OPINION

of the Committee on Industry, Research and Energy

for the Committee on Economic and Monetary Affairs


Rapporteur: Marisa Matias
SHORT JUSTIFICATION

A vast majority of European citizens are affected, directly or indirectly, by indices. All the financial instruments have been impacted by the use of indices: derivatives, equities and bonds as well as physical and commodity markets, having these last ones faced a massive increase in volumes of commodity index funds over the past 10 years.

A wide variety of benchmarks are currently produced using different methodologies by different providers, ranging from public entities to independent dedicated benchmarks providers.

Many indices and benchmarks have become de facto public goods. As such, their social benefits should be maximized while the harm to the real economy and society as a whole resulting from their potential malproduction or manipulation should be under the tightest scrutiny and subject to criminal and pecuniary sanctions.

There is currently an obvious regulatory gap in that supervisory authorities exert oversight of financial instruments but not on the production and governance of indices that determine the risk profile, performance and economic value of these instruments. In this sense, there is an urgent need of proper regulation of indices as their use has been indispensable for blueprint for investment strategies or reference for financial instruments.

Although the Commission proposal pretends to regulate the production and use of all the indices used as benchmarks, the Legal Opinion of the ITRE committee will focus mainly on the commodity price assessments provided by commodity price reporting agencies (PRAS) and physical energy markets. Regulation (EU) No1227/2011 of the European Parliament and of the Council on the wholesale energy market integrity contains certain provisions which prohibit the manipulation of benchmarks that are used for wholesale energy markets. However these provisions do not address the whole range of vulnerabilities in the progress of producing benchmarks.

Price assessment models show considerable variation – some involve actual reported transactions while others rely on reporters judging bids, offers and information on deals from traders who may have a vested interest in moving the market leaving the door open to manipulation.

Allegations of attempted manipulation of commodity price assessments provided by commodity price reporting agencies (PRA) are also under investigation by the competent authorities and IOSCO has carried out a review of oil price assessments by PRAs. This manipulation can not only endanger the investor but as well the end user, or final consumer, as this will determine the price may households will pay for gas or any energy supply.

PRA-assessed benchmark prices are to varying degrees used as references for transactions in a number of physical markets, namely the oil market, exchanges, clearing houses and over-the-counter (“OTC”) commodity derivative contracts, making these prices significant to the functioning of these markets and clearing houses.
The use of price assessment as well as benchmarks on commodity derivatives markets have a huge impact in several issues such as; the adequacy of a commodity derivatives contract's design, the accuracy and integrity of price formation in a commodity derivatives contract that references a potentially deficient price assessment, the transparency of the various factors impacting physical derivatives pricing including PRA assessment methodologies and processes, and the susceptibility of a physical derivatives contract to manipulation.

The integrity of benchmarks is critical to the pricing of many financial instruments, such as interest rate swaps, and commercial and non-commercial contracts, such as mortgages. If a benchmark is manipulated this will cause significant losses to some of the investors that own financial instruments whose value is determined by a reference to the benchmark. By sending out deceptive signals about the state of an underlying market it may distort the real economy. Benchmarks are susceptible to manipulation where conflicts of interest and discretion exists in the benchmarks process and these are not subject to adequate governance and controls.

Although the application of administrative and criminal sanctions for the manipulation of indices is already foreseen on the Market Abuse Directive and Regulation it is now necessary to regulate and prevent the risks of manipulation linked to indices' production and use. In order to protect investors it is necessary that benchmarks are robust, reliable, fit for purpose and subject to adequate governance control. In the light of these considerations we welcome the legislative initiative and would like to reinforce the idea that this proposal should go in line with the IOSCO principles.

Given the range and impact of the indices on our financial system as well as in physical energy markets the current situation of self-regulations has proved to be ineffective. Making benchmarks a regulated activity is of major importance to restore confidence and to enforce neutrality/independence, by avoiding and prohibiting the conflicts of interest; to promote transparency through the obligation of presenting all the data and methodologies to the public and supervisors; to safeguard the appropriateness of using index in a financial instrument or contracts with the aim to protect the end-users; to comply with accuracy with harmonized methodology and quality of the data used to define an index.

