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INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a Regulation of the European Parliament and of the Council on indices used as benchmarks in financial instruments and financial contracts - Outcome of the European Parliament's first reading (Brussels, 27 to 28 April 2016)

I. INTRODUCTION

On 19 May 2015, the Parliament in plenary adopted one amendment (amendment 1), but then postponed the vote on the legislative resolution to a later session - thereby not bringing the Parliament's first reading to a close. The proposal was instead referred back to the Committee on Economic and Monetary Affairs, pursuant to Rule 61(2) of the European Parliament's Rules of Procedure [1].

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure [2], a number of informal contacts then took place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

1 Doc. 8646/15
2 OJ C 145, 30.6.2007, p.5

Further to these contacts, the Committee on Economic and Monetary Affairs submitted a further compromise amendment (amendment 2) which was intended to replace the already adopted amendment 1. Amendment 2 had been agreed during the informal contacts referred to above.

II. VOTE

When it voted on 28 April 2016, the plenary adopted amendment 2 to the proposal for a Regulation and then adopted its legislative resolution, thus bringing the Parliament's first reading to a close.

Amendment 2 replaced the previously adopted amendment 1. The Commission's proposal as amended by amendment 2 constitutes the Parliament's first-reading position, which is contained in its legislative resolution as set out in the Annex hereto [3].

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

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[3] The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics.*** The symbol " ▌ " indicates deleted text.

ANNEX
(28.04.2016)

Indices used as benchmarks in financial instruments and financial contracts ***I

European Parliament legislative resolution of 28 April 2016 on the proposal for a regulation of the European Parliament and of the Council on indices used as benchmarks in financial instruments and financial contracts (COM(2013)0641 – C7-0301/2013 – 2013/0314(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2013)0641),

– having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0301/2013),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to 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 2014[4],

– having regard to the opinion of the European Economic and Social Committee of 21 January 2014[5],

– having regard to the undertaking given by the Council representative by letter of 9 December 2015 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

– having regard to Rule 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 (A8-0131/2015),

1. Adopts its position at first reading hereinafter set out[6];

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[4] OJ C 113, 15.4.2014, p. 1.
[5] OJ C 177, 11.6.2014, p. 42.
[6] This position replaces the amendments adopted on 19 May 2015 (Texts adopted, P8_TA(2015)0195).

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.

P8_TC1-COD(2013)0314

Position of the European Parliament adopted at first reading on 28 April 2016 with a view to the adoption of Regulation (EU) 2016/... of the European Parliament and of the Council on indices used as benchmarks in financial instruments and financial contracts *or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014*

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank[7],

Having regard to the opinion of the European Economic and Social Committee[8],

Acting in accordance with the ordinary legislative procedure[9],

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7 OJ C 113, 15.4.2014, p. 1.

8 OJ C 177, 11.6.2014, p. 42.

9 Position of the European Parliament of 28 April 2016.

Whereas:

(1) The pricing of many financial instruments and financial contracts depends on the accuracy and integrity of benchmarks. ***Serious*** 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, ***demonstrate*** that benchmarks ***can be*** subject to conflicts of interest. The use of discretion, and weak governance ***regimes, increase the vulnerability of benchmarks*** to manipulation. Failures in, or doubts about, the accuracy and integrity of indices used as benchmarks can 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 of the benchmark determination process.

(2) Directive ***2014/65/EU*** of the European Parliament and of the Council[10] contains certain requirements with respect to the reliability of benchmarks used to price a listed financial instrument. Directive 2003/71/EC of the European Parliament and of the Council[11] contains certain requirements on benchmarks used by issuers. Directive 2009/65/EC of the European Parliament and of the Council[12] contains certain requirements on the use of benchmarks by undertakings for collective investment in transferable securities (UCITS). Regulation (EU) No 1227/2011 of the European Parliament and of the Council[13] contains certain provisions which prohibit the manipulation of benchmarks that are used for wholesale energy products. However, those legislative acts only cover certain aspects of certain benchmarks and ***they neither*** address all the vulnerabilities in the provision of all benchmarks***, nor do they cover all uses of financial benchmarks in the financial industry***.

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10 Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

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

12 Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

13 Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (OJ L 326, 8.12.2011, p. 1).

(3) Benchmarks are vital in pricing cross-border transactions, 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 provided in one Member State but used by credit institutions and consumers in other Member States. In addition, such credit institutions often hedge their risks or obtain funding for granting those financial contracts in the cross-border interbank market. Only ***a few*** Member States have adopted national rules on benchmarks, but their respective legal frameworks on benchmarks already show divergences regarding aspects such as the scope of application. In addition, the International Organization of Securities Commissions (IOSCO) ▌ agreed principles on ***financial*** benchmarks ***on 17 July 2013*** (▌ "IOSCO principles for financial benchmarks"), Principles for Oil Price Reporting Agencies on 5 October 2012 (IOSCO principles for PRAs) (together, "the IOSCO principles"), and since ***those*** principles provide a certain flexibility as to their exact scope and means of ▌ implementation ▌ , Member States are likely to adopt rules at national level which would implement such principles in a divergent manner.

(4) Those 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 provided 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, or in order to measure the performance of investment funds, in the Union it is therefore likely that differences in Member States' laws will create obstacles to the smooth functioning of the internal market for the provision of benchmarks.

(5) Union consumer protection rules do not cover the particular issue of ***adequate information on*** benchmarks in financial contracts. As a result of consumer complaints and litigation relating to the use of ▌ benchmarks in several Member States, it is likely that divergent measures, inspired by legitimate concerns of consumer protection, would be adopted at national level, which could result in fragmentation of the internal market due to the divergent conditions of competition attached to different levels of consumer protection.

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

(7) It is appropriate and necessary for that framework to take the form of a regulation in order to ensure that provisions directly imposing obligations on persons involved in the provision, contribution and use of benchmarks are applied in a uniform manner throughout the Union. Since a legal framework for the provision of benchmarks necessarily involves measures specifying precise requirements concerning aspects inherent to such 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, should reduce the possibility of divergent measures being taken at national level, and should ensure a consistent approach and greater legal certainty, and prevent the appearance of significant impediments in the cross-border provision of benchmarks.

