems is not expected to lead to **substantial costs or** disproportionate administrative burden. Therefore this Regulation imposes certain **obligation** on supervised contributors.

Amendment

(13) Contributors are subject to potential conflicts of interest, exercise discretion and so may be the source of manipulation. Contributing to a benchmark is a voluntary activity. If any initiative requires contributors to significantly change their business models, they may cease to contribute. However, for entities already subject to regulation and supervision, requiring good governance and control systems is not expected to lead to **a** disproportionate administrative burden. Therefore this Regulation imposes certain **obligations** on supervised contributors.

Amendment 11**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

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 **either directly** publishes the benchmark **or outsources the publication of the benchmark to a third party**. However, where a person merely **and solely** publishes or refers to a benchmark as part of his or her journalistic

should not be subject to the requirements imposed on administrators by this Regulation.

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.

Or. en

Amendment 12

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 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 13

Proposal for a regulation

Recital 17

Text proposed by the Commission

(17) ***Vulnerabilities in the process of***

Amendment

(17) In order to ensure the integrity 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.

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 ***important*** that administrators have an independent function to oversee the implementation and effectiveness of the governance arrangements that provide effective oversight.

Or. en

Amendment 14

Proposal for a regulation Recital 19

Text proposed by the Commission

(19) Auditing and the effective enforcement of this Regulation requires ex post analysis and evidence ***and it is therefore necessary that benchmark administrators keep adequate records*** relating to the calculation of the benchmark for a sufficient period of time. The reality that a benchmark seeks to measure and the environment in which it is measured are likely to change over time. Therefore it is necessary that the process and methodology of the provision of

Amendment

(19) Auditing and the effective enforcement of this Regulation requires ex post analysis and evidence. ***This Regulation should therefore set out a framework for adequate recordkeeping by benchmark administrators*** relating to the calculation of the benchmark for a sufficient period of time. The reality that a benchmark seeks to measure and the environment in which it is measured are likely to change over time. Therefore it is necessary that the process and

benchmarks are audited or reviewed on a periodic basis to identify shortcomings and possible improvements. Many stakeholders may be impacted by failures in the provision of the benchmark and can help identify these shortcomings. ***It is therefore necessary that*** an independent complaints procedure ***is established to ensure that those*** stakeholders ***are able*** to notify the benchmark administrator of complaints and ***that*** the benchmark administrator objectively evaluates the merits of any complaint.

methodology of the provision of benchmarks are audited or reviewed on a periodic basis to identify shortcomings and possible improvements. Many stakeholders may be impacted by failures in the provision of the benchmark and can help identify these shortcomings. ***This Regulation should therefore set out a framework for the establishment of*** an independent complaints procedure ***by administrators to enable*** stakeholders to notify the benchmark administrator of complaints and ***ensure*** that the benchmark administrator objectively evaluates the merits of any complaint.

Or. en

Amendment 15

Proposal for a regulation Recital 21

Text proposed by the Commission

(21) The benchmark administrator is the central recipient of the input data and is able to evaluate the integrity and accuracy of this input data on a consistent basis. ***It is therefore necessary that the benchmark administrator has adequate controls to assess accuracy of input data and notifies the relevant competent authority of suspicious data.***

Amendment

(21) The benchmark administrator is the central recipient of the input data and is able to evaluate the integrity and accuracy of this input data on a consistent basis.

Or. en

Amendment 16

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 should therefore ***put in place a framework*** to enable employees to alert administrators confidentially of possible breaches of this Regulation.

Or. en

Amendment 17

Proposal for a regulation
Recital 24

Text proposed by the Commission

(24) The accuracy and reliability of a benchmark in measuring the economic reality it is intended to track depends on the methodology and input data used. It is therefore necessary to adopt a methodology that ensures the benchmark's reliability and accuracy.

Amendment

(24) The accuracy and reliability of a benchmark in measuring the economic reality it is intended to track depends on the methodology and input data used. It is therefore necessary to adopt a ***transparent*** methodology that ensures the benchmark's reliability and accuracy.

Or. en

Amendment 18

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

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.***

obligations of the contributors in respect of this input data are clearly specified, can be relied on and are consistent with the benchmark administrator's controls and methodology. It is therefore necessary that, ***where appropriate and possible,*** the benchmark administrator produces a code of conduct to specify these requirements and ***reports to the competent authority any misconduct of contributors.***

Or. en

Amendment 19

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 ***by the application of a formula*** calculated using input data that is provided by regulated venues, ***approved publication arrangements or reporting mechanisms,*** energy exchanges ***or*** emission allowance auctions. ***In these cases, existing*** regulation and supervision ensure the integrity ***and transparency*** of the input data, and provide for governance requirements and procedures for the notification of ***infringements.*** Therefore these benchmarks, which are subject to independent verification, are ***less vulnerable and less susceptible to manipulation, and are accordingly released from certain obligations.***

Or. en

Amendment 20

Proposal for a regulation Recital 28

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 21

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. ***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. ***In addition, some degree of flexibility should be foreseen in this Regulation in order to allow for a timely update of the differentiated requirements applying to different benchmark sectors in light of ongoing international developments, with particular regard to the work of the International Organisation Securities Commissions (IOSCO).***

Or. en

Amendment 22

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 critical benchmarks *referencing* a significant *value of financial instruments may* impact *the integrity of markets, the financing of households and corporations, and financial stability*, and it is therefore necessary that additional requirements apply to ensure the integrity and robustness of these benchmarks. *The failure of certain benchmarks may have effects such as those referred to above also within a single Member State.* It is therefore necessary that *this Regulation provides for a process to determine which benchmarks* should be considered critical benchmarks.

Or. en

Amendment 23

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, *as the capability of these benchmarks to measure the underlying market or economic reality would be impaired.* It is therefore necessary to include a power for the relevant competent authority to require mandatory contributions *from supervised entities* to critical benchmarks *in order to preserve the credibility of the benchmark in question. Mandatory contribution of input*

data is not intended to impose an obligation on supervised entities to enter into, or commit to entering into, transactions.

Or. en

Amendment 24

Proposal for a regulation Recital 32

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 25

Proposal for a regulation Recital 33

Text proposed by the Commission

(33) Consumers may enter into financial contracts, in particular mortgages and consumer credit contracts that reference a benchmark, but unequal bargaining power and the use of standard terms mean that they may have a limited choice about the benchmark used. It is therefore necessary to ensure that the responsibility for assessing the suitability of such a benchmark for the consumer rests with the lenders or creditors who are

Amendment

deleted

supervised entities because they have a greater ability to choose the benchmark. However the suitability assessment should not be required by this Regulation for financial instruments referencing a benchmark, as it is already provided for in Directive [MIFID].

Or. en

Amendment 26

Proposal for a regulation Recital 34 a (new)

Text proposed by the Commission

Amendment

(34a) This Regulation also introduces a recognition regime allowing administrators of benchmarks located in a third country to provide their benchmarks in the Union provided they comply with the requirements set out in this Regulation and provided that effective cooperation arrangements exist with their home-country supervisor.

Or. en

Amendment 27

Proposal for a regulation Recital 35

Text proposed by the Commission

Amendment

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

(35) The administrator *of a critical benchmark* should be authorised and supervised by the competent authority of the Member State where that administrator is located. *An administrator that only provides benchmarks determined by the application of a formula using input data contributed entirely and directly by*

regulated venues, approved publication arrangements or reporting mechanisms, energy exchanges or emission allowance auctions and/or an administrator that provides only noncritical benchmarks should be registered with, and supervised by, the competent authority.

The registration of an administrator is not intended to affect supervision by the relevant competent authorities. ESMA shall maintain a register of administrators at Union level.

Or. en

Amendment 28

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, ***a financial contract or an investment fund.*** This is particularly the case where the users and benchmark administrator are located in different Member States. It is therefore necessary ***to increase the level of transparency concerning the relevant uses of benchmarks. This can be achieved by improving the content of the prospectuses or key information documents required by the Union law and the content of the notifications and list of financial instruments required by Regulation (EU) No 596/2014 of the European Parliament and of the Council^{1a}.***

^{1a} ***Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive***

Amendment 29

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 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.

Amendment

(38) For the purpose of detecting **infringements** 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 **an infringement** 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 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.

Amendment 30

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 supervised entities may constitute crucial, and sometimes the only evidence to detect and prove the existence of **infringements** 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 **organisational** 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 **an infringement** of this Regulation.

Or. en

Amendment 31

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 **infringement**, 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 **infringements**, while fines significantly lower than the maximum level may be applied to minor **infringements** 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.

Or. en

Amendment 32

Proposal for a regulation

Recital 48

Text proposed by the Commission

(48) In order to ensure uniform conditions for the implementation of this Regulation and further specify technical elements of the proposal, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission ***in respect of the specification of technical elements of definitions, governance and control requirements applied to administrators and to supervised contributors, requirements concerning input data and methodology, the code of conduct, specific requirements for different types of***

Amendment

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

benchmarks and sectors and the information to be provided in applications for authorisation of administrators.

Or. en

Amendment 33

Proposal for a regulation Recital 49

Text proposed by the Commission

(49) The Commission should adopt draft regulatory technical standards developed by ESMA establishing the minimum content of cooperation arrangements with the competent authorities of third countries, by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Amendment

(49) The Commission should adopt draft regulatory technical standards developed by ESMA **concerning governance and control requirements and** establishing the minimum content of cooperation arrangements with the competent authorities of third countries, **amongst others**, by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Or. en

Amendment 34

Proposal for a regulation Recital 50

Text proposed by the Commission

(50) In order to ensure uniform conditions for the implementation of this Regulation, in regard to certain of its aspects implementing powers should be granted to the Commission. Those aspects concern the ascertainment of the equivalence of the legal framework to which **central banks and** providers of benchmarks of third countries are subject, as well of the fact that a benchmark is critical in nature. Those

Amendment

(50) In order to ensure uniform conditions for the implementation of this Regulation, in regard to certain of its aspects implementing powers should be granted to the Commission. Those aspects concern the ascertainment of the equivalence of the legal framework to which providers of benchmarks of third countries are subject, as well of the fact that a benchmark is critical in nature. Those powers should be

powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011¹⁸ laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

¹⁸ OJ L 55, 28.2.2011, p. 13.

exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

¹⁸ OJ L 55, 28.2.2011, p. 13.

Or. en

Amendment 35

Proposal for a regulation

Article 2 – paragraph 2 – point a

Text proposed by the Commission

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

Amendment

(a) central banks.

Or. en

Amendment 36

Proposal for a regulation

Article 2 – paragraph 2 – point b

Text proposed by the Commission

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

Amendment

(b) *public authorities which provide or have control over the provision of benchmarks provided for public policy purposes, including measures of employment, economic activity, and inflation.*

Or. en

Amendment 37

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(ba) Central Counterparties (CCPs) where they produce reference prices or settlement prices.

Or. en

Amendment 38

Proposal for a regulation

Article 2 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. This Regulation shall not apply to administrators in respect of their noncritical benchmarks as defined in point 21a of Article 3(1) with respect to Articles 5(1), 5(2), 5(4), 5(5), 5(6), 5a, 5b, 5d, 7, 7a, 8(1), 8(2), 9(1), 9(2), 11(2a), 11(2b), 17(1).

Or. en

Amendment 39

Proposal for a regulation

Article 2 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Where a noncritical benchmark is a commodity benchmark subject to the requirements set out in Annex Ia in accordance with Article 14a, points 3 – 16 of Annex Ia of this Regulation shall not

apply.

Or. en

Amendment 40

Proposal for a regulation Article 2 – paragraph 3

Text proposed by the Commission

Amendment

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

deleted

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

Or. en

Amendment 41

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

Amendment 42

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

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

assessment;

assessment; *and*

Or. en

Amendment 43

Proposal for a regulation

Article 3 – paragraph 1 – point 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 44

Proposal for a regulation

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 45

Proposal for a regulation

Article 3 – paragraph 1 – point 5

Text proposed by the Commission

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

Amendment

(5) ‘**use** of a benchmark’ means:

(a) the issuance of a financial instrument which references an index or a combination of indices,

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

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

(d) the determination of the performance of an investment fund through an index or a combination of indices with the purposes of tracking the return of such index or combination of indices or of defining the asset allocation of a portfolio or of computing the performance fees.

Or. en

Amendment 46

Proposal for a regulation

Article 3 – paragraph 1 – point 6

Text proposed by the Commission

(6) ‘contribution of input data’ means providing any input data to an administrator, or to another person for the purposes of passing to an administrator, that is required in connection with the determination of **that** benchmark, and is provided for that purpose;

Amendment

(6) ‘contribution of input data’ means providing any input data **not publicly available** to an administrator, or to another person for the purposes of passing to an administrator, that is required in connection with the determination of **a** benchmark, and is provided for that purpose’;

Or. en

Amendment 47

Proposal for a regulation

Article 3 – paragraph 1 – point 9 a (new)

Text proposed by the Commission

Amendment

(9a) 'assessor' means the employee of an administrator of a commodity benchmark, or any other natural person or third party whose services are placed at the administrator's disposal or under its control, who is responsible for applying a methodology or judgement to input data and other information to reach a conclusive assessment about the price of a certain commodity;

Or. en

Amendment 48

Proposal for a regulation

Article 3 – paragraph 1 – point 11

Text proposed by the Commission

Amendment

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

(11) 'regulated data' ***means the following:***

Regulation (EU) No 1031/2010 of the
European Parliament and of the Council;

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

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

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

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

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

(e) a natural gas exchange as referred to in
point (j) of paragraph 1 of Article 41 of
Directive 2009/73/EC¹⁹ or

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

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

¹⁹ OJ L 211, 14.8.2009, p. 55.

²⁰ OJ L 9, 14.8.2009, p. 112.

¹⁹ OJ L 211, 14.8.2009, p. 55.

²⁰ OJ L 9, 14.8.2009, p. 112.