In face of the exposed concerns, this proposal should be able to:

- Minimize the vulnerability of the assessment process to factors that could undermine the reliability of PRA assessment as an indicator of physical market values or increase the susceptibility of commodity derivatives contract to manipulation or price distortion.
- Facilitate a market authority's determination as to whether a PRA-assessed price that is referenced by the terms of a commodity derivatives contract accurately reflects the transactions in the physical market that it purports to measure, the data are sufficient to represent that physical market and such data are bona fide.
- Facilitate a market authority's ability to detect, deter and if necessary take enforcement action with respect to manipulation or other abusive conduct.

In order to promote the reliability of the PRA assessments and the enforcement of the PRAs to comply with the rules and methodology proposed by this regulation, we strongly support that the market authorities should prohibit trading in any commodity derivatives contract that references as PRA-assessed price unless that assessment follows the EU legislation or, in case
of a third country the IOSCO Principles for Oil Price Reporting Agencies.

We also believe that the integrity of the production of indices requires that limits are established to the voluntary nature of the flow of information from contributors do administrators of indices or benchmarks. This is why we feel that the scope of benchmarks covered by the possibility of mandatory contributions should be wider.

Finally, because changes in methodology are necessary to ensure the quality of benchmarks but can have a disruptive effect for market agents using it, we suggest the implementation of transition periods after changes in methodology, whenever possible, during which the benchmarks will be calculated according to both the previous and the new methodology.

AMENDMENTS

The Committee on Industry, Research and Energy calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to take into account the following amendments:

Amendment 1
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 vary 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

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, but their form depends greatly on the input data used. It should be permitted to make benchmarks subject to adequate governance and control requirements, without, however, infringing the proportionality principle. Since the vulnerability and importance of a benchmark vary over time, restricting the scope by reference to currently important or vulnerable indices would not address the
in the future, so that, in their regard, even a minor manipulation may have significant impact.

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 2

Proposal for a regulation
Recital 9

Text proposed by the Commission

(9) The critical determinant of the scope of this Regulation should be whether the output value of the benchmark determines the value of a financial instrument, financial contract or measures the performance of an investment fund. Therefore the scope should not be dependent on the nature of the input data. **Benchmarks calculated from economic input data, such as share prices and non-economic number or values such as weather parameters should thus be included.** The framework should cover those benchmarks subject to these risks, but should also provide for a proportionate response to the risks that different benchmarks pose. This Regulation should therefore cover all benchmarks which are used to price financial instruments **listed or traded on regulated venues.**

Amendment

(9) The critical determinant of the scope of this Regulation should be whether the output value of the benchmark, **which** determines the value of a financial instrument or financial contract or measures the performance of an investment fund, **can be manipulated.** Therefore the scope should be dependent on the nature of the input data. The framework should cover those benchmarks subject to these risks, but should also provide for a proportionate response to the risks that different benchmarks pose. This Regulation should therefore cover all benchmarks which are used to price financial instruments. **In the case of commodity benchmarks, however, the IOSCO (International Organisation of Securities Commissions) Principles for Oil Price Reporting Agencies, published on 5 October 2012, and the IOSCO review of those principles, due to be published in May or June 2014, should be taken into account.**

Amendment 3

Proposal for a regulation
Recital 9 a (new)
Text proposed by the Commission

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

Amendment

Text proposed by the Commission

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

Amendment

(29) Different types of benchmark and different benchmark sectors have different characteristics, vulnerabilities and risks. The provisions of this Regulation should be further specified for particular benchmark sectors and types. Interbank interest rate benchmarks are benchmarks that play an important role in the transmission of monetary policy and so it is necessary to specify how these provisions would apply to these benchmarks in this Regulation. Commodity benchmarks are widely used and have sector-specific characteristics and so it is necessary to specify whether and to what extent these benchmarks may be exempted from the provisions of this Regulation.
Amendment 5
Proposal for a regulation
Recital 37 a (new)

Text proposed by the Commission

(37a) In the cases where this Regulation captures or potentially captures supervised entities and markets covered by Regulation 1227/2011/EU of the European Parliament and of the Council on wholesale energy market integrity and transparency (REMIT), the Agency for the Cooperation of Energy Regulators (ACER) should be consulted by ESMA (European Securities and Markets Authority) in order to draw on ACER’s expertise in energy markets and to mitigate dual-regulation.