(8) The scope of this Regulation should be as broad as necessary to create a preventive regulatory framework. The provision 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 benchmarks. Such risk factors are common to all benchmarks and should be made subject to adequate governance and control requirements. ***The degree of risk, however, varies, and the approach adopted should therefore be tailored to the particular circumstances.*** Since the vulnerability and importance of a benchmark varies over time, restricting the scope by reference to indices that are currently important or vulnerable would not address the risks that any benchmark poses in the future. In particular, benchmarks that are currently not widely used could be used more in the future with the result that, in their regard, even a minor manipulation could have a significant impact.

(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 a 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 numbers, or values such as weather parameters should thus be included. The framework provided for in this Regulation should also ***acknowledge the existence of a large number of benchmarks and the different impact 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 benchmarks which are used to price financial instruments listed or traded on regulated venues.

(10) A large number of consumers are parties to financial contracts, in particular consumer credit agreements secured by mortgages, that reference benchmarks that are subject to the same risks. This Regulation should therefore cover ***credit agreements as defined*** in ***Directives*** 2008/48/EC[14] and ***2014/17/EU*** of the European Parliament and of the Council***[15]***.

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14 Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ L 133, 22.5.2008, p. 66).

15 ***Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ L 60, 28.2.2014, p. 34).***

(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 those benchmarks are published and others are made available, for free or upon payment of a fee, to the public or a section of the public and their manipulation can adversely affect investors. This Regulation should therefore cover indices or reference rates that are used to measure the performance of an investment fund.

(12) All contributors of input data to benchmarks ***can exercise discretion and*** are ***potentially*** subject to ▌ conflicts of interest, ▌ and so risk being a source of manipulation. Contributing to a benchmark is a voluntary activity. If any initiative requires contributors to significantly change their business models, they could 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 obligations on supervised contributors. ***When a benchmark is determined on the basis of readily available data, the source of such data should not be considered to be a contributor.***

(13) Financial benchmarks are not only used in the issuance and manufacturing of financial instruments and contracts. The financial industry also relies on benchmarks for measuring the performance of investment funds for the purpose of return tracking or of determining the asset allocation of a portfolio or of computing the performance fees. A given benchmark can be used either directly as a reference for financial instruments and financial contracts or to measure the performance of investment funds, or indirectly within a combination of benchmarks. In the latter case, 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 discretion, in contrast to the activity of provision of benchmarks. The holding of financial instruments referencing a certain benchmark is not considered to be use of the benchmark.

(14) Central banks ***already*** meet principles, standards and procedures which ensure ***that they exercise their activities with integrity and in an independent manner***. It is therefore not necessary that ***central banks*** be subject to this Regulation. ***When*** central banks provide benchmarks***, especially where*** those ***benchmarks are intended for transaction purposes, it is their responsibility to set appropriate internal procedures in order to ensure the accuracy, integrity, reliability and independence of*** those ***benchmarks, in particular with respect to transparency in*** governance ***and computation methodology***.

(15) Furthermore, public authorities, including national statistics agencies, should not be subject to this Regulation where they contribute data to, provide or have control over the provision of, benchmarks for public policy purposes, including measures of employment, economic activity, and inflation.

(16) An administrator is the natural or legal person that has control over the provision of a benchmark and in particular ▌ administers the ***arrangements for determining the*** benchmark, collects and analyses the input data, determines the benchmark and publishes it. An administrator should be able to outsource ***to a third party*** one or more of those functions, including the ***calculation or publication of the benchmark***, or other relevant services and activities in the provision of the benchmark. However, where a person merely publishes or refers to a benchmark as part of that person's journalistic activities but does not have control over the provision of that benchmark, that person should not be subject to the requirements imposed on administrators by this Regulation.

(17) An index is calculated using a formula or some other methodology on the basis of underlying values. There exists a degree of discretion in constructing the formula, performing the necessary calculation and determining the input data which creates a risk of manipulation. Therefore, all benchmarks sharing that characteristic of discretion should be covered by this Regulation.

(18) However**,** where a single price or value is used as a reference to a financial instrument, for example where the price of a single security is the reference price for an option ***or future***, there is no calculation, input data or discretion. Therefore single price or single value reference prices should not be considered to be benchmarks for the purposes of this Regulation.

(19) Reference prices or settlement prices produced by central counterparties (CCPs) should not be considered to be benchmarks because they are used to determine settlement, margins and risk management and thus do not determine the amount payable under a financial instrument or the value of a financial instrument.

(20) ***The provision of borrowing rates by creditors should not be considered to be benchmark provision for the purposes of this Regulation. A borrowing rate provided by a creditor is either set by an internal decision or calculated as a spread or mark-up over an index (e.g. EURIBOR). In the first case, the creditor is exempt from this Regulation for activity concerning financial contracts entered into by that creditor with its own clients, while in the latter case the creditor is considered to be only a user of a benchmark.***

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

(22) The manipulation or unreliability of benchmarks can cause damage to investors and consumers. Therefore, this Regulation should set out a framework for retention of records by administrators and contributors as well as for providing transparency about a benchmark's purpose and ***methodology*** which facilitates a more efficient and fairer resolution of potential claims in accordance with national or Union law.

(23) Auditing and the effective enforcement of this Regulation requires *ex post* analysis and evidence***. This Regulation should*** therefore ***set out requirements for adequate record-keeping by benchmark administrators*** relating to the calculation of the benchmark for a sufficient period of time. The reality that a benchmark intends 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 benchmarks are ▌ reviewed on a periodic basis to identify shortcomings and possible improvements. Many stakeholders can be impacted by failures in the provision of the benchmark and can help identify such shortcomings. ***This Regulation should*** therefore ***set out a framework for the establishment of a*** complaints ***handling mechanism by benchmark administrators*** to ***enable*** stakeholders to notify the benchmark administrator of complaints and ***ensure*** that the benchmark administrator objectively evaluates the merits of any complaint.

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

(25) The benchmark administrator is the central recipient of input data and is able to evaluate the integrity and accuracy of input data on a consistent basis. It is therefore necessary ***that this Regulation requires administrators to take certain measures where an administrator considers that input data does not represent the market or economic reality that a benchmark intends to measure, comprising measures to change the input data, the contributors or the methodology or else to cease providing that benchmark. Furthermore, an administrator should, as part of its control framework, establish measures to monitor, where feasible, input data prior to the publication of the benchmark and to validate input data after publication, including comparing that data against historical patterns where applicable.***

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

(27) The accuracy and reliability of a benchmark in measuring the economic reality it is intended to measure 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. ***Such transparency does not mean the publication of the formula applied for the determination of a given benchmark, but rather the disclosure of elements sufficient to allow stakeholders to understand how the benchmark is derived and to assess its representativeness, relevance and appropriateness for its intended use.***

(28) It could become necessary to change the methodology to ensure the continued accuracy of the benchmark, but any changes in the methodology have an impact on users and stakeholders of the benchmark. It is therefore necessary to specify the procedures to be followed when changing the benchmark methodology, including the need for consultation, so that users and stakeholders can take the necessary action in light of those changes or notify the administrator if they have concerns about those changes.