Amendment 49

Proposal for a regulation

Article 3 – paragraph 1 – point 13

Text proposed by the Commission

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

Amendment

(13) ‘financial instrument’ means any of the instruments listed in Section C of Annex I to Directive **2014/65/EU** for which a request for admission to trading on a trading venue, **as defined in point (24) of Article 4(1) of Directive 2014/65/EU**, has been made or which are traded on a trading venue **or on a systematic internaliser, as defined in point (20) of Article 4(1) of Directive 2014/65/EU**;

Or. en

Amendment 50

Proposal for a regulation

Article 3 – paragraph 1 – point 14 – point b

Text proposed by the Commission

(b) investment firms as defined in point (1) of **paragraph 1 of Article 2 of [MIFIR]**;

Amendment

(b) investment firms as defined in point (1) of **Article 4(1) of Directive 2014/65/EU**;

Or. en

Amendment 51

Proposal for a regulation

Article 3 – paragraph 1 – point 14 – point f a (new)

Text proposed by the Commission

Amendment

(fa) institutions for occupational retirement provision as defined in point

(a) of Article 6 of Directive 2003/41/EC;

Or. en

Amendment 52

Proposal for a regulation

Article 3 – paragraph 1 – point 14 – point f b (new)

Text proposed by the Commission

Amendment

(fb) creditors as defined in point (b) of Article 3 of Directive 2008/48/EC for the purposes of credit agreements as defined in point (c) of Article 3 of Directive 2008/48/EC;

Or. en

Amendment 53

Proposal for a regulation

Article 3 – paragraph 1 – point 14 – point f c (new)

Text proposed by the Commission

Amendment

(fc) non-credit institutions as defined in point (10) of Article 4 of Directive 2014/17/EU for the purposes of credit agreements as defined in point (3) of Article 4 of Directive 2014/17/EU;

Or. en

Amendment 54

Proposal for a regulation

Article 3 – paragraph 1 – point 14 – point f d (new)

Text proposed by the Commission

Amendment

(fd) market operators as defined in point

**(18) of Article 4(1) of Directive
2014/65/EU;**

Or. en

Amendment 55

Proposal for a regulation

Article 3 – paragraph 1 – point 15 – point b

Text proposed by the Commission

Amendment

(b) any credit agreement as defined in point 3 of Article 3 *of [Directive [2013/.../] of the European Parliament and of the Council on credit agreements relating to residential property]*;

(b) any credit agreement as defined in point 3 of Article 4 *of Directive 2014/17/EU*;

Or. en

Amendment 56

Proposal for a regulation

Article 3 – paragraph 1 – point 19

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 57

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 ***whose cessation or provision on the basis of input data or a panel of contributors no longer representative of the market or economic reality the benchmark seeks to measure, would have an adverse impact on the integrity of markets, financial stability, the real economy, or the financing of households and corporations in one or more Member States, as covered by the criticality criteria set out in Article 13.***

Or. en

Amendment 58

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

Text proposed by the Commission

Amendment

(21a) 'noncritical benchmark' means a benchmark which does not meet the criteria for a critical benchmark as laid down in Article 13.

Or. en

Amendment 59

**Proposal for a regulation
Article 3 – paragraph 1 – point 22 a (new)**

Text proposed by the Commission

Amendment

(22a) 'public authority' means:
(a) any government or other public administration of the European Union,
(b) any entity or person, either performing public administrative functions under

national law, or having public responsibilities or functions or providing public services, including measures of inflation, labour and economic activities, under the control of an entity falling within point (a).'

Or. en

Amendment 60

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:

(i) adopt delegated acts in accordance with Article 37 ***in order 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,

(ii) ***adopt implementing acts in accordance with the examination procedure referred to in Article 38(2)*** in order to ***establish and review a list of public authorities in the Union falling within the definition under point (23) of paragraph 1 of this Article.***

Or. en

Amendment 61

Proposal for a regulation

Article 3 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Where applicable, the Commission shall take into account international convergence of supervisory practice in relation to benchmarks.

Amendment

Where applicable, the Commission shall take into account ***the market or technological developments and the*** international convergence of supervisory practice in relation to benchmarks.

Or. en

Amendment 62

Proposal for a regulation

Article 4 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 63

Proposal for a regulation

Article 4 – paragraph 2

Text proposed by the Commission

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

Amendment

deleted

Amendment 64

**Proposal for a regulation
Article 5 – title**

Text proposed by the Commission

Amendment

Governance requirements

Governance *and Conflict of Interest*
Requirements

Amendment 65

**Proposal for a regulation
Article 5 – paragraph 1**

Text proposed by the Commission

Amendment

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

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

(b) the administrator shall establish an oversight function to provide oversight of all aspects of the provision of its benchmarks ('Oversight');

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

(d) the administrator shall have an accountability framework covering record keeping, auditing and review, and complaints process, that provides evidence of compliance with the requirements of

this Regulation ('Accountability').

Or. en

Amendment 66

Proposal for a regulation

Article 5 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The administrator shall have robust governance arrangements, which shall include a clear organisational structure with well defined, transparent and consistent roles and responsibilities for all persons involved in the provision of a benchmark. The administrator shall take all necessary steps to identify and to prevent or manage conflicts of interests between itself, including its managers, employees or any other natural person or third party whose services are placed at its disposal or under its control, and the contributors or users and to ensure that, where any discretion or judgement in the benchmark process is required, it is exercised independently and fairly.

Or. en

Amendment 67

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

Amendment 68

Proposal for a regulation

Article 5 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The provision of a benchmark shall be operationally separated from any part of the administrator's business that may create an actual or potential conflict of interest. Where conflicts of interests may arise within the administrator due to its ownership structure, controlling interests or other activities conducted by any entity owning or controlling the administrator or that is owned or controlled by the administrator or any of its affiliates, the administrator shall establish an independent oversight function which shall include a balanced representation of a range of stakeholders where the stakeholders are known, subscribers and contributors. If such conflicts cannot be adequately managed, the administrator shall cease any activities or relationships that create these conflicts or cease producing the benchmark.

Or. en

Amendment 69

Proposal for a regulation

Article 5 – paragraph 3

Text proposed by the Commission

Amendment

3. The Commission shall be empowered to 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

deleted

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.

Or. en

Amendment 70

Proposal for a regulation

Article 5 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. An administrator shall publish or disclose all existing or potential conflicts of interest to users of the benchmark and the relevant competent authority and, where relevant, to contributors, including conflicts of interest arising from the ownership or control of the administrator.

Or. en

Amendment 71

Proposal for a regulation

Article 5 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3b. An administrator shall establish and operate adequate policies and procedures,

as well as effective organisational arrangements, for the identification, disclosure, management, mitigation and avoidance of conflicts of interest in order to protect the integrity and independence of benchmark determinations. Such policies and procedures shall be regularly reviewed and updated. The policies and procedures shall take into account and address conflicts of interest, the degree of discretion exercised in the benchmark process and the risks that the benchmark poses, and shall:

(a) ensure the confidentiality of information contributed to or produced by the administrator, subject to the disclosure and transparency obligations under this Regulation; and

(b) specifically mitigate conflicts due to the administrator's ownership or control, or due to other interests in its group or as a result of other persons that may exercise influence or control over the administrator in relation to setting the benchmark.

Or. en

Amendment 72

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

Text proposed by the Commission

Amendment

3c. The administrator shall ensure that employees and any other natural persons whose services are placed at its disposal or under its control and who are directly involved in the provision of a benchmark:

(a) have the necessary skills, knowledge and experience for the duties assigned to them and are subject to effective management and supervision;

(b) are not subject to undue influence or conflicts of interest and that the compensation and performance evaluation of these persons do not create conflicts of interest or otherwise impinge on the integrity of the benchmark process;

(c) do not have any interests or business connections that compromise the administrator's functions;

(d) are prohibited from contributing to a benchmark determination by way of engaging in bids, offers and trades on a personal basis or on behalf of market participants; and

(e) are subject to effective procedures to control the exchange of information with other employees, and are not involved in activities that may create a risk of conflict of interest.

Or. en

Amendment 73

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

Text proposed by the Commission

Amendment

3d. The administrator shall establish specific internal control procedures to ensure the integrity and reliability of the employee or person determining the benchmark, including at least an internal sign-off by management before the dissemination of the benchmark.

Or. en

Amendment 74

Proposal for a regulation Article 5 a (new)

Article 5a

Oversight function requirements

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

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

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

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

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

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

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

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

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

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

conduct; and

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

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

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

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

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

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

Or. en

Amendment 75

**Proposal for a regulation
Article 5 b (new)**

Text proposed by the Commission

Amendment

Article 5b

Control Framework Requirements

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

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

(a) the management of operational risk;

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

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

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

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

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

Amendment 76**Proposal for a regulation
Article 5 c (new)***Text proposed by the Commission**Amendment**Article 5c**Accountability Framework Requirements*

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

the accuracy of the administrator's compliance statement. Such an audit shall take place at least every two years and whenever material changes to the benchmark occur.

5. For critical benchmarks, the administrator shall appoint an independent external auditor to periodically review and report on the administrator's compliance with the benchmark methodology and this Regulation.

6. Upon the request of the relevant competent authority, or any user of the benchmark, the administrator shall provide or publish details of the reviews in paragraph 2 or audits under paragraphs 2a and 3.

Or. en

Amendment 77

Proposal for a regulation Article 5 d (new)

Text proposed by the Commission

Amendment

Article 5d

Record Keeping Requirements

1. The administrator shall keep records of:

(a) all input data;

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

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

disregard;

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

(e) all documents relating to any complaint; and

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

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

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

Or. en

Amendment 78

Proposal for a regulation Article 5 e (new)

Text proposed by the Commission

Amendment

Article 5e

*ESMA regulatory technical standards on
governance and control requirements*

ESMA shall develop draft regulatory

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

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

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

(c) distinctions between critical and noncritical benchmarks.

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

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

Or. en

Amendment 79

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

deleted

Or. en

Amendment 80

**Proposal for a regulation
Article 6 – paragraph 3 a (new)**

Text proposed by the Commission

Amendment

3a. Where outsourcing takes place, the administrator shall ensure that the following conditions are satisfied:

(a) the service provider shall have the ability, capacity, and any authorisation required by law, to perform the outsourced functions, services or activities reliably and professionally;

(b) the administrator shall take appropriate action if it appears that the service provider may not be carrying out the functions effectively and in compliance with applicable law and regulatory requirements;

(c) the administrator shall retain the necessary expertise to supervise the outsourced functions effectively and to manage the risks associated with the outsourcing;

(d) the service provider shall disclose to the administrator any development that may have a material impact on its ability to carry out the outsourced functions effectively and in compliance with applicable law and regulatory requirements;

(e) the service provider shall cooperate with the relevant competent authority in connection with the outsourced activities, and the administrator and the relevant competent authority shall have effective access to data related to the outsourced activities, as well as to the business premises of the service provider, and the relevant competent authority shall be able to exercise these rights of access;

(f) the administrator shall be able to terminate the arrangements where

necessary.

Or. en

Amendment 81

Proposal for a regulation Title 2 – chapter 2 – title

Text proposed by the Commission

Amendment

Input data *and* methodology and reporting of *breaches*

Input Data, Methodology and Reporting of *Infringements*

Or. en

Amendment 82

Proposal for a regulation Article 7 – title

Text proposed by the Commission

Amendment

Input data *and methodology*

Input Data

Or. en

Amendment 83

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

Text proposed by the Commission

Amendment

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

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

the input data shall be transaction data. If available transaction data is not sufficient to represent accurately and reliably the

market or economic reality that the benchmark is intended to measure, including a firm and executable bid and offer quotes or estimates, input data which is not transaction data may be used provided that such data is verifiable;

Or. en

Amendment 84

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(aa) the administrator shall establish and publish clear guidelines regarding the hierarchy of input data and exercise of expert judgement;

Or. en

Amendment 85

Proposal for a regulation

Article 7 – paragraph 1 – point b

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 86

Proposal for a regulation

Article 7 – paragraph 1 – point c

Text proposed by the Commission

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

Amendment

(c) The administrator shall *only use* input data *from* contributors *which comply with the code of conduct referred to in Article 9*;

Or. en

Amendment 87

Proposal for a regulation

Article 7 – paragraph 1 – point d

Text proposed by the Commission

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

Amendment

deleted

Or. en

Amendment 88

Proposal for a regulation

Article 7 – paragraph 1 – point e

Text proposed by the Commission

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

Amendment

deleted

Or. en

Amendment 89

Proposal for a regulation

Article 7 – paragraph 2

Text proposed by the Commission

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

Amendment

2. The administrator shall **ensure that the controls in respect of the** input data include:

(a) criteria that define who may contribute input data to the administrator and a process for selecting the contributors;

(b) a process for evaluating the contributor's input data and preventing the contributor from providing further input data or applying other sanctions for non-compliance against the contributor, where appropriate; and

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

Or. en

Amendment 90

Proposal for a regulation Article 7 – paragraph 3

Text proposed by the Commission

Amendment

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

deleted

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

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

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

Or. en

Amendment 91

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

Text proposed by the Commission

Amendment

3a. Where the input data of a benchmark is contributed from a front office function, which means any department, division, group, or personnel of contributors or any of its affiliates that performs any pricing trading, sales, marketing, advertising, solicitation,

structuring, or brokerage activities, the administrator shall:

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

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

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

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

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

Or. en

Amendment 92

Proposal for a regulation

Article 7 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3b. Where the input data of a benchmark is not transaction data and a contributor is a party to more than 50% of the value of transactions in the market 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.

Or. en

Amendment 93

Proposal for a regulation

Article 7 – paragraph 3 c (new)

Text proposed by the Commission

Amendment

3c. ESMA shall develop draft regulatory technical standards to specify further the internal oversight and verification procedures of a contributor that the administrator shall seek, in compliance with paragraph 3, in order to ensure the integrity and accuracy of input data.