Justification

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

Amendment 6
Proposal for a regulation
Recital 41

Text proposed by the Commission

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

Justification

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

Amendment 7

Proposal for a regulation

Article 2 – paragraph 1

Text proposed by the Commission

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

Amendment

1. This Regulation shall apply to the provision of benchmarks within the Union, the contribution of input data to certain benchmarks and the use of certain benchmarks within the Union. It shall encompass the IOSCO principles and shall be applied in proportion to the size of, and the risks arising from, particular benchmarks, their administrators, and the benchmark-setting process, including the number and types of contributors.
Amendment 8
Proposal for a regulation
Article 2 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) reference prices or settlement prices produced by central counterparties (CCPs);

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

Text proposed by the Commission

Amendment

(bb) commodity benchmarks as defined in Article 3(1)(20) which comply with the IOSCO Principles of 5 October 2012 for Oil Price Reporting Agencies or the IOSCO Principles of 17 July 2013 for Financial Benchmarks, until such time as ESMA, on the basis of the review of the IOSCO Principles for Oil Price Reporting Agencies, due to be published in May or June 2014, and of Annex III of this Regulation, has determined whether and how commodity benchmarks can be encompassed within the scope of this Regulation or whether they should be governed by their own rules.

Amendment 10
Proposal for a regulation
Article 3 – paragraph 1 – point 2

Text proposed by the Commission

Amendment

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

contract, or the value of a financial instrument is determined or an index that is used to measure the performance of an investment fund; this does not apply to reference prices or settlement prices originating from central counterparties (CCPs) as defined in Article 2(1) of Regulation (EU) No 648/2012 or to financial instruments as defined in Article 3(1)(13) of this Regulation;

Amendment 11
Proposal for a regulation
Article 3 – paragraph 1 – point 5

Text proposed by the Commission

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

Amendment

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

Amendment 12
Proposal for a regulation
Article 3 – paragraph 1 – point 7

Text proposed by the Commission

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

Amendment

(7) ‘contributor’ means a natural or legal person contributing input data not constituting regulated data as defined in Article 3(1)(11);

Amendment 13
Proposal for a regulation
Article 3 – paragraph 1 – point 11
(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/EC\(^{19}\) or a natural gas exchange as referred to in point (j) of paragraph 1 of Article 41 of Directive 2009/73/EC\(^{20}\) or an auction platform referred to in Article 26 or in Article 30 of Regulation (EU) No 1031/2010 of the European Parliament and of the Council;


Amendment 14

Proposal for a regulation

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

Text proposed by the Commission

(fa) market participants as defined in point (7) of Article 2 of Regulation (EU) No 1227/2011 of the European Parliament and of the Council;

Amendment

Advanced

Proposal for a regulation

PE524.509v02-00 12/38 AD\1016103EN.doc
Article 3 – paragraph 1 – point 20

Text proposed by the Commission

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

Amendment

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

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Justification


Amendment 16

Proposal for a regulation

Article 3 – paragraph 1 – point 21

Text proposed by the Commission

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

Amendment

21. ‘critical benchmark’ means a benchmark that does not satisfy the criteria for an objective benchmark as defined in point 21a (new) and that references financial instruments having a notional value of at least EUR 500 billion;

Amendment 17

Proposal for a regulation

Article 3 – paragraph 1 – point 21 a (new)
(21a) ‘objective benchmark’ means a benchmark that uses only regulated input data and a strictly rule-based methodology;

Amendment 18
Proposal for a regulation
Article 5 – paragraph 1 – point a

Text proposed by the Commission

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

The administrator shall take all necessary steps to ensure that the provision of a benchmark is not affected by any existing or potential conflict of interest and that, where any discretion or judgement in the benchmark process is required, it is independently and honestly exercised (‘Governance and conflicts of interest’);