(29) Employees of the administrator can identify possible ***infringements*** 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 ***infringements*** of this Regulation.

(30) 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 contributors in respect of such input data are clearly specified, that compliance with those obligations can be relied upon, and that the obligations 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 those requirements and ***the contributor's responsibilities concerning the provision of input data. The administrator should be satisfied that contributors adhere to the code of conduct. Where contributors are located in third countries, the administrator should be satisfied to the extent possible***.

(31) Contributors are potentially subject to conflicts of interest and are able to exercise discretion in the determination of input data. Therefore, it is necessary for contributors to be subject to governance arrangements in order to ensure that those conflicts are managed and that the input data is accurate, conforms to the administrator's requirements and can be validated.

(32) Many benchmarks are determined ***by the application of a formula using*** input data that is provided by the following entities: a ***trading*** venue, an ***approved publication arrangement, a consolidated tape provider, an approved reporting mechanism,*** an energy exchange ***or*** an emission allowance auction platform. ***In some situations, data collection is outsourced to a service provider that receives the data entirely and directly from those entities. In those 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, those benchmarks are ***less vulnerable to manipulation,*** are ***subject to independent verifications, and the relevant administrators are accordingly*** released from certain obligations set out in this Regulation ▌.

(33) Different types of benchmarks 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. ***Interest*** rate benchmarks are benchmarks that play an important role in the transmission of monetary policy and so it is necessary to introduce specific provisions in this Regulation for such benchmarks.

(34) Physical commodities markets have unique characteristics which should be taken into account. Commodity benchmarks are widely used and can have sector-specific characteristics, so it is necessary to introduce specific provisions in this Regulation for such benchmarks. ***Certain commodity benchmarks are exempt from this Regulation but would need to nevertheless respect the relevant IOSCO principles. Commodity benchmarks can become critical since the regime is not limited to benchmarks based on submissions by contributors which are in majority supervised entities. For critical commodity benchmarks subject to Annex II, the requirements of this Regulation regarding mandatory contribution and colleges are not applicable.***

(35) The failure of ▌ critical benchmarks can ▌ impact ▌ market integrity, financial stability, ***consumers, the real economy, or the financing of households and businesses in Member States***. ***Those potentially destabilising effects of the failure of a*** critical ▌ benchmark ***could be felt in a single Member State or in more than one***. It is therefore necessary that ***this Regulation provides for a process to determine*** those benchmarks that ▌ should be considered to be critical benchmarks ***and that additional requirements apply to ensure the integrity and robustness of such benchmarks***.

(36) Critical benchmarks can be determined using a quantitative criterion or a combination of quantitative and qualitative criteria. In addition, in cases where a benchmark does not meet the appropriate quantitative threshold, it could nonetheless be recognised as critical where the benchmark has no or very few market-led substitutes and its existence and accuracy are relevant for market integrity, financial stability or consumer protection in one or more Member States, and where all the relevant competent authorities agree that such a benchmark should be recognised as critical. In the event of disagreement between the relevant competent authorities, the decision of the competent authority of the administrator on whether such a benchmark should be recognised as critical should prevail. In such a case, the European Securities and Markets Authority (ESMA), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council[16], should be able to publish an opinion on the assessment made by the competent authority of the administrator. Furthermore, a competent authority can also designate a benchmark as critical based on certain qualitative criteria where the administrator and the majority of the contributors to the benchmark are located in its Member State. All critical benchmarks should be included in a list established by a way of an implementing act by the Commission, which should be reviewed and updated regularly.

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16 Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

(37) ***The cessation of the administration of a critical benchmark by an administrator could render financial contracts or financial instruments invalid, cause losses to consumers and investors, and impact financial stability. It is therefore necessary to include a power for the relevant competent authority to require mandatory administration of a critical benchmark in order to preserve the existence of the benchmark in question. In the event of insolvency proceedings of a benchmark administrator, the competent authority should provide an assessment for the consideration of the relevant judicial authority of whether and how the critical benchmark could be transitioned to a new administrator or could cease to be provided.***

(38) ***Without prejudice to the application of Union competition law and the ability of Member States to take measures to facilitate compliance with it, it is necessary to require administrators of critical benchmarks, including critical commodity benchmarks, to take adequate steps to ensure that licences of, and information on, benchmarks are provided on a fair, reasonable, transparent and non-discriminatory basis to all users.***

(39) Contributors that cease to contribute input data to critical benchmarks can undermine the credibility of such benchmarks***, as the capability of such benchmarks to measure the underlying market or economic reality would as a result 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 to commit to entering into, transactions.***

(40) ***Due to the existence of a large variety of types and sizes of benchmarks, it is important to introduce proportionality in this Regulation and to avoid putting an excessive administrative burden on administrators of benchmarks the cessation of which poses less threat to the wider financial system. Thus, in addition to the regime for critical benchmarks, two distinct regimes should be introduced: one for significant benchmarks and one for non-significant benchmarks.***

(41) ***Administrators of significant benchmarks should be able to choose not to apply a limited number of detailed requirements of this Regulation. Competent authorities should, however, maintain the right to require the application of those requirements, based on criteria outlined in this Regulation. Delegated acts and implementing acts that apply to significant benchmark administrators should take due account of the principle of proportionality and aim to avoid administrative burden where possible.***

(42) Administrators of non-significant benchmarks are subject to a less detailed regime, whereby administrators should be able to choose not to apply some requirements of this Regulation. In such a case, the administrator in question should explain why it is appropriate not to do so in a compliance statement which should be published and provided to the administrator's competent authority. That competent authority should review the compliance statement and should be able to request additional information or require changes to ensure compliance with this Regulation. While non-significant benchmarks could still be vulnerable to manipulation, they are more easily substitutable, therefore transparency to users should be the main tool used for market participants to make informed choices about the benchmarks they consider appropriate for use. For that reason, the delegated acts in Title II should not apply to non-significant benchmark administrators.