ESMA shall take into account the different types of benchmarks and sectors as set out in this Regulation, the nature of the input data and the principle of proportionality, as well as the international convergence of supervisory practice in relation to benchmarks.

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

Power is delegated to the Commission to adopt the regulatory technical standards referred to in point (a) of paragraph 1 in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Amendment 94

**Proposal for a regulation
Article 7 a (new)**

Text proposed by the Commission

Amendment

Article 7a

Methodology

1. The administrator shall use a methodology for the determination of the benchmark that

(a) is robust and reliable;

(b) has clear rules identifying how and when discretion may be exercised in the determination of that benchmark;

(c) is rigorous, continuous and capable of validation, including back-testing;

(d) is resilient and ensures that the benchmark can be calculated in the widest set of possible circumstances;

(e) is traceable and verifiable.

2. When developing the benchmark methodology the benchmark administrator shall,

(a) take into account factors including the size and normal liquidity of the market, the transparency of trading and the positions of market participants, market concentration, market dynamics, and the adequacy of any sample to represent the market or the economic reality that the benchmark is intended to measure;

(b) determine what constitutes an active market for the purposes of that benchmark; and

(c) establish the priority given to different types of input data.

3. The administrator shall have in place

clear published arrangements that identify the circumstances in which the quantity or quality of input data falls below the standards necessary for the methodology to determine the benchmark accurately and reliably, and that describe whether and how the benchmark will be calculated in such circumstances

Or. en

Amendment 95

Proposal for a regulation Article 7 b (new)

Text proposed by the Commission

Amendment

Article 7b

Transparency of Methodology

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

The administrator shall publish, by means that ensure a fair and easy access

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

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

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

Or. en

Amendment 96

Proposal for a regulation Article 7 c (new)

Text proposed by the Commission

Amendment

Article 7c

ESMA standards on input data and methodology

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

- (a) developments in benchmarks and financial markets in light of international convergence of supervisory practice in relation to benchmarks;***
- (b) specific features of different benchmarks and types of benchmarks; and***
- (c) the vulnerability of benchmarks to manipulation in light of the methodologies and input data used.***

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

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

Or. en

Amendment 97

Proposal for a regulation

Article 8 – paragraph 1

Text proposed by the Commission

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

Amendment

1. The administrator shall ***have procedures in place for its managers, employees, and any other natural persons whose services are placed at its disposal or under its control, to report internally infringements of this Regulation.***

Or. en

Amendment 98

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 ***have procedures in place to report infringements of this Regulation to the appropriate authorities.***

Or. en

Amendment 99

Proposal for a regulation

Article 8 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) a material breach of the [Market Abuse Regulation]; ***deleted***

Or. en

Amendment 100

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 ***deleted***

Or. en

Amendment 101

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

Text proposed by the Commission

Amendment

(c) collusion to manipulate or to attempt to manipulate a benchmark. ***deleted***

Or. en

Amendment 102

Proposal for a regulation Article 8 – paragraph 3

Text proposed by the Commission

Amendment

3. An administrator shall have procedures for the managers, employees and any other natural persons whose services are ***deleted***

placed at its disposal or under its control to report breaches of this Regulation internally through a specific, autonomous channel.

Or. en

Amendment 103

Proposal for a regulation Article 9 – paragraph 1

Text proposed by the Commission

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

Amendment

1. ***Where a benchmark is based on input data from contributors, the administrator shall draw up*** a code of conduct for each benchmark clearly specifying the contributors' responsibilities with respect to the ***contribution of input data and shall ensure submitters confirm on an annual basis their compliance with the code of conduct as well as in the event of any changes to it.***

Or. en

Amendment 104

Proposal for a regulation Article 9 – paragraph 2

Text proposed by the Commission

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

Amendment

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

(a) a clear description of the input data to be provided and the requirements necessary to ensure that the input data is provided in accordance with Articles 7 and 8;

(b) a list of persons who may contribute

input data to the administrator including procedures to evaluate the identity of a contributor and any submitters ;

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

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

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

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

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

– record keeping policies;

– suspicious input data reporting requirements;

– conflict management requirements.

Or. en

Amendment 105

Proposal for a regulation

Article 9 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The administrator may develop a single code of conduct for each family of benchmarks it provides.

Or. en

Amendment 106

Proposal for a regulation

Article 9 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Within 20 days from the date of application of the decision to include a critical benchmark in the list referred to in Article 13(1), the administrator of that critical benchmark shall notify the code of conduct to the relevant competent authority. The relevant competent authority shall verify within 30 days whether the content of the code of conduct complies with this Regulation.

Or. en

Amendment 107

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 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.

ESMA shall ***develop draft regulatory technical standards*** to specify further the terms of the code of conduct referred to in ***paragraph 2*** for different types of benchmarks, and in order to take account of developments in benchmarks and financial markets.

ESMA, while developing those draft regulatory technical standards, shall take into account the different characteristics of benchmarks and of contributors, notably in terms of differences in input data and methodologies, the risks of input data being manipulated, and the international convergence of supervisory practices in relation to benchmarks

ESMA shall submit those draft regulatory

technical standards to the Commission by [XXX].

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

Or. en

Amendment 108

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

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 109

Proposal for a regulation Article 10

Text proposed by the Commission

Amendment

Article 10

deleted

Regulated data

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

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

Or. en

Amendment 110

Proposal for a regulation

Article 11 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

1. The governance and control requirements **set out in paragraphs 2a and 2b** shall apply to a supervised contributor **contributing input data to a critical benchmark.**

Or. en

Amendment 111

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

deleted

Or. en

Amendment 112

Proposal for a regulation

Article 11 – paragraph 1 – point b

Text proposed by the Commission

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 code of conduct ('Adequate controls').

deleted

Or. en

Amendment 113

Proposal for a regulation

Article 11 – paragraph 2

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 114

Proposal for a regulation

Article 11 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. A supervised contributor shall have effective systems and controls in place to ensure the integrity and reliability of all contributions of input data to the administrator, including:

(a) controls regarding who may submit

input data to an administrator including, where proportionate, a process for sign off by a natural person senior to the submitter;

(b) appropriate training for submitters, covering at least this Regulation and Regulation (EU) No 596/2014;

(c) conflict management measures, including organisational separation of employees where appropriate and a consideration of how to remove incentives to manipulate any benchmark created by remuneration policies;

(d) record keeping of communications in relation to provision of input data for an appropriate period of time.

Or. en

Amendment 115

Proposal for a regulation Article 11 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Where input data is not transaction data or committed quotes, supervised contributors shall, in addition to the systems and controls referred to in paragraph 2a, establish policies guiding any use of judgement or exercise of discretion and retain records of the rationale for any such judgement or discretion, where proportionate, taking into account the nature of the benchmark and input data.

Or. en

Amendment 116

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 I**.

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, **including for the purposes set out in Article 5c(2a), and** make available the information and records kept in accordance with **paragraphs 2a and 2b**.

Or. en

Amendment 117

Proposal for a regulation Article 11 – paragraph 4

Text proposed by the Commission

4. **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

4. **ESMA** shall **develop draft regulatory technical standards** to specify further the requirements concerning systems and controls set out in **paragraphs 2a, 2b and 3** for different types of benchmarks.

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

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

Or. en

Amendment 118

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

ESMA 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.

Or. en

Amendment 119

Proposal for a regulation Title 3

Text proposed by the Commission

**SECTORAL REQUIREMENTS AND
CRITICAL BENCHMARKS**

Amendment

**REQUIREMENTS *FOR DIFFERENT
TYPES OF* BENCHMARKS AND
SECTORS**

Or. en

Amendment 120

Proposal for a regulation Title 3 – chapter 1 – title

Text proposed by the Commission

Amendment

Benchmark sectors

Regulated Data

Or. en

Amendment 121

**Proposal for a regulation
Article 12**

Text proposed by the Commission

Amendment

Article 12

deleted

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

- 1. In addition to the requirements of the Title II, the specific requirements set out in Annex II shall apply to inter-bank interest rate benchmarks.***
- 2. In addition to the requirements of the Title II, the specific requirements set out in Annex III shall apply to commodity benchmarks.***
- 3. The Commission shall be empowered to adopt delegated acts in accordance with Article 39 to specify, or adjust, in light of market and technological developments and international developments, the following elements of Annexes II and III:***
 - (a) The period of time after which input data shall be published (Annex II point 6)***
 - (b) The processes for election and nomination and responsibilities of the oversight committee (Annex II points 8, 9 and 10)***
 - (c) The frequency of audits (Annex II point 12)***
 - (d) The processes by which input data is provided to be specified in the code of conduct (Annex II point 13)***

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

Or. en

Amendment 122

Proposal for a regulation Article 12 a (new)

Text proposed by the Commission

Amendment

Article 12a

Regulated data

Where benchmarks are determined by the application of a formula to data set out in point 11(i) or point 11(ii) of Article 3(1), Articles 7(1)(b), 7(1)(c), 7(2), 7(3), 8(1), 8(2), 9 and 11 shall not apply to the

provision of and the contribution to such benchmarks. Article 5d(1)(a) shall not apply to the provision of such benchmarks with reference to input data that are contributed entirely and directly as specified in Article 3(1)(20a). These requirements shall also not apply for purposes of Article 5c(2a).

Or. en

Amendment 123

Proposal for a regulation Article 13 – paragraph 1

Text proposed by the Commission

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

Amendment

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

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

(b) the benchmark is recognised as critical in accordance with the procedure laid down in paragraphs 2a, 2c and 2e-2g.

ESMA shall develop draft regulatory technical standards to:

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

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

- review the EUR 500 000 000 000

threshold, at least every [3] years after the date of the entry into force of this Regulation.

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

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

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

Or. en

Amendment 124

Proposal for a regulation Article 13 – paragraph 2

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 125

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

Text proposed by the Commission

Amendment

2a. A competent authority of a Member State may deem a benchmark administered within its jurisdiction to be critical where it has an average notional value totalling less than the amount set in paragraph 1 if it considers that the cessation of that benchmark would have a significant adverse impact on the integrity of markets, financial stability, consumers, the real economy, or the financing of households and corporations within its jurisdiction. In such a case, it shall notify ESMA of its decision within five days.

Or. en

Amendment 126

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

Text proposed by the Commission

Amendment

2b. Within 10 days following the receipt of the notification provided for in paragraph 2a, ESMA shall publish the notification on its website and update the register referred to Article 25a.

Or. en

Amendment 127

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

Text proposed by the Commission

Amendment

2c. Where a national competent authority considers that a decision taken pursuant to paragraph 2a by another competent authority in the Union will have a significant adverse impact on financial market stability, the real economy, or supervised contributors to the relevant benchmark in its jurisdiction, it shall issue a request to that national competent authority to reconsider its decision. The competent authority that took the decision pursuant to paragraph 2a shall inform the requesting competent authority of its response within 30 days of the receipt of the request.

Or. en

Amendment 128

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

Text proposed by the Commission

Amendment

2d. In the absence of an agreement between the competent authorities, the requesting competent authority may refer the matter to ESMA. Within 60 days of receiving such a referral request, ESMA shall act in accordance with Article 19 of Regulation (EU) No 1095/2010.

Or. en

Amendment 129

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

Text proposed by the Commission

Amendment

2e. Where a competent authority of a Member State considers that a benchmark administered in another Member State with an average notional value totalling less than the amount set in point (a) of the first subparagraph of paragraph 1 should nevertheless be deemed to be critical, as the cessation of that benchmark would have a significant adverse impact on the integrity of markets, financial stability, consumers, the real economy, or the financing of households and corporations within its jurisdiction, it shall issue a request to the national competent authority of the relevant benchmark administrator to categorise the benchmark as critical. The competent authority of the relevant benchmark administrator shall inform the requesting competent authority of its response within 30 days of the receipt of the request.

Or. en

Amendment 130

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

Text proposed by the Commission

Amendment

2f. Following the procedure laid down in paragraph 2e, and in the absence of an agreement between the competent authorities, the requesting competent authority may refer the matter to ESMA. It shall transmit a documented assessment of the impact of the cessation of the benchmark in its jurisdiction, which shall include at least the following:

- the variety of use in terms of market participants, as well as use in retail***

markets;

- the availability of a feasible market-led substitute for the benchmark;

- the value of financial instruments and financial contracts that reference the benchmark within the Member State and its relevance in terms of the gross national product of the Member State;

- the concentration in use and, where applicable, of contribution to the benchmark among Member States;

- any other indicator to assess the potential impact of the discontinuity or unreliability of the benchmark on the integrity of markets, financial stability, or the financing of households and corporations of the Member State.

Or. en

Amendment 131

Proposal for a regulation

Article 13 – paragraph 2 g (new)

Text proposed by the Commission

Amendment

2g. Within [10] weeks of receiving the notification referred to in paragraph 2a, and after consulting the ESRB and other relevant national competent authorities, ESMA shall issue a binding opinion on the criticality of the benchmark. ESMA shall transmit its opinion to the Commission, the national competent authorities and the administrator, together with the results of the consultations. ESMA shall base its opinion on the criteria listed in Paragraph 2f and other relevant criteria.

Or. en

Amendment 132

Proposal for a regulation
Article 14 – title

Text proposed by the Commission

Amendment

Mandatory contribution

Mandatory contribution *to critical benchmarks*

Or. en

Amendment 133

Proposal for a regulation
Article 14 – paragraph 1

Text proposed by the Commission

Amendment

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

deleted

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

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

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

Or. en

Amendment 134

Proposal for a regulation

Article 14 – paragraph 2 – introductory part

Text proposed by the Commission

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

Amendment

2. *If one or more supervised contributors to a critical benchmark intend to cease contributing input data, they shall promptly notify the benchmark administrator in writing. Within 14 days of receipt of such notification, the administrator shall inform the competent authority and provide an assessment an assessment of the implications of the cessation on the capability of the benchmark to measure the underlying market or economic reality.*

Or. en

Amendment 135

Proposal for a regulation

Article 14 – paragraph 3

Text proposed by the Commission

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

Amendment

3. The competent authority *shall promptly inform ESMA and make its own assessment of the implications of the cessation.*

Or. en

Amendment 136

Proposal for a regulation

Article 14 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The competent authority shall have the power to require the contributors which made the notification intending to cease contributing input data to continue to contribute input data until such time as the competent authority has completed its assessment but in any event for no longer than four weeks from the date that the notification was made.