Amendment 19
Proposal for a regulation
Article 5 – paragraph 1 – point b

Text proposed by the Commission

(b) the administrator shall establish an oversight function to provide oversight of all aspects of the provision of its benchmarks (‘Oversight’);
Amendment 20

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

Text proposed by the Commission

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

Amendment

deleted

Amendment 21

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

Text proposed by the Commission

(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’);

Amendment

deleted

Amendment 22

Proposal for a regulation
Article 5 – paragraph 1

Text proposed by the Commission

The following governance requirements shall apply to the administrator:

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

a) administrators of critical benchmarks;

b) administrators of broadly used commodity benchmarks, as defined and updated by ESMA after close consultation with ACER;
c) administrators of major benchmarks;
d) administrators of exclusively licensed benchmarks as defined and updated by ESMA;
e) administrators of an IBOR, Overnight Index Swap, Overnight Index Rates or other benchmark that the competent authority deems a substitute or comparable to those benchmarks and which are widely used;
f) administrators of a benchmark with relatively few submitters and which the competent authority considers vulnerable to manipulation;
g) benchmarks that the competent authority has investigated and concluded by way of a reasoned decision requires supervision due to its vulnerability;
h) substantial numbers of benchmarks which the competent authority or ESMA considers collectively have significant single market impact;

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

ESMA shall provide guidelines for competent authorities concerning application of the criteria in (b), to (i) and shall provide regulatory technical standards for circumstances when requirements in (a) to (i) can be phased, waived or any provisions of this Regulation dis-applied for reasons of proportionality or duplication of supervisory requirements or existing governance controls. This shall also include lists of exempted types of institutions which shall include identification of the corresponding governance controls...
In establishing guidelines and regulatory technical standards, ESMA shall take into account:

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

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

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

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

(v) how the regulatory framework interacts with third counties and international trade.

Amendment 23
Proposal for a regulation
Article 7 – paragraph 1 – point b

Text proposed by the Commission

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

Amendment

(b) The administrator shall obtain the input data from a reliable and representative panel or sample of contributors so as to ensure that the resultant benchmark is reliable and representative of the market or economic reality that the benchmark is intended to measure (‘Representative contributors’). In case of transactional based benchmarks the administrator shall obtain the data in an aggregated anonymous form from trade repositories and regulators according to the Markets in Financial Instruments Directive (MiFID) 2004/39/EC, in the Regulation
Amendment 24
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 of the input data for the purpose of paragraph 2.

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

Amendment 25
Proposal for a regulation
Article 9 – paragraph 1

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

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

Amendment 26
Proposal for a regulation
Article 9 – paragraph 2
2. The code of conduct shall be signed by the administrator and the contributors and shall be legally binding on all parties to it, provided that it has been agreed by administrators and a number of contributors sufficiently representative of the market.

Amendment 27

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

Text proposed by the Commission

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

Amendment

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

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

Amendment 28

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

Text proposed by the Commission

(a) The supervised contributor shall ensure

Amendment

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

Amendment 29

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

Text proposed by the Commission

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

Amendment

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

Amendment 30

Proposal for a regulation
Article 12 – paragraph 2

Text proposed by the Commission

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

Amendment

deleted

Amendment 31

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

**Justification**

*Given the unique characteristics of commodities they should be regulated within annex III.*

**Amendment 32**

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

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**Amendment 33**

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

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<td><em>(k) The elements to be included in the methodology and the description of the methodology (Annex III point 1 and 2)</em></td>
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**Amendment 34**

Proposal for a regulation
Article 12 – paragraph 3 – point l
Amendment 35

Proposal for a regulation
Article 15 a (new)

Text proposed by the Commission

Article 15 a

Disclosure or dissemination of information in the media

Where information is disclosed or disseminated and where recommendations are produced or disseminated for the purpose of journalism, such disclosure or dissemination of information shall be assessed taking into account the rules governing the freedom of expression, the freedom and pluralism of the media and the rules or codes governing the journalist profession, unless:

(a) the persons concerned or persons closely associated with them derive, directly or indirectly, an advantage or profits from the disclosure or the dissemination of the information in question; or

(b) the disclosure or the dissemination is made with the intention of misleading the market as to the supply of, demand for, or price of financial instruments.