(43) In order for users of benchmarks to choose appropriately from among, and understand the risks of, benchmarks, they need to know what a given benchmark intends to measure and its susceptibility to manipulation. Therefore, the benchmark administrator should publish a benchmark statement specifying those elements. ***In order to ensure uniform application and that benchmark statements are of reasonable length but at the same time focus on providing the key information needed to users in an easily accessible manner, ESMA should provide further specification of the content of the benchmark statement, differentiating appropriately among the different types and specificities of benchmarks and their administrators***.

(44) This Regulation should take into account the IOSCO principles, which serve as global standards for regulatory requirements for benchmarks. ***As an overarching principle, in order to ensure*** investor protection, ▌ supervision and regulation in ***a*** third country ***should be*** equivalent to Union supervision and regulation of benchmarks ▌. ***Therefore, benchmarks*** provided from that third country can be used by supervised entities in the Union ***where a positive decision on equivalence of the third- country regime has been taken by the Commission. In such circumstances, competent authorities should enter into cooperation arrangements with supervisory authorities in third countries. ESMA should coordinate the development of such cooperation arrangements and the exchange between competent authorities of information received from third countries. However, in order to avoid any adverse impact resulting from a possible abrupt cessation of the use in the Union of benchmarks provided from a third country, this Regulation also provides for certain other mechanisms (namely, recognition and endorsement) under which third-country benchmarks can be used by supervised entities located in the Union***.

(45) This Regulation introduces a process for the recognition of administrators located in a third country by the competent authority of the Member State of reference. Recognition should be granted to administrators complying with the requirements of this Regulation. Acknowledging the role of the IOSCO principles as a global standard for the provision of benchmarks, the competent authority of the Member State of reference should be able to grant recognition to administrators on the basis of them applying the IOSCO principles. To do so, the competent authority should assess the application of the IOSCO principles by a specific administrator and determine whether such application is equivalent, for the administrator in question, to compliance with the various requirements established in this Regulation, taking into account the specificities of the regime of recognition as compared to the equivalence regime.

(46) ***This Regulation also introduces an endorsement regime allowing, under certain conditions, administrators or supervised entities located in the Union to endorse benchmarks provided from a third country in order for such benchmarks to be used in the Union. To do so, the competent authority should take into account whether, in providing the benchmark to be endorsed, compliance with the IOSCO principles would be equivalent to compliance with this Regulation, taking into account the specificities of the regime of endorsement as compared to the equivalence regime. An administrator or a supervised entity that has endorsed a benchmark provided from a third country should be fully responsible for such endorsed benchmarks and for the fulfilment of the relevant conditions referred to in this Regulation.***

(47) All benchmark administrators ***are able to exercise discretion,*** are potentially subject to conflicts of interest, ▌ and risk having inadequate governance and control systems in place. As administrators control the benchmark determination process, requiring authorisation ***or registration*** and supervision of administrators is the most effective way of ensuring the integrity of benchmarks.

(48) Certain administrators should be authorised and supervised by the competent authority of the Member State where the administrator in question is located. ***Entities already subject to supervision and that provide financial benchmarks other than critical benchmarks should be registered and supervised by the competent authority for the purposes of this Regulation. Entities that provide only indices that qualify as non-significant benchmarks should also be registered by the relevant competent authority. Authorisation and registration should be distinct processes with authorisation requiring a more extensive assessment of the administrator's application. Whether an administrator is authorised or registered should not affect the supervision of that administrator by the relevant competent authorities. Additionally, a transitional regime should be introduced, according to which persons providing benchmarks which are not critical and are not widely used in one or more Member States could be registered, with a view to facilitating the initial phase of application of this Regulation. ESMA should maintain at the Union level a register that contains information on authorised or registered administrators, on benchmarks and the administrators that provide those benchmarks by virtue of a positive decision under either the equivalence regime or the recognition regime, on Union administrators or supervised entities that have endorsed benchmarks from a third country, and on any such endorsed benchmarks and their administrators located in a third country.***

(49) In some circumstances a person provides an index but could be unaware that the index in question is being used as a reference for a financial instrument***, a financial contract or an investment fund.*** That 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 which specific benchmark is being used. Such transparency can be achieved by improving the content of the prospectuses or key information documents required by Union law and the content of the notifications required by Regulation (EU) No 596/2014 of the European Parliament and of the Council***[17]***.***

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

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[17] ***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 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).***

(51) 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 ▌ legal persons in order to seize documents. 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 could be relevant to prove ***an infringement*** of this Regulation. Additionally, 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, access to premises should take place after having obtained that prior judicial authorisation.

(52) Existing recordings of telephone conversations and data traffic records from supervised entities can constitute crucial, and sometimes the only, evidence to detect and prove the existence of ***infringements*** of this Regulation, in particular the compliance with governance and control requirements. Such records and recordings can help to verify the identity of the person responsible for the submission of input data, 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 could be relevant to prove ***an infringement*** of this Regulation.

(53) 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 ***life***, the protection of personal data, the right to freedom of expression and information, the freedom to conduct a business, the right to property, the right to consumer protection, the right to an effective remedy, the right of defence. ***Accordingly***, this Regulation should be interpreted and applied in accordance with those rights and principles.

(54) The rights of defence of the persons concerned should be fully respected. In particular, persons subject to proceedings should be provided with access to the findings upon which the competent authorities has based the decision and should be given the right to be heard.

(55) Transparency regarding benchmarks is necessary for reasons of financial market stability and investor protection. Any exchange or transmission of information by competent authorities should take place in accordance with the rules on the transfer of personal data laid down in Directive 95/46/EC of the European Parliament and of the Council[18]. Any exchange or transmission of information by ESMA should take place in accordance with the rules on the transfer of personal data laid down in Regulation (EC) No 45/2001 of the European Parliament and of the Council[19].

(56) Taking into consideration the principles set out in the Commission's Communication of 8 December 2010 on reinforcing sanctioning regimes in the financial services sector, and legal acts of the Union adopted as a follow-up to that Communication, Member States should, in order to ensure a common approach and deterrent effect, lay down rules on administrative ***sanctions*** and other administrative measures, including pecuniary sanctions, applicable to infringements of the provisions of this Regulation and should ensure that they are implemented. Those administrative ***sanctions*** and other administrative measures should be effective, proportionate and dissuasive.