Or. en

Amendment 137

Proposal for a regulation Article 14 – paragraph 4

Text proposed by the Commission

Amendment

[...]

deleted

Or. en

Amendment 138

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

Text proposed by the Commission

Amendment

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

(a) require supervised entities in accordance with paragraph 5, including entities that are not already contributors to the relevant critical benchmark, to contribute input data to the administrator in accordance with the methodology, code of conduct or other rules;

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

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

Or. en

Amendment 139

Proposal for a regulation Article 14 – paragraph 5

Text proposed by the Commission

5. The administrator shall notify the relevant competent authority in the event that any contributors breach the requirements of paragraph 1 of this Article as soon as is technically possible.

Amendment

5. The supervised entities referred to in paragraph 4a shall be determined by the competent authority of the administrator, with the assistance of the competent authority of the supervised entities, on the basis of the size of the supervised entity's participation in the market that the benchmark seeks to measure;

Or. en

Amendment 140

Proposal for a regulation Article 14 – paragraph 5 a (new)

Text proposed by the Commission

5a. The competent authority of a supervised entity referred to in paragraph 5 shall assist the competent authority of the administrator in enforcing measures pursuant to paragraph 4.

Or. en

Amendment 141

**Proposal for a regulation
Article 14 – paragraph 5 b (new)**

Text proposed by the Commission

Amendment

5b. The competent authority of the administrator shall annually review the measures adopted under paragraph 4a. It shall revoke them if:

(a) it judges that the contributors mandated to contribute input data are likely to continue contributing input data for at least one year. This shall be evidenced by at least:

(i) a written commitment by the contributors to the administrator and the competent authority to continue contributing input data to the critical benchmark for at least one year in the event that the mandatory contribution decision is revoked;

(ii) a written assessment by the administrator to the competent authority providing evidence that the critical benchmark's continued viability is able to be assured if mandatory participation is revoked;

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

Or. en

Amendment 142

**Proposal for a regulation
Article 14 – paragraph 5 c (new)**

Text proposed by the Commission

Amendment

5c. The administrator shall, as soon as is practically possible, notify the relevant competent authority in the event that a contributor infringes the requirements of paragraph 4a.

Or. en

Amendment 143

**Proposal for a regulation
Article 14 – paragraph 5 d (new)**

Text proposed by the Commission

Amendment

5d. Where a benchmark is deemed to be critical in accordance with the procedure laid down in paragraphs 2a-2c of Article 13, the competent authority of the administrator shall have the power to require the contribution of input data in accordance with points (a), (b) and (d) of paragraph 4a of this Article only from supervised contributors located in its Member State.

Or. en

Amendment 144

**Proposal for a regulation
Article 14 – paragraph 5 e (new)**

Text proposed by the Commission

Amendment

5e. The administrator of one or more critical benchmarks based on submissions by contributors which are in majority

supervised entities shall submit every two years to its competent authority an assessment of the capability of each critical benchmark it provides to measure the underlying market or economic reality.

Or. en

Amendment 145

Proposal for a regulation Article 14 a (new)

Text proposed by the Commission

Amendment

Article 14a

Commodity Benchmarks

1. The specific requirements laid down in Annex Ia shall apply to commodity benchmarks unless the benchmark is based on regulated data in accordance with Article 12a or is based upon submissions from contributors, the majority of which are supervised entities. The requirements of Title II, with the exception of Article 6, shall not apply.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 37 to specify or adjust the requirements laid down in Annex Ia, in light of market evolution and international developments.

Or. en

Amendment 146

Proposal for a regulation Article 15 – paragraph 1

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

deleted

(a) clearly and unambiguously defines the market or economic reality measured by the benchmark and the circumstances in which such measurement may become unreliable;

(b) describes or lists the purposes for which it is appropriate to use the benchmark and the circumstances in which it may cease to be fit for such purposes;

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

(d) provides notice of the possibility that factors, including external factors beyond the control of the administrator, may necessitate changes to, or the cessation, of the benchmark; and

(e) advises that any financial contracts or other financial instruments that reference the benchmark should be able to withstand, or otherwise address the possibility of changes to, or cessation of, the benchmark.

Or. en

Amendment 147

**Proposal for a regulation
Article 15 – paragraph 1 a (new)**

1a. Within [4 weeks] of the inclusion in the register referred to in Article 25a, an administrator shall publish a benchmark statement, by means that ensure fair and easy access, for each benchmark or, when applicable, for each family of benchmarks produced and published or recognised in accordance with Article 21a. The statement shall:

(a) clearly and unambiguously define the market or economic reality measured by the benchmark and the circumstances in which such measurement may become unreliable;

(b) clearly and unambiguously identify the elements of the calculation of the benchmark to which discretion may be exercised, the criteria applicable to the exercise of such discretion, the persons by whom discretion may be exercised, and how such discretion may subsequently be evaluated;

(c) provide notice of the possibility that factors, including external factors beyond the control of the administrator, may necessitate changes to, or the cessation of, the benchmark; and

(d) advise that any financial contracts or investment funds or other financial instruments that reference the benchmark should be able to withstand or otherwise address the possibility of changes to, or cessation of, the benchmark.

Or. en

Amendment 148

**Proposal for a regulation
Article 15 – paragraph 2**

Text proposed by the Commission

Amendment

2. In order to ensure compliance with paragraph 1, an administrator shall comply with the detailed requirements set out in Section F of Annex 1.

deleted

Or. en

Amendment 149

Proposal for a regulation

Article 15 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The benchmark statement shall at least contain:

(a) the definitions for all key terms in relation to the benchmark;

(b) the rationale for adopting the benchmark methodology and procedures for the review and approval of the methodology;

(c) the criteria and procedures used to determine the benchmark, including a description of the input data, the priority given to different types of input data, the use of any models or methods of extrapolation and any procedure for rebalancing the constituents of a benchmark's index;

(d) the controls and rules that govern any exercise of discretion or judgement by the administrator or any contributors, to ensure consistency in the use of such discretion or judgment;

(e) the procedures which govern benchmark determination in periods of stress, or periods where transaction data sources may be insufficient, inaccurate or unreliable and the potential limitations of the benchmark in such periods; and

(f) the procedures for dealing with errors in input data, or the benchmark determination, including when a re-determination of the benchmark will be required.

Or. en

Amendment 150

Proposal for a regulation Article 15 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. ESMA shall develop draft regulatory technical standards to specify further the contents of the benchmark statement and the cases in which an update of such statement is required, distinguishing for different types of benchmarks and sectors as set in this Regulation and taking into account the principle of proportionality.

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

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

Or. en

Amendment 151

Proposal for a regulation Article 16

Text proposed by the Commission

Amendment

Article 16

deleted

Transparency of input data

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

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

Or. en

Amendment 152

Proposal for a regulation Article 17 – paragraph 1

Text proposed by the Commission

1. An administrator shall publish a procedure concerning the actions to be taken by the administrator in the event of changes to or the cessation of a benchmark.

Amendment

1. An administrator shall publish, **together with the benchmark statement referred to in Article 15**, a procedure concerning the actions to be taken by the administrator in the event of changes to or the cessation of a benchmark **or the recognition of a benchmark pursuant to Article 21a. The procedure may be drafted, where applicable, for families of benchmarks and shall be updated and published whenever a material change occurs.**

Or. en

Amendment 153

Proposal for a regulation Article 17 – paragraph 2

Text proposed by the Commission

2. Supervised entities ***that issue or own financial instruments or are party to financial contracts that reference*** a benchmark shall produce robust written plans setting out the actions that they would take in the event that a benchmark materially changes or ceases to be produced. The supervised entities shall provide the relevant competent authority with these plans ***on*** request.

Amendment

2. Supervised entities, ***other than an administrator, that use*** a benchmark shall produce ***and maintain*** robust written plans setting out the actions that they would take in the event that a benchmark materially changes or ceases to be produced. ***Where feasible and appropriate, such plans shall nominate one or several alternative benchmarks that might be referenced, indicating why such benchmarks would be suitable alternatives.*** The supervised entities shall provide the relevant competent authority with these plans ***upon*** request ***and where possible reflect them in the contractual relationship with clients.***

Or. en

Amendment 154

Proposal for a regulation Article 18

Text proposed by the Commission

Article 18

Assessment of suitability

1. Where a supervised entity intends to enter into a financial contract with a consumer, that supervised entity shall first obtain the necessary information regarding the consumer's knowledge and experience with respect to the benchmark, his financial situation and his objectives in respect of that financial contract, and the benchmark statement published in accordance with Article 15 and shall

Amendment

deleted

assess whether referencing the financial contract to that benchmark is suitable for him.

2. Where the supervised entity considers, on the basis of the assessment under paragraph 1, that the benchmark is not suitable for the consumer, the supervised entity shall warn the consumer in writing with reasons.

Or. en

Amendment 155

Proposal for a regulation Article 19 – title

Text proposed by the Commission

Amendment

Use of *robust benchmarks*

Use of *a benchmark*

Or. en

Amendment 156

Proposal for a regulation Article 19 – paragraph 1

Text proposed by the Commission

Amendment

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

1. A supervised entity may use a benchmark *or a combination of benchmarks* in the Union as a reference in a financial *contract* or financial *instrument* or to measure the performance of an investment fund if *they are* provided by *administrators authorised or registered* in accordance with Article 23 or an administrator located in a third country *pursuant to Article [20], or Article [21a].*

Or. en

Amendment 157

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

Text proposed by the Commission

Amendment

1a. Where the object of a prospectus to be published under Directive 2003/71/EC or Directive 2009/65/EC is transferable securities or other investment that reference a benchmark, the issuer, offeror, or person asking for admission to trade on a regulated market shall ensure that the prospectus also includes clear and prominent information stating whether the benchmark has been registered or is provided by an administrator registered under Article 25a of this Regulation.

Or. en

Amendment 158

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

Text proposed by the Commission

Amendment

1b. ESMA shall withdraw, or bring into line with paragraph 1, paragraphs 49 to 62 of ESMA's Guidelines for competent authorities and UCITS management companies, Guidelines on ETFs and other UCITS issues, 01.08.2014, ESMA/2014/937.

Or. en

Amendment 159

Proposal for a regulation Article 20 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

1. Benchmarks provided by an administrator ***located*** in a third country may be used by supervised entities in the Union provided that the following conditions are ***met, unless Article 21a applies***:

Or. en

Amendment 160

Proposal for a regulation

Article 20 – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

(a) the Commission has adopted an equivalence decision in accordance with paragraph 2 ***or paragraph 2a***;

Or. en

Amendment 161

Proposal for a regulation

Article 20 – paragraph 1 – point c

Text proposed by the Commission

(c) the administrator has notified ESMA of its consent that its actual or prospective benchmarks may be used by supervised entities in the Union, ***the list of the benchmarks which may be used in the Union and the competent authority responsible for its supervision in the third country***;

Amendment

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

Amendment 162

Proposal for a regulation

Article 20 – paragraph 1 – point d

Text proposed by the Commission

(d) the administrator is duly registered under Article 21; and

Amendment

(d) the administrator is duly registered under Article 25a; and

Amendment 163

Proposal for a regulation

Article 20 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Alternatively, the Commission may adopt a decision stating that specific rules or requirements in a third country with respect to individual and specific administrators or individual and specific benchmarks or families of benchmarks are equivalent to that of this Regulation and that those individual and specific administrators or individual and specific benchmarks or families of benchmarks may therefore be used by supervised entities in the Union.

Amendment 164

Proposal for a regulation

Article 20 – paragraph 3 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 165

Proposal for a regulation

Article 20 – paragraph 3 – point a

Text proposed by the Commission

(a) the mechanism for the exchange of information between ESMA and the competent authorities of third countries concerned, including access to all information regarding the administrator authorised in that third country that is requested by ESMA;

Amendment

(a) the mechanism for the exchange of information between ESMA and the competent authorities of third countries concerned, including access to all **relevant** information regarding the administrator authorised in that third country that is requested by ESMA;

Or. en

Amendment 166

Proposal for a regulation

Article 20 – paragraph 3 – point b

Text proposed by the Commission

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

Amendment

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

legislation;

country;

Or. en

Amendment 167

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

Text proposed by the Commission

Amendment

(c) the procedures concerning the coordination of supervisory activities ***including on-site inspections.***

(c) the procedures concerning the coordination of supervisory activities.

Or. en

Amendment 168

Proposal for a regulation Article 21 – title

Text proposed by the Commission

Amendment

Registration

Withdrawal of registration of an administrator located in a third country

Or. en

Amendment 169

Proposal for a regulation Article 21 – paragraph 1

Text proposed by the Commission

Amendment

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

1. ESMA shall ***withdraw the registration of an administrator*** referred to in Article 20(d) ***where ESMA has well-founded reasons, based on documented evidence, that the administrator:***

administrators are permitted to provide and the competent authority responsible for their supervision in the third country.

(a) is acting in a manner which is clearly prejudicial to the interests of the users of its benchmarks or the orderly functioning of markets; or

(b) has seriously infringed the national legislation or other provisions applicable to it in the third country and on the basis of which the Commission has adopted the decision in accordance with Article 20(2) or Article 20(2a).