Justification

Exception of the press in order to insure transparency in the market. Article copied from the
Amendment 36

Proposal for a regulation
Article 16 – paragraph 1

Text proposed by the Commission

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

Amendment

1. An administrator shall publish the relevant methodology used to determine the index, together with, in the case of non-objective benchmarks, the input data used, immediately after publication of the benchmark except where publication would (i) have serious adverse consequences for the contributors or (ii) adversely affect the reliability or integrity of the benchmark or (iii) where the input data correspond to regulated data as defined in Article 3(1)(11). The administrator shall not be required to publish data whose integrity and confidentiality cannot be guaranteed.

Amendment 37

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 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.

Amendment 38

Proposal for a regulation
Article 19 – paragraph 1

Text proposed by the Commission
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.

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. Non-objective benchmarks must be provided by an administrator covered by the authorisation requirement under Article 22.

A supervised entity may also use objective benchmarks of a registered administrator located in a third country if the administrator declares to its competent authority that the benchmarks conform to the IOSCO Principles for Financial Benchmarks, published on 17 July 2013.

Amendment 39

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

Text proposed by the Commission
1. Benchmarks provided by an

Amendment
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:

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

- Administrators of third country benchmarks may submit demonstration of compliance with IOSCO principles directly to ESMA, which may then be referenced by supervised entities.

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

- Six months before the entry into force of this regulation ESMA shall produce a report on the implementation of IOSCO principles.
The procedure under this paragraph shall be reviewed after five years in the light of international regulatory convergence and in particular whether to extend the duration of its application.

Amendment 40

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
deleted

Amendment 41

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
deleted

Amendment 42

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  

deleted

Amendment 43  

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

Text proposed by the Commission  

(e) the cooperation arrangements referred to in paragraph 3 of this Article are operational.  

Amendment  

deleted

Amendment 44  

Proposal for a regulation  
Article 20 – paragraph 2 – subparagraph 1 – point a  

Text proposed by the Commission  

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

Amendment  

(a) administrators authorised or registered in that third country comply with binding requirements which are equivalent to the requirements resulting from this Regulation, in particular taking into account if the legal framework and supervisory practice of a third country ensure compliance with the IOSCO principles on financial benchmarks published on 17 July 2013, and with the IOSCO Principles for Oil Price Reporting Agencies, published on 5 October 2012, and with the IOSCO Principles for the Regulation and Supervision of Commodity Derivative Markets published on 15 September 2011, when oil or commodity benchmarks are involved; and
Amendment 45

Proposal for a regulation
Article 22 – paragraph 1

Text proposed by the Commission

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

Amendment

(1) An administrator shall apply for authorisation to provide benchmarks if it provides non-objective benchmarks or objective benchmarks not conforming to the IOSCO Principles of 17 July 2013 which are used to reference financial instruments or financial contracts or to measure the performance of an investment fund.

Amendment 46

Proposal for a regulation
Article 23 – paragraph 1

Text proposed by the Commission

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

Amendment

1. The administrator, if covered by the authorisation requirement under Article 22(1), shall submit an application for authorisation to the competent authority of the Member State in which the administrator is located.

Amendment 47

Proposal for a regulation
Article 30 – paragraph 2 – subparagraph 2

Text proposed by the Commission

For the exercise of those powers, competent authorities shall have in place adequate and effective safeguards in regard to the right of defence and fundamental rights.

Amendment

For the exercise of those powers, competent authorities shall have in place adequate and effective safeguards in regard to the right of defence, confidentiality and fundamental rights.
Amendment 48
Proposal for a regulation
Article 35 – paragraph 2 a (new)

Text proposed by the Commission

2a. Performing its role in the implementation and monitoring of Regulation (EC) No 1227/2011, the Agency for the Cooperation of Energy Regulators (ACER) shall cooperate with ESMA for the purposes of this Regulation and, without delay, shall supply all information necessary to fulfil its obligations.