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18 Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

19 Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

(57) Administrative sanctions and other administrative measures 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 ***infringement***, any aggravating or mitigating factors, the need for administrative pecuniary sanctions 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 pecuniary sanctions to be imposed in a specific case should be able to reach the maximum level provided for in this Regulation, or the higher level provided for in national law, for very serious ***infringements***, while administrative pecuniary sanctions significantly lower than the maximum level should be able to be applied to minor ***infringements*** or in case of settlement. The possibility of imposing a temporary ban on the exercise of management functions within benchmark administrators or contributors should be available to the competent authority.

(58) ***This Regulation should not limit the ability of Member States to provide for higher levels of administrative sanctions and should be without prejudice to any provisions in the law of Member States relating to criminal sanctions.***

(59) ***Even though nothing prevents Member States from laying down rules for administrative and criminal sanctions for the same infringement, Member States should not be required to lay down rules for administrative sanctions for the infringements of this Regulation which are subject to national criminal law. In accordance with national law, Member States are not obliged to impose both administrative and criminal sanctions for the same offence, but they should be able to do so if their national law so permits. However, the maintenance of criminal sanctions instead of administrative sanctions for infringements of this Regulation should not reduce or otherwise affect the ability of competent authorities to cooperate, access and exchange information in a timely way with competent authorities in other Member States for the purposes of this Regulation, including after any referral of the relevant infringements to the competent judicial authorities for criminal prosecution.***

(60) It is necessary to reinforce provisions on exchange of information between competent authorities and to strengthen the duties of assistance and cooperation which they owe to each other. Due to increasing cross-border activity, competent authorities should provide each other with the relevant information for the exercise of their function, so as to ensure the effective enforcement of this Regulation, including in situations where an infringement or suspected infringement is of concern to authorities in two or more Member States. When exchanging information, strict professional secrecy is needed to ensure the smooth transmission of that information and the protection of particular rights.

(61) In order to ensure that decisions made by competent authorities to impose an administrative sanction or other administrative measure have a deterrent effect on the public at large, they should be published. The publication of decisions imposing an administrative sanction or other administrative measure is also an important tool for competent authorities to inform market participants of the type of behaviour that is considered ***to*** infringe this Regulation and to promote wider good behaviour amongst market participants. If such publication risks causing disproportionate damage to the persons involved, or jeopardises the stability of financial markets or an on-going investigation, the competent authority should either publish the administrative sanction or other administrative measure on an anonymous basis or delay the publication. In addition, competent authorities should have the option not to publish a decision imposing administrative sanctions or other administrative measures at all where anonymous or delayed publication is considered insufficient to ensure that the stability of financial markets is not jeopardised. Competent authorities are also not required to publish administrative sanctions or other administrative measures which are deemed to be of a minor nature where publication would be disproportionate.

(62) Critical benchmarks can involve contributors, administrators and users in more than one Member State. Thus, the cessation of the provision of such a benchmark or any events that can significantly undermine its integrity could have an impact in more than one Member State, meaning that the supervision of such a benchmark only by the competent authority of the Member State in which the administrator of the benchmark is located will not be efficient and effective in terms of addressing the risks that the critical benchmark poses. ***In such a case, in order to*** ensure the effective exchange of supervisory information among competent authorities and coordination of their activities and supervisory measures, colleges, comprising competent authorities and ESMA, should be formed. The activities of the colleges should contribute to the harmonised application of rules under this Regulation and to the convergence of supervisory practices. ***The competent authority of the administrator should establish written arrangements regarding the exchange of information, the decision-making process, which could include rules on voting procedures, any cooperation for the purposes of mandatory contribution measures, and the cases where the competent authorities should consult each other.*** ESMA's legally binding mediation is a key element of the achievement of coordination, supervisory consistency and convergence of supervisory practices ▌.

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

(64) ***In cases where this Regulation captures or potentially captures supervised entities and markets covered by Regulation (EU) No 1227/2011, the Agency for the Cooperation of Energy Regulators (ACER) would need to be consulted by ESMA in order to draw upon ACER's expertise in energy markets and to mitigate any dual regulation.***

(65) In order to specify further technical elements of this Regulation, the power to adopt acts in accordance with Article 290 of TFEU should be delegated to the Commission in respect of the specification of technical elements of definitions***; in respect of the calculation of the nominal amounts of financial instruments, notional amount of derivatives and the net asset value of investment funds referencing a benchmark to determine whether such benchmark is critical; in respect of reviewing the calculation method used to determine the threshold for the determination of critical and significant benchmarks; in respect of establishing the objective reasons for the endorsement of a benchmark or family of benchmarks provided in a third country; in respect of establishing the elements to assess whether the cessation or the changing of an existing benchmark could reasonably result in a force majeure event, frustrate or otherwise breach the terms of any financial contract or financial instrument, or the rules of any investment fund, which references such benchmark; and in respect of the extension of the 24-month period envisaged for the registration instead of authorisation of certain administrators. When adopting those acts, the Commission should take into account the market or technological developments and the international convergence of supervisory practice in relation to benchmarks, in particular the work of IOSCO. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016[20]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.***

[20] OJ XXX, XXX, p. XXX.

(66) ***Technical standards should ensure consistent harmonisation of the requirements for the provision of and contribution to indices used as benchmarks and adequate protection of investors and consumers across the Union. As a body with highly specialised expertise, it would be efficient and appropriate to entrust ESMA with the elaboration of draft regulatory technical standards which do not involve policy choices for submission to the Commission.*** The Commission should adopt draft regulatory technical standards developed by ESMA ▌ by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010***, regarding the procedures and the characteristics of the oversight function; regarding how to ensure the appropriateness and the verifiability of the input data as well as the internal oversight and verification procedures of a contributor; regarding the information to be provided by an administrator about the benchmark and methodology; regarding the elements of the code of conduct; regarding the requirements concerning systems and controls; regarding the criteria that the competent authority should take into account when deciding whether to apply certain additional requirements; regarding the contents of the benchmark statement and the cases in which an update of such a statement is required; regarding the minimum content of the cooperation arrangements between the competent authorities and ESMA; regarding the form and content of the application for recognition of a third country administrator and presentation of the information that is to be provided with such an application; and regarding the information to be provided in the application for authorisation or registration.***

(67) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission ***to establish and review a list of public authorities in*** the ***Union, to establish and review the list of critical benchmarks, and to determine*** the equivalence of the legal framework to which ▌ providers of benchmarks of third countries are subject ***for the purposes of full or partial equivalence***. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[21].