Or. en

Amendment 170

Proposal for a regulation

Article 21 – paragraph 2 – introductory part

Text proposed by the Commission

2. ESMA shall *withdraw the registration of an administrator referred to in paragraph 1 from the register referred to in paragraph 1 when:*

Amendment

2. ESMA shall *take a decision under paragraph 1 only if the following conditions are fulfilled:*

Or. en

Amendment 171

Proposal for a regulation

Article 21 – paragraph 2 – point a

Text proposed by the Commission

(a) ESMA has *well-founded reasons, based on documented evidence, to consider that the administrator is acting in a manner which is clearly prejudicial to the interests of users of its benchmarks or the orderly functioning of markets; or*

Amendment

(a) ESMA has *referred the matter to the competent authority of the third country and that competent authority has not taken the appropriate measures needed to protect investors and the proper functioning of the markets in the Union,*

or has failed to demonstrate that the administrator concerned complies with the requirements applicable to it in the third country;

Or. en

Amendment 172

Proposal for a regulation Article 21 – paragraph 2 – point b

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 173

Proposal for a regulation Article 21 – paragraph 3

Text proposed by the Commission

3. ESMA shall take a decision under paragraph 2 only if the following conditions are fulfilled:

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

Amendment

deleted

third country;

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

Or. en

Amendment 174

Proposal for a regulation Article 21 a (new)

Text proposed by the Commission

Amendment

Article 21a

Recognition of an administrator located in a third country

1. Until such time as an equivalence decision in accordance with Article 20(2) is adopted, benchmarks provided by an administrator located in a third country may be used by supervised entities in the Union provided that the administrator acquires prior recognition by ESMA in accordance with this Article.

2. An administrator located in a third country intending to obtain prior recognition as referred to in paragraph 1 shall comply with all the requirements established in this Regulation except for Articles 11 and 14.

Where an administrator is able to demonstrate that a benchmark it provides is based on regulated data or is a commodity benchmark that is not based on submissions by contributors which are in majority supervised entities, the exemptions for such benchmarks, as provided for in Articles 12a and 14a respectively, shall apply to the administrator.

3. An administrator located in a third country intending to obtain prior recognition as referred to in paragraph 1 shall have a representative established in the Union. The representative shall be a natural person domiciled in the Union or a legal person with its registered office in the Union. The representative shall be expressly designated by the administrator located in a third country to act on its behalf concerning all communication with the authorities including ESMA and relevant competent authorities and any other relevant person in the Union with regard to the administrator's obligations under this Regulation.

4. An administrator located in a third country intending to obtain prior recognition as referred to in paragraph 1 shall apply for recognition with ESMA. The applicant administrator shall provide all information, as set out in Article 23 or Article 23a, necessary to satisfy ESMA that it has established, at the time of recognition, all the necessary arrangements to meet the requirements referred to in paragraph 2 and shall indicate the list of its actual or prospective benchmarks which may be used in the Union and the competent authority responsible for its supervision in the third country.

Within [90] days of receiving the application referred to in the first subparagraph, ESMA, after consulting relevant competent authorities, shall verify that the conditions laid down in paragraphs 2, 3 and 4 are fulfilled. ESMA may delegate this task to a relevant national competent authority.

If ESMA considers that this is not the case, it shall refuse the recognition request explaining the reasons for the refusal.

Without prejudice to the third subparagraph, no recognition shall be

granted unless the following additional conditions are met:

(i) an appropriate cooperation arrangement is in place between the relevant competent authority or ESMA and the third country authority of the administrator in order to ensure at least an efficient exchange of information;

(ii) the effective exercise by the competent authority or ESMA of its supervisory functions under this Regulation is not prevented by the laws, regulations or administrative provisions of the third country where the administrator is located.

5. Where an administrator located in a third country considers that a benchmark it provides may be entitled to the exemptions in Article 12a and 14a, it shall, without undue delay, notify ESMA thereof. It shall provide documentary evidence to support its assertion.

6. Where an administrator located in a third country considers that a benchmark it provides, the cessation of which would have a significant adverse impact on the integrity of markets, financial stability, consumers, the real economy, or the financing of households and corporations in one or more Member States, it may apply to ESMA for an exemption from one or more of the applicable requirements of this Regulation for a specific and limited period of time, not exceeding 12 months. It shall provide documentary evidence to support its application.

ESMA shall consider the application within 30 days and inform the third country administrator whether it is exempt from one or more of the requirements as specified in its application and the length of time of the exemption.

ESMA may extend the exemption period

upon its expiry by up to a further 12 months where there is good reason to do so

7. ESMA shall develop draft regulatory technical standards to specify further the recognition process, in particular the form and content of the application referred to in paragraph 4, the presentation of the information required in paragraph 5 and any delegation of tasks and responsibilities to national competent authorities with respect to those paragraphs.

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

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

Or. en

Amendment 175

Proposal for a regulation Article 22

Text proposed by the Commission

Amendment

Article 22

deleted

Requirement for authorisation

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

2. An authorised administrator shall comply at all times with the conditions for

authorisation and shall notify the competent authority of any material changes to the conditions for initial authorisation.

Or. en

Amendment 176

Proposal for a regulation Article 23 – paragraph 1

Text proposed by the Commission

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

Amendment

1. *A natural or legal person located in the Union that intends to act as an administrator of at least one critical benchmark shall apply* to the competent authority *designated under Article 29 of this Regulation for* the Member State in which *that person* is located.

Or. en

Amendment 177

Proposal for a regulation Article 23 – paragraph 1 a (new)

Text proposed by the Commission

1a. An authorised administrator shall comply at all times with the conditions laid down in this Regulation and shall notify the competent authority of any material changes thereof.

Or. en

Amendment 178

Proposal for a regulation

Article 23 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

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

2. The application in accordance with paragraph 1 shall be made **within 30 days of any agreement entered into by a supervised entity to use an index provided by the person as a reference to a financial instrument or financial contract or to measure the performance of an investment fund.**

Or. en

Amendment 179

Proposal for a regulation

Article 23 – paragraph 2 – point a

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 180

Proposal for a regulation

Article 23 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) within 30 working days of the administrator giving its consent in accordance with paragraph 2 of Article 25

deleted

to the referencing of the index in the financial instrument referred to in paragraph 1 of Article 25.

Or. en

Amendment 181

Proposal for a regulation Article 23 – paragraph 3

Text proposed by the Commission

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

Amendment

3. The applicant administrator shall provide all information necessary to satisfy the competent authority that **it** has established, at the time of authorisation **or registration**, all the necessary arrangements to meet the requirements laid down in this Regulation. **It shall also provide a total reference value, or an estimate thereof, where available, of each benchmark.**

Or. en

Amendment 182

Proposal for a regulation Article 23 – paragraph 4

Text proposed by the Commission

4. Within **15 working** days of receipt of the application, the relevant competent authority shall assess whether the application is complete and shall notify the applicant accordingly. If the application is incomplete, then the applicant shall submit the additional information required by the relevant competent authority.

Amendment

4. Within **20** days of receipt of the application, the relevant competent authority shall assess whether the application is complete and shall notify the applicant accordingly. If the application is incomplete, then the applicant shall submit the additional information required by the relevant competent authority.

Or. en

Amendment 183

Proposal for a regulation Article 23 – paragraph 5

Text proposed by the Commission

5. ***Within 45 working days of receipt of a complete application***, the relevant competent authority shall, examine the application and adopt a decision to authorise or refuse ***authorisation of the applicant administrator***. Within ***five working*** days of the adoption of a decision whether to authorise or refuse authorisation, the competent authority shall notify it to the administrator concerned. Where the competent authority refuses to authorise the applicant administrator, it shall give reasons for its decision.

Amendment

5. The relevant competent authority shall examine the application ***for an authorisation*** and adopt a decision to authorise or refuse ***it within 60 days of receipt of a complete application***.

Within 10 days of the adoption of a decision whether to authorise or refuse authorisation ***or of the registration***, the competent authority shall notify it to the ***applicant*** administrator concerned. Where the competent authority refuses to authorise the applicant administrator, it shall give reasons for its decision;

Or. en

Amendment 184

Proposal for a regulation Article 23 – paragraph 6

Text proposed by the Commission

6. The competent authority shall notify ESMA of any decision to authorise an applicant administrator ***or refuse authorisation and ESMA shall publish a list of administrators authorised in accordance with this Regulation. That list***

Amendment

6. The competent authority shall notify ESMA of any decision to authorise an applicant administrator within ***10 days***.

shall be updated within 7 working days of any notification referred to in this paragraph.

Or. en

Amendment 185

Proposal for a regulation Article 23 – paragraph 7

Text proposed by the Commission

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 39 concerning measures to further specify information to be provided in the application for authorisation taking into account the principle of proportionality and the costs to the *administrators* and competent authorities.

Amendment

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 37 concerning measures to further specify information to be provided in the application for authorisation ***and in the application for registration***, taking into account the principle of proportionality and the costs to the *applicants* and competent authorities.

Or. en

Amendment 186

Proposal for a regulation Article 23 a (new)

Text proposed by the Commission

Amendment

Article 23a

Application for Registration

1. A natural or legal person located in the Union that intends to act exclusively as an administrator of noncritical benchmarks shall apply for registration to the competent authority designated under Article 29 of this Regulation for the Member State in which this person is located

2. A registered administrator shall comply

at all times with the conditions laid down in this

Regulation and shall notify the competent authority of any material changes thereof.

3. An application in accordance with paragraph 1 shall be made within 30 days of any agreement entered into by a supervised entity to use an index provided by the person as a reference to a financial instrument or financial contract or to measure the performance of an investment fund.

4. The applicant administrator shall provide:

(a) documentation to satisfy the competent authority that it meets the requirements laid down in Articles 5(2), 5(3) 5c(2a), 5c(2b), 6 (where applicable), 7b and 15; and

(b) the total reference value, or estimate thereof, where available, of each benchmark

5. Within 15 days of receipt of the application, the relevant competent authority shall assess whether the application is complete and shall notify the applicant accordingly. If the application is incomplete, then the applicant shall submit the additional information required by the relevant competent authority.

6. The relevant competent authority shall register the applicant within 15 days of receipt of a complete application for registration.

7. Where the relevant competent authority believes a benchmark should be categorised as critical pursuant Article 13(1), it shall notify ESMA and the administrator within 30 days of receipt of the complete application.

8. Where the registering competent authority believes a benchmark should be categorised as critical pursuant Article

13(2a) or Article 13(2c) it shall notify ESMA and the administrator within 30 days after receipt of the complete application, and submit to ESMA its assessment pursuant to Article 13(2a) or Article 13(2c).

9. Where a registered administrator's benchmark is categorised as critical, the administrator shall apply for authorisation pursuant to Article 23 within 90 days following the receipt of the notification laid down in Article 13(2b) or the opinion laid down Article 13(2g).

10. The Commission shall be empowered to adopt delegated acts in accordance with Article 37 concerning measures to further specify information to be provided in the application for registration, taking into account the principle of proportionality the nature of the supervised entities seeking for registration under paragraph 1(iii) and the costs to the applicants and competent authorities.

Or. en

Amendment 187

Proposal for a regulation Article 24 – title

Text proposed by the Commission

Amendment

Withdrawal or suspension of authorisation

Withdrawal or suspension of authorisation
or registration

Or. en

Amendment 188

Proposal for a regulation Article 24 – paragraph 1 – introductory part

Text proposed by the Commission

1. The competent authority **shall** withdraw or suspend the authorisation of an administrator where the administrator:

Amendment

1. The competent authority **may** withdraw or suspend the authorisation **or registration** of an administrator where the administrator:

Or. en

Amendment 189

Proposal for a regulation

Article 24 – paragraph 1 – point b

Text proposed by the Commission

(b) has obtained the authorisation by making false statements or by any other irregular means;

Amendment

(b) has obtained the authorisation **or registration** by making false statements or by any other irregular means;

Or. en

Amendment 190

Proposal for a regulation

Article 24 – paragraph 1 – point c

Text proposed by the Commission

(c) no longer meets the conditions under which it was authorised; or

Amendment

(c) no longer meets the conditions under which it was authorised **or registered**; or

Or. en

Amendment 191

Proposal for a regulation

Article 24 – paragraph 2

Text proposed by the Commission

2. The competent authority shall notify

Amendment

2. The competent authority shall notify

ESMA of its decision within *five working days*.

ESMA of its decision within seven *days*.

Or. en

Amendment 192

Proposal for a regulation Article 24 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Following the adoption of a decision to suspend the authorisation or registration of an administrator, and where ceasing the benchmark would result in a force majeure event, or frustrate or otherwise breach the terms of any financial contract or financial instrument which references that benchmark within the meaning specified by the Commission in its delegated acts pursuant to Article 39(6), the provision of the benchmark may be permitted by the relevant competent authority of the Member State where the administrator is located until the decision of suspension has not been withdrawn. During this period of time the use of such benchmark by supervised entities shall be permitted only for financial instruments and financial contracts that already referenced the benchmark.

Or. en

Amendment 193

Proposal for a regulation Article 24 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Following the adoption of a decision

to withdraw the authorisation or registration of an administrator, Article 17(2) shall apply.

Or. en

Amendment 194

Proposal for a regulation Title 6 – chapter 2

Text proposed by the Commission

Amendment

Notification of benchmarks

deleted

Article 25

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

- 1. Whenever a competent authority becomes aware that an index is being used as a reference to a financial instrument, or that a request for admission to trading has been made to a trading venue supervised by that competent authority in respect of a financial instrument that references an index, that competent authority shall notify ESMA within 10 working days.*
- 2. Within 10 working days of any notification ESMA shall notify the relevant administrator of the benchmark providing full details of its use and requesting the administrator to confirm that it consents to this use of the benchmark within 10 working days.*
- 3. Without prejudice to Article 30 [MIFIR], where the administrator does not confirm to ESMA its consent within the time limit set out in paragraph 2, ESMA shall notify the relevant competent authority which shall request that the trading venue withdraw the listing of that financial instrument or refuse its admission to trading within 10 working*

days.