Amendment

Amendment 49
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), 5(3), 7(3), 9(3), 11(4), 12(3), 16(2), and 23(7) shall be conferred on the Commission for a period of five years from [date of entry into force of this Regulation].

The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension no less than three months before the end of each period.

Amendment 50
Proposal for a regulation
Article 39 – paragraph 1 a (new)

Text proposed by the Commission

1a. As regards commodity benchmarks as defined in Article 3(1)(20), ESMA, on the basis of the review of the IOSCO Principles of 5 October 2012 for Oil Price Reporting Agencies, due to be published in May or June 2014, and of Annex III of this Regulation, which is to serve as a guide, shall, within 18 months of the entry into force of this Regulation, determine whether and how commodity benchmarks can be encompassed within the scope of this Regulation or whether they should be governed by their own rules. It shall submit its findings to the European Parliament and the Commission.

Amendment 51

Proposal for a regulation
Article 39 – paragraph 1 b (new)

Text proposed by the Commission

1b. Where benchmarks have been provided by an administrator established in a third country, the conditions set out in Article 20(1)(a) to (e) shall apply only on expiry of a transitional period of 36 months following the entry into force of this Regulation, if those benchmarks comply at the time of entry into force of this Regulation with the IOSCO principles of 17 July 2013 for Financial Benchmarks.

Amendment 52

Proposal for a regulation
Article 39 – paragraph 4
4. The use of a benchmark shall be permitted by the relevant competent authority of the Member State where the administrator is located until such time as the benchmark references financial instruments and financial contracts worth no more than 5% by value of the financial instruments and financial contracts that referenced this benchmark at the time of entry into force of this Regulation. No financial instruments or financial contracts shall reference such an existing benchmark after the entry into application of this Regulation.

ESMA shall develop draft regulatory technical standards, after close consultation with ACER in the case of point (c), to specify:

a) information to be provided by an administrator in the application for authorisation in order to reasonably demonstrate that frustration, force majeure or breach of a contract could happen;

b) the circumstances in which frustration, force majeure and breach of the terms of any financial contract are regarded to occur in accordance with this Regulation;

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

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 and subject to a third month extension [as provided for in Omnibus 2]
Amendment 53

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

Text proposed by the Commission

By June 2014 the Commission shall assess if this Regulation, in what concerns the Commodity Benchmarks, is in line with the Final Report on the IOSCO Principles for Oil Price Reporting Agencies that is going to be published in April 2014, and present its recommendations and proposals to the European Parliament to encompass the international agreements, if it is considered to be adequate.

Amendment 54

Proposal for a regulation
Annex I – section A – part I – point 1

Text proposed by the Commission

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

Amendment

1. A legal or natural person that has control over the provision of a benchmark may not simultaneously act, operationally or functionally, as a user of that benchmark.

Amendment 55

Proposal for a regulation
Annex I – section A – part I – point 8 – point b
(b) There is physical separation of employees in the front office function and reporting lines.

Amendment 56

Proposal for a regulation
Annex I – section A – part II – point 10 – point a

Text proposed by the Commission
(a) where the administrator is owned or controlled by 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 should not be contributors. Where the administrator is owned or controlled by users, a majority of the committee should not be users;

Amendment
(a) where the administrator is owned or controlled by contributors of input data not constituting transaction data, a separate board or committee, whose composition ensures its independence and the absence of conflicts of interest;

Amendment 57

Proposal for a regulation
Annex I – section A – part II – point 10 – point b

Text proposed by the Commission
(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;

Amendment
(b) where the administrator is not owned or controlled by its contributors of input data not constituting transaction data, an internal board or committee. A majority of the members of the internal board or committee may not be involved in the provision of any benchmark they oversee;
Amendment 58
Proposal for a regulation
Annex I – section A – part II – point 10 – point c

Text proposed by the Commission

(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 must not be involved in the provision of any benchmark they oversee.