(68) The Commission should also be empowered to adopt implementing technical standards developed by ESMA establishing ***templates for the compliance statements,*** procedures and forms for exchange of information between competent authorities and ESMA, by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010.

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21 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 (OJ L 55, 28.2.2011, p. 13).

(69) Since the objectives of this Regulation, namely to lay down a consistent and effective regime to address the vulnerabilities that benchmarks pose, cannot be sufficiently achieved by the Member States, given that the overall impact of the problems relating to benchmarks can be fully perceived only in a Union context, but can rather, by reason of the scale and effects of this Regulation, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(70) Given the urgency of the need to restore confidence in benchmarks and promote fair and transparent financial markets, this Regulation should enter into force on the day following that of its publication.

(71) Consumers are able to 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 can have a limited choice about the benchmark used. It is therefore necessary to ensure ***that at least adequate information is provided by creditors or credit intermediaries to consumers. To that end, Directives 2008/48/EC and 2014/17/EU should therefore be amended accordingly***.

(72) Regulation (EU) No 596/2014 requires persons discharging managerial responsibilities, as well as persons closely associated with them, to notify the issuer and the competent authority of every transaction conducted on their own account relating to financial instruments that are themselves linked to shares and debt instruments of their issuer. However, there are a variety of financial instruments that are linked to shares and debt instruments of a given issuer. Such financial instruments include units in collective investment undertakings, structured products or financial instruments embedding a derivative that provides exposure to the performance of shares or debt instruments issued by an issuer. Every transaction in such financial instruments above a de minimis threshold should be subject to notification to the issuer and the competent authority. An exception should be made where either the linked financial instrument provides an exposure of 20 % or less to the issuer's shares or debt instruments, or the person discharging managerial responsibilities or person closely associated with them did not and could not know the investment composition of the linked financial instrument. Regulation (EU) No 596/2014 should therefore be amended,

HAVE ADOPTED THIS REGULATION:

TITLE I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject-matter

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

Article 2

Scope

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

2. This Regulation shall not apply to:

(a) a central bank;

(b) a public authority, where it contributes data to, provides, or has control over the provision of, benchmarks for public policy purposes, including measures of employment, economic activity, and inflation;

(c) a central counterparty (CCP), where it provides reference prices or settlement prices used for CCP risk-management purposes and settlement;

(d) the provision of a single reference price for any financial instrument listed in Section C of Annex I to Directive 2014/65/EU;

(e) the press, other media and journalists where they merely publish or refer to a benchmark as part of their journalistic activities with no control over the provision of that benchmark;

(f) a natural or legal person that grants or promises to grant credit in the course of that person's trade, business or profession, only insofar as that person publishes or makes available to the public that person's own variable or fixed borrowing rates set by internal decisions and applicable only to financial contracts entered into by that person or by a company within the same group with their respective clients;

(g) a commodity benchmark based on submissions from contributors the majority of which are non-supervised entities and in respect of which both of the following conditions apply:

(i) the benchmark is referenced by financial instruments for which a request for admission to trading has been made on only one trading venue, as defined in point (24) of Article 4(1) of Directive 2014/65/EU, or which are traded on only one such trading venue;

(ii) the total notional value of financial instruments referencing the benchmark does not exceed EUR 100 million;

(h) an index provider in respect of an index provided by said provider where that index provider is unaware and could not reasonably have been aware that that index is used for the purposes referred to in point (3) of Article 3(1).

Article 3

Definitions

1. For the purposes of this Regulation, the following definitions ▌ apply:

(1) ‘index’ means any figure:

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

(b) that is regularly determined:

(i) entirely or partially by the application of a formula or any other method of calculation, or by an assessment; ***and***

(ii) on the basis of the value of one or more underlying assets or prices, including estimated prices, ***actual or estimated interest rates, quotes and committed quotes,*** or other values ***or surveys;***

(2) ‘index provider’ means a natural or legal person that has control over the provision of an index;

(3) ‘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 ***with the purpose of tracking the return of such index or of defining the asset allocation of a portfolio or of computing the performance fees;***

(4) ‘family of benchmarks’ means a group of benchmarks provided by the same administrator and determined from input data of the same nature which provides specific measures of the same or similar market or economic reality;

(5) ‘provision of a benchmark’ means:

(a) administering the arrangements for determining a benchmark;

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

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

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

(7) ‘***use*** of a benchmark’ means:

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

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

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

(d) providing a borrowing rate as defined in point (j) of Article 3 of Directive 2008/48/EC calculated as a spread or mark-up over an index or a combination of indices and that is solely used as a reference in a financial contract to which the creditor is a party;

(e) measuring the performance of an investment fund through an index or a combination of indices for the purpose of tracking the return of such index or combination of indices, of defining the asset allocation of a portfolio, or of computing the performance fees;

(8) 'contribution of input data' means providing any input data ***not readily 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;

(9) 'contributor' means a natural or legal person contributing input data;

(10) 'supervised contributor' means a supervised entity that contributes input data to an administrator located in the Union;

(11) 'submitter' means ***a*** natural person employed by the contributor for the purpose of contributing input data;

(12) 'assessor' means an employee of an administrator of a commodity benchmark, or any other natural person whose services are placed at the administrator's disposal or under the control of the administrator, and 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;

(13) 'expert judgement' means the exercise of discretion by an administrator or a contributor with respect to the use of data in determining a benchmark, including extrapolating values from prior or related transactions, adjusting values for factors that might influence the quality of data such as market events or impairment of a buyer or seller's credit quality, and weighting firm bids or offers greater than a particular concluded transaction;

(14) 'input data' means the data in respect of the value of one or more underlying assets, or prices, including estimated prices, ***quotes, committed quotes*** or other values, used by an administrator to determine a benchmark;

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

(16) '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 is traded on a trading venue as defined in point (24) of Article 4(1) of Directive 2014/65/EU or via a systematic internaliser as defined in point (20) of Article 4(1) of that Directive;

(17) 'supervised entity' means any of the following:

(a) a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council[22];

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

(c) an insurance undertaking as defined in point (1) of Article 13 of Directive 2009/138/EC of the European Parliament and of the Council[23];

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[22] ***Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).***

[23] ***Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).***

(d) a reinsurance undertaking as defined in point (4) of Article 13 of Directive 2009/138/EC;