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

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

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

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

Or. en

Amendment 195

Proposal for a regulation Article 25 a (new)

Text proposed by the Commission

Amendment

Article 25a

Administrators' register

1. ESMA shall establish and maintain a public register that contains the following information:

- (a) the identities of the administrators authorised or registered under the provisions of Article 23 and the competent authority responsible for the supervision;**
- (b) the identities of the administrators that have notified ESMA of their consent referred to in Article 20(1)(c) and the third-country competent authority responsible for the supervision;**

(c) the identities of the administrators that acquired recognition in accordance with Article 21a and the third-country competent authority responsible for the supervision;

2. The register shall be updated within 10 days of ESMA receiving updated information from competent authorities.

Or. en

Amendment 196

Proposal for a regulation Article 26 – paragraph 1

Text proposed by the Commission

1. In accordance with Article 28 of Regulation (EU) No 1095/2010 a competent authority may delegate its tasks under this Regulation to the competent authority of another Member State.
Delegation of tasks shall not affect the responsibility of the delegating competent authority and the competent authorities shall notify ESMA of any proposed delegation 60 days prior to such delegation taking effect.

Amendment

1. In accordance with Article 28 of Regulation (EU) No 1095/2010 a competent authority may delegate its tasks under this Regulation to the competent authority of another Member State ***with its prior written consent.*** The competent authorities shall notify ESMA of any proposed delegation 60 days prior to such delegation taking effect.

Or. en

Amendment 197

Proposal for a regulation Article 26 – paragraph 2

Text proposed by the Commission

2. A competent authority may delegate some of its tasks under this Regulation to ESMA subject to the agreement of ESMA.
Delegation of tasks shall not affect the responsibility of the delegating competent

Amendment

2. A competent authority may delegate some of its tasks under this Regulation to ESMA subject to the agreement of ESMA.

authority.

Or. en

Amendment 198

Proposal for a regulation Article 26 – paragraph 3

Text proposed by the Commission

3. ESMA shall notify the Member States of a proposed delegation within seven days. ESMA shall publish details of any agreed delegation within **five working** days of notification.

Amendment

3. ESMA shall notify the Member States of a proposed delegation within seven days. ESMA shall publish details of any agreed delegation within **seven** days of notification.

Or. en

Amendment 199

Proposal for a regulation Article 28 – paragraph 1

Text proposed by the Commission

1. **The relevant** competent authority may request the **assistance** of another competent authority **with regard to on-site** inspections or investigations.

Amendment

1. **A** competent authority **of a Member State** may request the **cooperation of the competent authority of another Member State in a supervisory activity or for an on-site inspection or an investigation.** **Where a** competent authority **receives a request with respect to an on-site inspection or an investigation, it shall exercise its powers in any of the following ways:**

(a) carry out the inspections or investigations **itself;**

(b) allow the requesting authority to carry out the inspection or investigation;
or

(c) allow auditors or experts to carry out the inspection or investigation.

Amendment 200

Proposal for a regulation

Article 30 – paragraph 1 – point a

Text proposed by the Commission

(a) have access to any document and other data in any form, and to receive or take a copy thereof;

Amendment

(a) have access to any **relevant** document and other **relevant** data in any form, and to receive or take a copy thereof;

Or. en

Amendment 201

Proposal for a regulation

Article 30 – paragraph 1 – point b

Text proposed by the Commission

(b) require or demand information from any person **including those who are successively involved in the transmission of orders or conduct of the operations concerned**, as well as their principals, and if necessary, to summon and question any such person with a view to **obtain** information;

Amendment

(b) require or demand information from any person **involved in the provision of, and contribution to, a benchmark, including any service provider pursuant to Article 6(3b)**, as well as their principals, and if necessary, summon and question any such person with a view to **obtaining** information;

Or. en

Amendment 202

Proposal for a regulation

Article 30 – paragraph 1 – point c

Text proposed by the Commission

(c) in relation to **benchmarks whose input data is commodities**, request information from **market participants** on related spot

Amendment

(c) in relation to **commodity benchmarks**, request information from **contributors** on related spot markets according, **where**

markets according *to standardized* formats, **obtain** reports on transactions, and have direct access to traders' systems;

applicable, to standardised formats **and** reports on transactions, and have direct access to traders' systems;

Or. en

Amendment 203

Proposal for a regulation Article 30 – paragraph 1 – point h

Text proposed by the Commission

Amendment

(h) suspend trading of the financial instrument concerned that references a benchmark;

deleted

Or. en

Amendment 204

Proposal for a regulation Article 30 – paragraph 1 – point k

Text proposed by the Commission

Amendment

(k) take all necessary measures to ensure that the public is correctly informed about the provision of a benchmark, including by requiring **a person who has published or disseminated** the benchmark **to publish** a corrective statement about past contributions to or figures of the benchmark.

(k) take all necessary measures to ensure that the public is correctly informed about the provision of a benchmark, including by requiring **an administrator under whose responsibility the publication or dissemination of** the benchmark **has been carried out to publish** a corrective statement about past contributions to or figures of the benchmark .

Or. en

Amendment 205

Proposal for a regulation Article 30 – paragraph 2 – subparagraph 1 – introductory part

Text proposed by the Commission

The competent authorities shall exercise their functions and powers, referred to in paragraph 1, in any of the following ways:

Amendment

The competent authorities shall exercise their functions and powers, referred to in paragraph 1, **and the powers to impose sanctions referred to in Article 31, in accordance with their national legal frameworks** in any of the following ways:

Or. en

Amendment 206

Proposal for a regulation
Article 31 – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

(a) the **infringements** of Articles 5, 5a, 5b, 5c, 5d, 6, 7, 7a, 7b, 8, 9, 11, 14, 15, 17, 19, 23, 23a and of Annex I of this Regulation; and

Or. en

Amendment 207

Proposal for a regulation
Article 31 – paragraph 2 – introductory part

Text proposed by the Commission

2. In case of **a breach** referred to in paragraph 1, Member States shall, in conformity with national law, confer on competent authorities the power apply at least the following administrative measures and sanctions:

Amendment

2. In the event of **an infringement** referred to in paragraph 1, Member States shall, in conformity with national law, confer on competent authorities the power **to** apply at least the following administrative measures and sanctions:

Or. en

Amendment 208

Proposal for a regulation

Article 31 – paragraph 2 – point a

Text proposed by the Commission

(a) an order requiring the **person** responsible for the **breach** to cease the conduct and to desist from repeating that conduct;

Amendment

(a) an order requiring the **administrator or supervised entity** responsible for the **infringement** to cease the conduct and to desist from repeating that conduct;

Or. en

Amendment 209

Proposal for a regulation

Article 31 – paragraph 2 – point b

Text proposed by the Commission

(b) the disgorgement of the profits gained or losses avoided because of the **breach** where those can be determined;

Amendment

(b) the disgorgement of the profits gained or losses avoided because of the **infringement** where those can be determined;

Or. en

Amendment 210

Proposal for a regulation

Article 31 – paragraph 2 – point c

Text proposed by the Commission

(c) a public warning which indicates the **person** responsible and the nature of the **breach**;

Amendment

(c) a public warning which indicates the **administrator or supervised entity** responsible and the nature of the **infringement**;

Or. en

Amendment 211

Proposal for a regulation

Article 31 – paragraph 2 – point d

Text proposed by the Commission

(d) withdrawal or suspension of the authorisation of **a regulated entity**;

Amendment

(d) withdrawal or suspension of the authorisation of **an administrator**;

Or. en

Amendment 212

Proposal for a regulation

Article 31 – paragraph 2 – point e

Text proposed by the Commission

(e) a temporary ban prohibiting any natural person, who is held responsible for such **breach**, from exercising management functions in administrators or contributors;

Amendment

(e) a temporary ban prohibiting any natural person, who is held responsible for such **infringement**, from exercising management functions in administrators or **supervised** contributors;

Or. en

Amendment 213

Proposal for a regulation

Article 31 – paragraph 2 – point f – introductory part

Text proposed by the Commission

(f) the imposition of maximum administrative pecuniary sanctions of at least **three times** the amount of the profits gained or losses avoided because of the **breach** where those can be determined; or

Amendment

(f) the imposition of maximum administrative pecuniary sanctions of at least **twice** the amount of the profits gained or losses avoided because of the **infringement** where those can be determined; or

Or. en

Amendment 214

Proposal for a regulation

Article 31 – paragraph 2 – point f – point 1 – point i

Text proposed by the Commission

(i) for **breaches** of Articles 5(1), 6, 7(1), 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 22 and 23, EUR 500,000 or in the Member States where the Euro is not the official currency, the corresponding value in the national currency on the date of entry **to** force of this Regulation; or

Amendment

(i) for **infringements** of Articles 5, 5a, 5b, 5c, 5d, 6, 7, 7a, 7b, 8, 9, 11, 12a(2), 14, 15, 17, 18, 19 and 23 **and of Annex Ia**, EUR 500 000 or in the Member States where the Euro is not the official currency, the corresponding value in the national currency on the date of entry **into** force of this Regulation; or

Or. en

Amendment 215

Proposal for a regulation

Article 31 – paragraph 2 – point f – point 1 – point ii

Text proposed by the Commission

(ii) for **breaches of points (b) or (c) of Articles 7(1)** EUR 100,000 or in the Member States where the Euro is not the official currency, the corresponding value in the national currency on the date of entry **to** force of this Regulation;

Amendment

(ii) for **infringements of point (b) of Articles 7(1) or of Article 7(4)** EUR 100 000 or in the Member States where the Euro is not the official currency, the corresponding value in the national currency on the date of entry **into** force of this Regulation;

Or. en

Amendment 216

Proposal for a regulation

Article 31 – paragraph 2 – point f – point 2 – point i

Text proposed by the Commission

(i) for **breaches** of Articles 5(1), 6, 7(1), 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 22 **and 23**, whichever is the higher of EUR 1,000,000

Amendment

(i) for **infringements** of Articles 5, 5a, 5b, 5c, 5d, 6, 7, 7a, 7b, 8, 9, 11, 12a(2), 14, 15, 17, 18, 19, 23 **and of Annex Ia** whichever

or 10 % of its total annual turnover according to the last available accounts approved by the management body. Where the legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts according to Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income according to Directive 86/635/EC for banks and Directive 91/674/EC for insurance companies according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking or if the person is an association, 10% of the aggregate turnovers of its members; or

is the higher of EUR 1 000 000 or 10 % of its total annual turnover according to the last available accounts approved by the management body. Where the legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts according to Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income according to Directive 86/635/EC for banks and Directive 91/674/EC for insurance companies according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking or if the person is an association, 10% of the aggregate turnovers of its members; or

Or. en

Amendment 217

Proposal for a regulation

Article 31 – paragraph 2 – point f – point 2 – point ii

Text proposed by the Commission

(ii) for breaches of points (b) and (c) of Articles 6(1), whichever is the higher of EUR250,000 or 2 % of its total annual turnover according to the last available accounts approved by the management body; where the legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts according to Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income according to Directive 86/635/EC for banks and Directive 91/674/EC for insurance companies according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking or if the person is an

Amendment

(ii) for breaches of points (b) and (c) of Articles 6(1), whichever is the higher of EUR250,000 or 2 % of its total annual turnover according to the last available accounts approved by the management body; where the legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts according to Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income according to Directive 86/635/EC for banks and Directive 91/674/EC for insurance companies according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking or if the person is an

association, 10% of the aggregate turnovers of its members.

association, 10% of the aggregate turnovers of its members.

Or. en

Amendment 218

Proposal for a regulation Article 31 – paragraph 3

Text proposed by the Commission

3. By [12 months after entry into force of this Regulation] Member States shall notify the rules regarding paragraphs 1 and 2 to the Commission and ESMA. They shall notify the Commission and ESMA without delay of any subsequent amendment thereto.

Amendment

3. By [12 months after entry into force of this Regulation] Member States shall notify the rules regarding paragraphs 1 and 2 to the Commission and ESMA.

Member States may decide not to lay down rules for administrative sanctions for infringements which are subject to criminal sanctions under their national law. In that case, Member States shall communicate to the Commission and ESMA the relevant criminal law provisions along with the notification referred to in the first subparagraph.

They shall notify the Commission and ESMA without delay of any subsequent amendment thereto.

Or. en

Amendment 219

Proposal for a regulation Article 32 – title

Text proposed by the Commission

Exercise of supervisory and sanctioning powers

Amendment

Exercise of supervisory and sanctioning powers ***and obligation to cooperate***

Amendment 220

**Proposal for a regulation
Article 32 – paragraph 1 – point a(new)**

Text proposed by the Commission

Amendment

(aa) the criticality of the benchmark to financial stability and the real economy;

Or. en

Amendment 221

**Proposal for a regulation
Article 32 – paragraph 2 a**

Text proposed by the Commission

Amendment

2a. Where Member States have chosen, in accordance with Article 31, to lay down criminal sanctions for infringements of the provisions referred to in that Article, they shall ensure that appropriate measures are in place so that competent authorities have all the necessary powers to liaise with judicial authorities within their jurisdiction to receive specific information relating to criminal investigations or proceedings commenced for possible infringements of this Regulation and provide the same to other competent authorities and ESMA to fulfil their obligation to cooperate with each other and ESMA for the purposes of this Regulation.

Or. en

Amendment 222

Proposal for a regulation Article 32 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Competent authorities shall provide assistance to competent authorities of other Member States. In particular, they shall exchange information and cooperate in any investigation or supervisory activities. Competent authorities may also cooperate with competent authorities of other Member States with respect to facilitating the recovery of fines.

Or. en

Amendment 223

Proposal for a regulation Article 33 – paragraph 1

Text proposed by the Commission

Amendment

1. A decision imposing an administrative sanction or measure for ***breach*** of this Regulation shall be published by competent authorities on their official website immediately after the person sanctioned is informed of that decision. The publication shall include at least information on the type and nature of the ***breach*** and the identity of the persons responsible. This obligation does not apply to decisions imposing measures that are of an investigatory nature.