Amendment

(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. This applies in particular to objective benchmarks if the administrator has declared to its competent authority that they conform to the IOSCO Principles for Financial Benchmarks, published on 17 July 2013. The oversight officer must not be involved in the provision of any benchmark they oversee.

Amendment 59
Proposal for a regulation
Annex I – section A – part IV – point 16

Text proposed by the Commission

16. For critical benchmarks, the administrator shall appoint an independent external auditor to review and report on the administrator’s adherence to the benchmark methodology and this Regulation if the size and complexity of the administrator’s benchmark operations poses a significant risk to financial stability.

Amendment

16. For critical benchmarks, as defined in Article 3(1)(21), and non-objective benchmarks, the administrator shall appoint an independent external auditor to review and report on the administrator’s adherence to the benchmark methodology and this Regulation if the size and complexity of the administrator’s benchmark operations pose a significant risk to financial stability.
Amendment 60
Proposal for a regulation
Annex I – section B – point 1 – point f a (new)

Text proposed by the Commission

( fa) the administrator shall inform the contributors of the benchmark(s) concerned of the outsourcing without delay.

Amendment

Amendment 61
Proposal for a regulation
Annex I – section C – part II – point 2 – point a

Text proposed by the Commission

(a) shall 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 economic reality that the benchmark is intended to measure;

Amendment

(a) shall take into account factors including the size and normal liquidity of the market, the level of development 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 economic reality that the benchmark is intended to measure;

Amendment 62
Proposal for a regulation
Annex III – paragraph 1

Text proposed by the Commission

This Annex applies to ‘commodity benchmarks’ which means a benchmark where the underlying asset for the purposes of Article 3(1)(c) is a commodity within the meaning of point (2) of Article 2 of Commission Regulation (EC) No 1287/200628.

Amendment

This Annex is intended as a guide for ESMA to help it determine whether and how commodity benchmarks within the meaning of Article 3(1)(20) can be encompassed within the scope of this regulation or whether they should be governed by their own rules.

Amendment 63

Proposal for a regulation
Annex III – paragraph 1 – footnote 28

Text proposed by the Commission

Amendment

28 OJ L 241, 2.9.2006, p. 1. deleted

Amendment 64

Proposal for a regulation
Annex III – point 1 – point e

Text proposed by the Commission

Amendment

(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; (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. The criteria shall explain the procedures used where no transaction data exists;

Amendment 65

Proposal for a regulation
Annex III – point 6 – introductory part

Text proposed by the Commission

Amendment

6. An administrator shall describe and publish with each calculation, to the extent possible without prejudicing due publication of the benchmark: 6. An administrator shall describe and publish with each calculation, to the extent reasonable without delaying a price reporting deadline:

Justification

In line with the IOSCO principles for commodities
Amendment 66

Proposal for a regulation
Annex III – point 12

*Text proposed by the Commission*

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

*Amendment*

12. An 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.

Amendment 67

Proposal for a regulation
Annex III – point 13 – introductory part

*Text proposed by the Commission*

13. An administrator shall ensure 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:

*Amendment*

13. An administrator shall ensure it has *appropriate* 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:
## PROCEDURE

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<th>Title</th>
<th>Indices used as benchmarks in financial instruments and financial contracts</th>
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<td>ECON 10.10.2013</td>
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<td>Rapporteur</td>
<td>Marisa Matias 23.10.2013</td>
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<td>Substitute(s) present for the final vote</td>
<td>Maria Badia i Cutchet, Yves Cochet, Rachida Dati, Ioan Enciu, Věra Flasarová, Françoise Grossetête, Roger Helmer, Jolanta Emilia Hibner, Eija-Riitta Korhola, Holger Krahmer, Werner Langen, Zofija Mazej Kukovič, Vladko Todorov Panayotov, Silvia-Adriana Țicău, Lambert van Nistelrooij, Hermann Winkler</td>
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<td>Substitute(s) under Rule 187(2) present for the final vote</td>
<td>Jean-Paul Berset, Janusz Władysław Zemke</td>
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