(e) a UCITS as defined in Article 1(2) of Directive 2009/65/EC or, where applicable, a UCITS management company as defined in point (b) of Article 2(1) of that Directive;

(f) an alternative investment fund manager (AIFM) as defined in point (b) of Article 4(1) of Directive 2011/61/EU of the European Parliament and of the Council[24];

(g) an institution for occupational retirement provision as defined in point (a) of Article 6 of Directive 2003/41/EC of the European Parliament and of the Council[25];

(h) a creditor 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 that Directive;

(i) a non-credit institution 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 that Directive;

(j) a market operator as defined in point (18) of Article 4(1) of Directive 2014/65/EU;

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24 *Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).*

25 *Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision (OJ L 235, 23.9.2003, p. 10).*

(k) a CCP as defined in point (1) of Article 2 of Regulation (EU) No 648/2012 of the European Parliament and of the Council[26];

(l) a trade repository as defined in point (2) of Article 2 of Regulation (EU) No 648/2012;

(m) an administrator;

(18) 'financial contract' means:

(a) any credit agreement as defined in point (c) of Article 3 of Directive 2008/48/EC;

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

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

(19) 'investment fund' means an AIF as defined in point (a) of Article 4(1) of Directive 2011/61/EU, or a UCITS as defined in Article 1(2) of Directive 2009/65/EC;

(20) 'management body' means the body or bodies of an administrator or another supervised entity which are appointed in accordance with national law, which are empowered to set the strategy, objectives and overall direction of the administrator or other supervised entity, and which oversee and monitor management decision-making and include persons who effectively direct the business of the administrator or other supervised entity;

(21) 'consumer' means a natural person who, in financial contracts covered by this Regulation, is acting for purposes which are outside his or her trade, business or profession;

(22) 'interest rate benchmark' means a benchmark which for the purposes of point (1)(b)(ii) of this paragraph is determined on the basis of the rate at which banks may lend to, or borrow from, other banks, or agents other than banks, in the money market;

(23) 'commodity benchmark' means a benchmark where the underlying asset for the purposes of point (1)(b)(ii) of this paragraph is a commodity within the meaning of point (1) of Article 2 of Commission Regulation (EC) No 1287/2006[27], excluding emission allowances as referred to in point (11) of Section C of Annex I to Directive 2014/65/EU;

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[27] ***Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive (OJ L 241, 2.9.2006, p. 1).***

(24) 'regulated-data benchmark' means a benchmark determined by the application of a formula from:

(a) input data ▌ contributed ***entirely and*** directly from***:***

(i) a trading venue as defined in point (24) of ▌ Article ***4(1) of Directive 2014/65/EU or a trading venue in a third country for which the Commission has adopted an implementing decision that the legal and supervisory framework of that country is considered to have equivalent effect within the meaning of Article 28(4) of Regulation (EU) No 600/2014 of the European Parliament and of the Council[28], or a regulated market considered to be equivalent under Article 2a of Regulation (EU) No 648/2012, but in each case only with reference to transaction data concerning financial instruments;***

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

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28 ***Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).***

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

(iv) an electricity exchange as referred to in point (j) of Article 37(1) of Directive 2009/72/EC ***of the European Parliament and of the Council***[29];

(v) a natural gas exchange as referred to in point (j) of Article 41(1) of Directive 2009/73/EC ▌ of the European Parliament and of the Council***[30];***

(vi) ***an auction platform referred to*** in Article ***26 or 30*** of Commission Regulation (***EU) No 1031/2010***[31]***;***

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29 ***Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ L 211, 14.8.2009, p. 55).***

30 ***Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p. 94)***.

31 ***Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community (OJ L 302, 18.11.2010, p. 1).***

(vii) a service provider to which the benchmark administrator has outsourced the data collection in accordance with Article 10, provided that the service provider receives the data entirely and directly from an entity referred to in points (i) to (vi);

(b) net asset values of investment funds;

(25) 'critical benchmark' means a benchmark ***other than a regulated-data benchmark that fulfils any of the conditions laid down in Article 20(1) and which is on the list established by the Commission pursuant to that Article;***

(26) 'significant benchmark' means a benchmark that fulfils the conditions laid down in Article 24(1);

(27) 'non-significant benchmark' means a benchmark that does not fulfil the conditions laid down in Articles 20(1) and 24(1);

(28) 'located' means, in relation to a legal person, the country where that person's registered office or other official address is situated and, in relation to a natural person, the country where that person is resident for tax purposes;

(29) 'public authority' means:

(a) any government or other public administration, including the entities charged with or intervening in the management of the public debt;

(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 employment, economic activities and inflation, under the control of an entity within the meaning of point (a).

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 49 ***in order*** to specify further technical elements of the definitions laid down in paragraph 1 of this Article, in particular specifying what constitutes making available to the public for the purposes of the definition of an index.

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

3. The Commission shall adopt implementing acts in order to establish and review a list of public authorities in the Union falling within the definition under point (29) of paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 50(2).

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

TITLE II

BENCHMARK INTEGRITY AND RELIABILITY

Chapter 1

Governance of and control by administrators

Article 4

Governance ***and conflict of interest*** requirements

1. An ▌ administrator shall have in place 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.

   Administrators shall take ***adequate*** steps to ***identify and to prevent or manage conflicts*** of ***interest between themselves, including their managers, employees or any person directly or indirectly linked to them*** by ***control, and contributors or users, and to ensure*** that, where any judgement or discretion in the benchmark determination process is required, it is independently and honestly exercised ▌ .

2. ***The provision of a benchmark shall be operationally separated from any part of an administrator's business that may create an actual or potential conflict of interest.***

3. ***Where a conflict of interest arises within an*** administrator ***due to the latter's ownership structure, controlling interests or other activities conducted by any entity owning or controlling the administrator or by an entity that is owned or controlled by the administrator or any of the administrator's affiliates, that cannot be adequately mitigated, the relevant competent authority may require the administrator to*** establish an ***independent*** oversight function ***which shall include a balanced representation of stakeholders, including users and contributors.***

4. ***If such a conflict of interest cannot be adequately managed, the relevant competent authority may require the administrator to either cease the activities or relationships that create the conflict of interest or cease providing the benchmark.***

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

6. An administrator shall establish and operate adequate policies and procedures, as well as effective organisational arrangements, for the identification, disclosure, prevention, management and mitigation 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 determination 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 of interest due to the administrator's ownership or control, or due to other interests in the administrator's group or as a result of other persons that may exercise influence or control over the administrator in relation to determining the benchmark.