1. A decision imposing an administrative sanction or measure for ***infringement*** of this Regulation shall be published by competent authorities on their official website immediately after the person sanctioned is informed of that decision. The publication shall include at least information on the type and nature of the ***infringement*** and the identity of the persons responsible. This obligation does not apply to decisions imposing measures that are of an investigatory nature.

Or. en

Amendment 224

**Proposal for a regulation
Article 33 – paragraph 4 a (new)**

Text proposed by the Commission

Amendment

4a. Member States shall annually provide ESMA with aggregated information regarding all sanctions and measures imposed pursuant to Article 31. That obligation does not apply to measures of an investigatory nature. ESMA shall publish that information in an annual report.

Where Member States have chosen, in accordance with Article 31, to lay down criminal sanctions for infringements of the provisions referred to in that Article, their competent authorities shall annually provide ESMA with anonymised and aggregated data regarding all criminal investigations undertaken and criminal sanctions imposed. ESMA shall publish data on criminal sanctions imposed in an annual report.

Or. en

Amendment 225

**Proposal for a regulation
Article 34 – paragraph 1**

Text proposed by the Commission

Amendment

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

1. Within 30 days from the ***inclusion of a benchmark in the list of critical benchmarks pursuant to points (a) and (b) of Article 13(1), the relevant*** competent authority shall establish a college of competent authorities.

Or. en

Amendment 226

Proposal for a regulation

Article 34 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Where a competent authority intends to become a member of a college pursuant to the first subparagraph, it shall submit a request to the competent authority of the administrator containing evidence that the requirements of that provision are fulfilled. The relevant competent authority of the administrator shall consider the request and notify the requesting authority within **20 working** days of receipt of the request whether or not it considers those requirements to be fulfilled. Where it considers those requirements not to be fulfilled, the requesting authority may refer the matter to ESMA in accordance with paragraph 10.

Amendment

Where a competent authority intends to become a member of a college pursuant to the first subparagraph, it shall submit a request to the competent authority of the administrator containing evidence that the requirements of that provision are fulfilled. The relevant competent authority of the administrator shall consider the request and notify the requesting authority within **30** days of receipt of the request whether or not it considers those requirements to be fulfilled. Where it considers those requirements not to be fulfilled, the requesting authority may refer the matter to ESMA in accordance with paragraph 10.

Or. en

Amendment 227

Proposal for a regulation

Article 34 – paragraph 6 – subparagraph 1 – point b

Text proposed by the Commission

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

Amendment

(b) the decision-making process between the competent authorities **and the timeframe within which each decision shall be taken;**

Or. en

Amendment 228

Proposal for a regulation

Article 34 – paragraph 6 – subparagraph 1 – point d

Text proposed by the Commission

(d) the assistance to be provided under Article 14(3) ***in the enforcement of the measures referred to in Article 14(1) (a) and (b).***

Amendment

(d) the assistance to be provided under Article 14(5) and ***14(6)***

Or. en

Amendment 229

**Proposal for a regulation
Article 34 – paragraph 7**

Text proposed by the Commission

7. In the absence of agreement concerning the arrangements under paragraph 6, any members of the college, other than ESMA, may refer the matter to ESMA. The competent authority of the administrator shall give due consideration to any advice provided by ESMA concerning the written coordination arrangements before agreeing their final text. The written coordination arrangements shall be set out in a single document containing full reasons for any significant deviation from the advice of ESMA. The competent authority of the administrator shall transmit the written coordination arrangements to the members of the college and to ESMA.

Amendment

7. The competent authority of the administrator shall give due consideration to any advice provided by ESMA concerning the written coordination arrangements before agreeing their final text. The written coordination arrangements shall be set out in a single document containing full reasons for any significant deviation from the advice of ESMA. The competent authority of the administrator shall transmit the written coordination arrangements to the members of the college and to ESMA.

Or. en

Amendment 230

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

Text proposed by the Commission

Before taking any measures referred to Article **14, 23, 24 and 31** the competent authority of the administrator shall consult the members of the college. The members of the college shall do everything reasonable within their power to reach an agreement.

Amendment

Before taking any measures referred to **in Article 24 and, where applicable, Articles 14 and 23**, the competent authority of the administrator shall consult the members of the college. The members of the college shall do everything reasonable within their power to reach an agreement **within the timeframe specified in the written arrangements referred to in paragraph 6.**

Or. en

Amendment 231

**Proposal for a regulation
Article 34 – paragraph 9**

Text proposed by the Commission

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

Amendment

9. In the absence of agreement between the members of the college, **competent authorities other than ESMA may refer to ESMA any of the following situations:**

- (a) where a competent authority has not communicated essential information;**
- (b) where, following a request made under paragraph 3, the competent authority of the administrator has notified the requesting authority that the requirements of that paragraph are not fulfilled or where it has not acted upon such request within a reasonable time;**

(c) where the competent authorities have failed to agree the matters set out in paragraph 6;

(d) where there is a disagreement regarding the measure to be taken in accordance with Articles 23 and 24.

*Where [20] days after referral to ESMA the issue is not settled, the competent authority of the administrator shall **take the final decision and provide a detailed explanation in writing** of its decision to the authorities referred to in the first subparagraph and to ESMA.*

Where ESMA considers that the competent authority of the administrator has taken any measures referred to in paragraph 8 which may not be in conformity with Union law it shall act in accordance with Article 17 of Regulation (EU) No 1095/2010.

Or. en

Amendment 232

Proposal for a regulation Article 34 – paragraph 9 a (new)

Text proposed by the Commission

Amendment

9a. Any of the competent authorities within a college that fails to agree on any of the measures to be taken in accordance with points (a), (b) and (d) of paragraph 4 of Article 14 may refer the matter to ESMA. Without prejudice to Article 258 TFEU, ESMA may act in accordance Article 19 of Regulation (EU) No 1095/2010.

Or. en

Amendment 233

**Proposal for a regulation
Article 34 – paragraph 10**

Text proposed by the Commission

Amendment

10. Competent authorities other than ESMA may refer to ESMA any of the following situations: *deleted*

(a) where a competent authority has not communicated essential information;

(b) where, following a request made under paragraph 3, the competent authority of the administrator has notified the requesting authority that the requirements of that paragraph are not fulfilled or where it has not acted upon such request within a reasonable time;

(c) where the competent authorities have failed to agree the matters set out in paragraph 6;

(d) where the benchmark is a critical benchmark, where there is a disagreement with the measure taken in accordance with Articles 14, 23, 24 and 31.

Without prejudice to Article 258 TFEU, ESMA may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010. ESMA may also assist the competent authorities in developing consistent cooperation practices on its own initiative in accordance with the second subparagraph of Article 19(1) of that Regulation.

Or. en

Amendment 234

**Proposal for a regulation
Article 37 – paragraph 2**

Text proposed by the Commission

2. The power to adopt delegated acts referred to in Articles 3(2), **5(3)**, **7(3)**, 9(3), 11(4), 12(3), **16(2)**, **and 23(7)** shall be conferred on the Commission for an indeterminate period of time from [date of entry into force of this Regulation].

Amendment

2. The power to adopt delegated acts referred to in Articles 3(2), **5e**, **7c**, 9(3), 11(4), 12(3), **13(2c)**, **23(7) and 39(6)** shall be conferred on the Commission for an indeterminate period of time from [date of entry into force of this Regulation].

Or. en

Amendment 235

Proposal for a regulation
Article 37 – paragraph 3

Text proposed by the Commission

3. The delegation of power referred to in Articles 3(2), **5(3)**, **7(3)**, 9(3), 11(4), 12(3), **16(2)**, **and 23(7)** may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of power specified in that decision. It shall take effect on the day following the publication of the decision in the Official Journal of the European Union or on a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Amendment

3. The delegation of power referred to in Articles 3(2), **5e**, **7c**, 9(3), 11(4), 12(3), **13(2c)**, **23(7) and 39(6)** may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of power specified in that decision. It shall take effect on the day following the publication of the decision in the Official Journal of the European Union or on a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Or. en

Amendment 236

Proposal for a regulation
Article 37 – paragraph 5

Text proposed by the Commission

5. A delegated act adopted pursuant to Articles 3(2), **5(3)**, **7(3)**, 9(3), 11(4), 12(3), **16(2)**, **and 23(7)** shall enter into force only

Amendment

5. A delegated act adopted pursuant to Articles 3(2), **5e**, **7c**, 9(3), 11(4), 12(3), **13(2c)**, **23(7) and 39(6)** shall enter into

if no objection has been expressed by either the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

force only if no objection has been expressed by either the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Or. en

Amendment 237

Proposal for a regulation Article 39 – paragraph 1

Text proposed by the Commission

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

Amendment

1. **A natural or legal person** providing a benchmark on [the date of entry into force of this Regulation] shall apply for authorisation **or registration** under Article 23 within [6 months after the date of application].

Or. en

Amendment 238

Proposal for a regulation Article 39 – paragraph 2

Text proposed by the Commission

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

Amendment

2. **A natural or legal person** that submitted an application for authorisation **or registration** in accordance with paragraph 1 may continue to produce an existing benchmark **which may be used by supervised entities** unless and until such authorisation **or registration** is refused.

Amendment 239**Proposal for a regulation
Article 39 – paragraph 3***Text proposed by the Commission*

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

Amendment

3. Where an existing benchmark does not meet the requirements of this Regulation, but changing that benchmark to conform with the requirements of this Regulation would result in a force majeure event, frustrate or otherwise breach the terms of any financial contract or financial instrument which references that benchmark, ***the continued use of the benchmark in existing financial contracts and financial instruments shall be permitted by the relevant competent authority of the Member State where the natural or legal person providing the benchmark is located . No financial instruments or financial contracts shall reference that benchmark after the entry into application of this Regulation.***

Amendment 240**Proposal for a regulation
Article 39 – paragraph 4***Text proposed by the Commission*

4. ***The use of a benchmark shall be permitted by the relevant competent authority of the Member State where the administrator is located until such time as the benchmark references financial instruments and financial contracts worth no more than 5% by value of the financial instruments and financial contracts that***

Amendment

4. ***Unless the Commission has adopted an equivalence decision as referred to in paragraph 2 or paragraph 2a of Article 20, supervised entities in the Union shall only use a benchmark provided by an administrator located in a third country, where it is used as a reference in existing financial instruments and financial***

referenced this benchmark at the time of entry into force of this Regulation. No financial instruments or financial contracts shall reference such *an existing* benchmark after the entry into application of this Regulation.

contracts, at the time of entry into force of this Regulation. No *new* financial instruments or financial contracts *in the Union* shall reference such benchmark after the entry into application of this Regulation.

Or. en

Amendment 241

Proposal for a regulation Article 39 a (new)

Text proposed by the Commission

Amendment

Article 39a

Deadline for updating the prospectuses and key information documents

Article 19(2) is without prejudice to existing prospectuses approved under Directive 2003/71/EC prior to the entry into force of this Regulation. For prospectuses approved prior to the entry into force of this Regulation under Directive 2009/65/EC the underlying documents shall be updated at the first opportunity or at the latest within [twelve] months of entry into force of this Regulation.

Or. en

Amendment 242

Proposal for a regulation Article 40 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) the value of the suitability requirement under Article 18.

deleted

Amendment 243

**Proposal for a regulation
Article 40 – paragraph 1 a (new)**

Text proposed by the Commission

Amendment

1a. The Commission shall review the evolution of international principles applicable to financial benchmarks and of legal frameworks and supervisory practices in third countries concerning the provision of financial benchmarks and report to the Parliament and to the Council every four years after the date of the entry into force of this Regulation. This report shall be accompanied by a legislative proposal, if appropriate.

Or. en

Amendment 244

**Proposal for a regulation
Annex 1**

Text proposed by the Commission

Amendment

[...]

deleted

Or. en

Amendment 245

**Proposal for a regulation
Annex 1 a (new)**

Text proposed by the Commission

Amendment

Commodity Benchmarks

Methodology

1. The administrator shall formalise, document, and make public any methodology that it uses for a benchmark calculation. At a minimum, a methodology shall contain and describe:

(a) all criteria and procedures that are used to develop the benchmark, including how the administrator uses the input data including the specific volume, concluded and reported transactions, bids, offers and any other market information in its assessment or assessment time periods or windows, why a specific reference unit is used, how the administrator collects such input data, the guidelines that control the exercise of judgment by assessors and any other information, such as assumptions, models or extrapolation from collected data that are considered in making an assessment;

(b) its procedures and practices that are designed to ensure consistency between its assessors in exercising their judgment;

(c) the relative importance that shall be assigned to each criterion used in benchmark calculation, in particular the type of input data used, and the type of criterion used to guide judgement so as to ensure the quality and integrity of the benchmark calculation;

(d) criteria that identify the minimum amount of transaction data required for a particular benchmark calculation. If no such minimum threshold is established, the reasons why not shall be explained, including setting out the procedures that will apply in circumstances where there is no transaction data;

(e) criteria that address the assessment periods where the submitted data fall below the methodology's recommended transaction data threshold or the requisite administrator's quality standards, including any alternative methods of

assessment including theoretical estimation models. These criteria shall explain the procedures used where no transaction data exist;

(f) criteria for timeliness of contributions of input data and the means for such contributions of input data whether electronically, by telephone, or otherwise;

(g) criteria and procedures that address assessment periods where one or more contributors submit input data that constitute a significant proportion of the total input data for that benchmark. The administrator shall also define in its criteria and procedures for what constitutes a significant proportion for each benchmark calculation;

(h) criteria according to which transaction data may be excluded from a benchmark calculation.

2. The administrator shall disclose to the public, by means that ensure fair and easy access, including on its website, the methodology it uses for each of the benchmarks produced and published or, when applicable, for each family of benchmarks produced and published.

3. The administrator shall also describe and publish :

(a) the rationale for adopting a particular methodology, including any price adjustment techniques and a justification of why the time period or window within which input data is accepted is a reliable indicator of physical market values;

(b) the procedure for internal review and approval of a given methodology, as well as the frequency of this review; and

(c) the procedure for external review of a given methodology, including the procedures to gain market acceptance of the methodology through consultation with users on important changes to their benchmark calculation processes.

Accountability

4. For a noncritical benchmark, the administrator shall publish and maintain a compliance statement for each benchmark or family of benchmarks. In the compliance statement, the administrator shall report on the administrator's compliance with the benchmark methodology and this Regulation, in particular with the requirements of this Annex, with the exception of point 1, 1a, 2. Where the administrator does not comply with the provisions set out in the relevant sections of this Annex, the compliance statement will clearly establish why such deviation is appropriate. The administrator shall appoint an independent external auditor to review, and report on, the accuracy of the administrator's compliance statement. Such an audit shall take place at least every two years and whenever material changes to the benchmark have occurred.

Changes to methodology

5. The administrator shall adopt and make public to its users clear procedures and the rationale for any proposed material change in its methodology. Those procedures shall be consistent with the overriding objective that an administrator must ensure the continued integrity of its benchmark calculations and implement changes for the good order of the particular market to which such changes relate. Such procedures shall provide:

(a) advance notice in a clear timeframe that gives users sufficient opportunity to analyse and comment on the impact of such proposed changes, having regard to the administrator's calculation of the overall circumstances;

(b) for users' comments, and the administrator's response to those comments, to be made accessible to all market users after any given consultation

period, except where the commenter has requested confidentiality.

6. The administrator shall regularly examine its methodologies for the purpose of ensuring that they reliably reflect the physical market under assessment and shall include a process for taking into account the views of relevant users.

Quality and integrity of benchmark calculations

7. The administrator shall:

(a) specify the criteria that define the physical commodity that is the subject of a particular methodology;

(b) give priority to input data in the following order, where consistent with the administrator's methodologies:

(i) concluded and reported transactions;

(ii) bids and offers;

(iii) other information.

If concluded and reported transactions are not given priority, the reasons for this should be explained pursuant to point 6(b).

(c) employ sufficient measures designed to use input data, reflecting bona fide transactions, ensuring that transactions have been executed at arm's length and particular attention is paid to inter-affiliate transactions;

(d) establish and employ procedures to identify anomalous or suspicious transaction data and keep records of decisions to exclude transaction data from the administrator's benchmark calculation process;

(e) encourage contributors to submit all of their input data that falls within the administrator's criteria for that calculation. Administrators shall seek, so far as they are able and is reasonable, to ensure that data submitted are representative of a contributor's actual

concluded transactions; and

(f) employ a system of appropriate measures so that, to the extent possible, contributors comply with an administrator's quality and integrity standards for input data.

8. The administrator shall describe and publish with each calculation, to the extent reasonable and without prejudicing due publication of the benchmark:

(a) a concise explanation, sufficient to facilitate a benchmark subscriber's or competent authority's ability to understand how the calculation was developed including, at a minimum, the size and liquidity of the physical market being assessed (such as the number and volume of transactions submitted), the range and average volume and range and average price, and indicative percentages of each type of input data that have been considered in a calculation; terms referring to the pricing methodology shall be included such as "transaction-based", "spread-based" or "interpolated or extrapolated";

(b) a concise explanation of the extent to which, and the basis upon which, any judgement including the exclusion of data which otherwise conformed to the requirements of the relevant methodology for that calculation, basing prices on spreads or interpolation, extrapolation, or weighting bids or offers higher than concluded transactions, if any, was exercised in any calculation.

Integrity of the Reporting Process

9. The administrator shall:

(a) specify the criteria that define who may submit input data to the administrator;

(b) have quality control procedures in place to evaluate the identity of a contributor and any employee of a

contributor who reports input data and the authorisation of such person to report input data on behalf of a contributor;

(c) specify the criteria applied to employees of a contributor who are permitted to submit input data to an administrator on behalf of a contributor;

(d) encourage contributors to submit transaction data from back office functions and seek corroborating data from other sources where transaction data is received directly from a trader; and

(e) implement internal controls and written procedures to identify communications between contributors and assessors that attempt to influence a calculation for the benefit of any trading position (whether of the contributor, its employees or any third party), attempt to cause an assessor to infringe the administrator's rules or guidelines or identify contributors that engage in a pattern of submitting anomalous or suspicious transaction data. Those procedures shall include provision for escalation by the administrator of inquiry within the contributor's company. Controls shall include cross-checking market indicators to validate submitted information.

Assessors

10. In relation to the role of an assessor, the administrator shall:

(a) adopt and have explicit internal rules and guidelines for selecting assessors, including their minimum level of training, experience and skills, as well as the process for periodic review of their competence;

(b) have arrangements in place to ensure that calculations can be made on a consistent and regular basis;

(c) maintain continuity and succession planning in respect of its assessors in

order to ensure that calculations are made consistently and by employees who possess the relevant levels of expertise;

(d) institute internal control procedures to ensure the integrity and reliability of calculations. At a minimum, such internal controls and procedures shall require the on-going supervision of assessors to ensure that the methodology was properly applied.

Audit Trails

11. The administrator shall have rules and procedures in place to document contemporaneously relevant information, including:

(a) all input data;

(b) the judgements that are made by assessors in reaching each benchmark calculation;

(c) whether a calculation excluded a particular transaction which otherwise conformed to the requirements of the relevant methodology for that calculation, and the rationale for doing so;

(d) the identity of each assessor and of any other person who submitted or otherwise generated any of the information in points (a), (b) or (c).

12. The administrator shall have rules and procedures in place to ensure that an audit trail of relevant information is retained for at least five years in order to document the construction of its calculations.

Conflicts of interest

13. The administrator shall establish adequate policies and procedures for the identification, disclosure, management, mitigation, and avoidance of conflicts of interest and the protection of the integrity and independence of calculations. These policies and procedures shall be reviewed and updated regularly and shall:

(a) ensure that benchmark calculations are not influenced by the existence of, or potential for, a commercial or personal business relationship or interest between the administrator or its affiliates, its personnel, clients, any market participant or persons connected with them;

(b) ensure that the administrator personnel's personal interests and business connections are not permitted to compromise the administrator's functions, including outside employment, travel, and acceptance of entertainment, gifts and hospitality provided by the administrator's clients or other commodity market participants;

(c) ensure, in respect of identified conflicts, an appropriate segregation of functions within the administrator by way of supervision, compensation, systems access and information flows;

(d) protect the confidentiality of information submitted to or produced by the administrator, subject to the disclosure obligations of the administrator;

(e) prohibit administrator managers, assessors and other employees from contributing to a benchmark calculation by way of engaging in bids, offers and trades on either a personal basis or on behalf of market participants;

(f) effectively address identified conflicts of interest which may exist between benchmark provision by the administrator (including all employees who perform or otherwise participate in benchmark calculation responsibilities), and any other business of the administrator.

14. The administrator shall ensure that its other business operations have in place appropriate procedures and mechanisms designed to minimise the likelihood that conflicts of interest will affect the integrity of benchmark calculations.

15. The administrator shall ensure that it has segregated reporting lines amongst its managers, assessors and other employees and from the managers to the administrator's most senior level management and its board to ensure:

(a) that the administrator satisfactorily implements the requirements of this Regulation; and

(b) that responsibilities are clearly defined and do not conflict or cause a perception of conflict.

16. The administrator shall disclose to its users as soon as it becomes aware of a conflict of interest arising from the ownership of the administrator.

Complaints

17. The administrator shall have in place and publish written procedures for receiving, investigating and retaining records concerning complaints made about an administrator's calculation process. Such a complaint mechanism shall ensure that:

(a) an administrator shall have in place a mechanism detailed in a written complaints handling policy, through which its subscribers may submit complaints on whether a specific benchmark calculation is representative of market value, proposed benchmark calculation changes, applications of methodology in relation to a specific benchmark calculation and other editorial decisions in relation to the benchmark calculation processes;

(b) there is a process and target timetable for handling of complaints;

(c) formal complaints made against an administrator and its personnel are investigated by that administrator in a timely and fair manner;

(d) the inquiry is conducted independently of any personnel who may be involved in

the subject of the complaint;

(e) an administrator shall aim to complete its investigation promptly;

(f) an administrator shall advise the complainant and any other relevant parties of the outcome of the investigation in writing and within a reasonable period;

(g) there is recourse to an independent third party appointed by the administrator, no later than six months from the time of the original complaints, if a complainant is dissatisfied with the way a complaint has been handled by the relevant administrator or with the administrator's decision; and

(h) all documents relating to a complaint, including those submitted by the complainant as well as an administrator's own record, are retained for a minimum of five years.

18. Disputes as to daily pricing determinations, which are not formal complaints, shall be resolved by the administrator with reference to its standard appropriate procedures. If a complaint results in a change in price, that shall be communicated to the market as soon as possible.

Or. en

Amendment 246

Proposal for a regulation Annex 2

Text proposed by the Commission

Amendment

[...]

deleted

Or. en

Amendment 247

Proposal for a regulation
Annex 3

Text proposed by the Commission

Amendment

[...]

deleted

Or. en

EXPLANATORY STATEMENT

The manipulation of the LIBOR and foreign exchange benchmarks, as well as the alleged manipulation of other indices has highlighted the importance of benchmarks and their vulnerabilities. In response to these revelations, the EU amended the Market Abuse legislation, to clarify that manipulation of benchmarks is illegal and to bring such conduct into the remit of criminal law.

However, a comprehensive approach to regulating benchmark manipulation has to go beyond the mere recognition of the illegality of such acts. It must also consider the macroprudential risks associated with the manipulation of widely-used benchmarks. Indeed, the continued extensive use of a limited number of very large benchmarks, even where the vulnerabilities and flaws of these benchmarks are known or suspected, underlines the importance of some benchmarks to the smooth functioning and stability of financial, commodities and other markets, as well as to the wider economy. These systemic considerations warrant and require additional legislative action, at least for the more widely-used benchmarks, to improve governance arrangements and mitigate conflicts of interest as well as other weaknesses.

Additional legislation however, also has to consider that a great many businesses, as well as households, investors and financial institutions rely on accessible benchmarks from all over the EU and beyond on a daily basis to efficiently conduct business, do trade, invest, hedge risks and provide or obtain credit. Therefore, taking account of the stability and efficiency of markets and the wider economy also demands that legislative action avoids restricting the number and variety of benchmarks being offered and used in the Union as much as possible. Indeed, greater availability of benchmarks is needed to reduce the systemic importance of some large benchmarks and strengthen the user's ability to impose effective market discipline and pre-empt or deter benchmark manipulation.

From this follows three key objectives: first, to enhance governance systems and standards, particularly for widely-used and systemically relevant benchmarks and to reduce their vulnerability to manipulation and abuse; second, to enhance transparency by making more information available to users of all benchmarks so as to allow them to make informed decisions; and third, to maintain the supply of and access to a wide variety of benchmarks by applying governance requirements proportionately. This includes providing a level-playing field for all administrators, both those based inside the EU and those located in third countries.

Scope

As vulnerability to manipulation can be and has been found across all types of benchmarks, the Regulation's scope has to be broad in principle. However, it has to be recognised that in some cases indices should not be considered to be benchmarks. This is true of internal reference prices produced by central counterparties, or of benchmarks that are constructed by use of another index or combination of indices without adding new input data.

Determining Criticality

In order to be able to apply proportionality appropriately, the definition of systemically-important, 'critical', benchmarks is crucial. A two-tiered approach is needed in determining the criticality of benchmarks: firstly, benchmarks with very large reference values (in excess

of EUR 500 billion, as calculated over an appropriate period of time) should be deemed to be critical. However, such a rigid quantitative threshold alone is not suited to an environment of rapidly-evolving markets, where benchmarks with smaller reference values may also yield macroprudential risks. Therefore, discretion should be given to competent authorities to include other benchmarks in the critical benchmarks category on the basis of criteria that can assess the systemic importance of a benchmark. In this exercise, it is important to apply the same criteria throughout the Union. Therefore, where benchmarks have exposures in multiple Member States, a final decision on its criticality must be made at EU-level. For purely national critical benchmarks, such decisions can be left to Member States.

Proportionality and transparency

For critical benchmarks, it is appropriate to impose binding governance requirements in line with and based on internationally-agreed principles drawn up by IOSCO. Such requirements do have to encompass a proportionate approach and take into account that different types of benchmarks capture different markets and economic realities, or use different types of input data.

For benchmarks that lack criticality, the emphasis should be on increasing transparency to users and end-users (consumers). This can be achieved by requiring administrators of such benchmarks to publish a benchmark statement. Furthermore, administrators should make available a compliance statement, verified by an independent auditor, to indicate the extent of the administrator's compliance with other governance requirements. Imposing extensive binding requirements on noncritical indices, would risk creating unnecessary, substantial costs. Such costs can significantly reduce the supply of benchmarks and to the extent that they were passed on to end users, would limit access and increase burdens on European businesses and households at a time when enhanced growth and international competitiveness should be our highest priorities.

In this context, tailored arrangements are also needed for benchmarks based on regulated data and for commodity benchmarks based on contributions from unsupervised contributors. These arrangements should be in line with relevant international standards.

Third countries

Ensuring access to a large number of benchmarks, vital to the continued efficient functioning of the financial system and the real economy, must include making workable provisions for third-country benchmark administrators. Currently, no jurisdiction outside the EU has put in place a comprehensive legislative framework and no significant developments are expected in the foreseeable future. Therefore, a third-country regime based on equivalence of jurisdiction is likely to be unworkable at present, although possible in the future. At the same time, a level playing field for EU-based administrators has to be guaranteed. Therefore, additional tools are needed to ensure EU users can maintain access to third-country benchmarks. Hence, partial equivalence decisions (i.e. equivalence decisions aimed at specific administrators or specific benchmarks) and recognition of individual third-country administrators should be permitted, at least until equivalence decisions for a jurisdiction as a whole can be adopted.