7. Administrators shall ensure that their employees and any other natural persons whose services are placed at their disposal or under their 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 those persons do not create conflicts of interest or otherwise impinge upon the integrity of the benchmark determination process;

(c) do not have any interests or business connections that compromise the activities of the administrator concerned;

(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, except where such way of contribution is explicitly required as part of the benchmark methodology and is subject to specific rules therein; and

(e) are subject to effective procedures to control the exchange of information with other employees involved in activities that may create a risk of conflicts of interest or with third parties, where that information may affect the benchmark.

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

Article 5

Oversight function requirements

1. ***Administrators*** shall establish ***and maintain a permanent and effective*** oversight function ***to ensure*** oversight of all aspects of the provision of their benchmarks***.***

2. ***Administrators shall develop and maintain robust procedures regarding their oversight function, which shall be made available to the relevant competent authorities.***

3. ***The oversight function shall operate with integrity and shall have the following responsibilities, which shall be adjusted by the administrator based on the complexity, use and vulnerability of the benchmark:***

(a) ***reviewing the benchmark's definition and methodology at least annually;***

(b) ***overseeing any changes to the benchmark methodology and being able to request the administrator to consult on such changes;***

(c) ***overseeing the administrator's control framework, the management and operation of the benchmark, and, where the benchmark is based on input data from contributors, the code of conduct referred to in Article 15;***

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

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

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

(g) where the benchmark is based on input data from 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 is based on input data from contributors, taking effective measures in respect of any breaches of the code of conduct referred to in Article 15; and

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

4. The oversight function shall be carried out by a separate committee or by means of another appropriate governance arrangement.

5. ESMA shall develop draft regulatory technical standards to specify the procedures regarding the oversight function and the characteristics of the oversight function including its composition as well as its positioning within the organisational structure of the administrator, so as to ensure the integrity of the function and the absence of conflicts of interest. In particular, ESMA shall develop a non-exhaustive list of appropriate governance arrangements as laid down in paragraph 4.

ESMA shall distinguish between the different types of benchmarks and sectors as set out in this Regulation and shall take into consideration the differences in the ownership and control structure of administrators, the nature, scale and complexity of the provision of the benchmark, and the risk and impact of the benchmark, also in light of international convergence of supervisory practice in relation to governance requirements of benchmarks. However, the ESMA draft regulatory technical standards shall not cover or apply to administrators of non-significant benchmarks.

ESMA shall submit those draft regulatory technical standards to the Commission by ... [nine months after the date of entry into force of this Regulation].

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.

6. ***ESMA may issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010, addressed to administrators of non-significant benchmarks to specify the elements referred to in paragraph 5 of this Article.***

Article 6

Control framework requirements

1. Administrators shall have in place a control framework that ensures that their benchmarks are 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 provision of the benchmark and the nature of the benchmark input data.***

3. ***The control framework shall include:***

(a) ***management of operational risk;***

(b) ***adequate and effective business continuity and disaster recovery plans;***

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

4. An administrator shall establish measures to:

(a) ensure that contributors adhere to the code of conduct referred to in Article 15 and comply with the applicable standards for input data;

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

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

Article 7

Accountability framework requirements

1. ***An*** administrator shall have in place an accountability framework, covering record-keeping, auditing and review, and a complaints process, that provides evidence of compliance with the requirements of this Regulation.

2. ***An*** administrator shall ***designate an internal function*** with the ***necessary capability to review*** and ***report on the administrator's compliance with the benchmark methodology and this Regulation.***

3***.*** ***For critical benchmarks, an administrator shall appoint an independent external auditor to review and report on the administrator's compliance with the benchmark methodology and this Regulation, at least annually.***

4. ***Upon the request of the relevant competent authority, an administrator shall provide to the relevant competent authority the details of the reviews and reports provided for in paragraph 2. Upon the request of the relevant competent authority or any user of a benchmark, an administrator shall publish the details of the audits provided for in paragraph 3.***

Article 8

Record-keeping requirements

1. An administrator shall keep records of:

(a) all input data, including the use of such data;

(b) the methodology used for the determination of a benchmark;

(c) any exercise of judgement or discretion by the administrator and, where applicable, by assessors, in the determination of a benchmark, including the reasoning for said judgement or discretion;

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

(e) other changes in or deviations from standard procedures and methodologies, including those made during periods of market stress or disruption;

(f) the identities of the submitters and of the natural persons employed by the administrator for the determination of a benchmark;

(g) all documents relating to any complaint, including those submitted by a complainant; and

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

2. An 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 determination of a benchmark and enable an audit or evaluation of input data, calculations, judgements and discretion. Records of telephone conversation or electronic communications recorded in accordance with point (h) of paragraph 1 shall be provided to the persons involved in the conversation or communication upon request and shall be kept for a period of three years***.

Article 9

Complaints-handling mechanism

1. ***An administrator shall have in place and publish procedures for receiving, investigating and retaining records concerning complaints made, including about the administrator's benchmark determination process.***

2. ***Such a complaints-handling mechanism shall ensure that:***

(a) ***the administrator makes available the complaints-handling policy through which complaints may be submitted on whether a specific benchmark determination is representative of market value, on a proposed change to the benchmark determination process, on an application of the methodology in relation to a specific benchmark determination, and on other decisions in relation to the benchmark determination process;***

(b) ***complaints are investigated in a timely and fair manner and the outcome of the investigation is communicated to the complainant within a reasonable period of time, unless such communication would be contrary to objectives of public policy or to Regulation (EU) No 596/2014; and***

(c) ***the inquiry is conducted independently of any personnel who may be or may have been involved in the subject-matter of the complaint.***

Article 10

Outsourcing

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

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

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

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

(b) the administrator makes available to the relevant competent authorities the identity and the tasks of the service provider that participates in the benchmark determination process;

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

(d) the administrator retains the necessary expertise to supervise the outsourced functions effectively and to manage the risks associated with the outsourcing;

(e) the service provider discloses 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;

(f) the service provider cooperates with the relevant competent authority regarding the outsourced activities, and the administrator and the relevant competent authority 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 is able to exercise those rights of access;

(g) the administrator is able to terminate the outsourcing arrangements where necessary;

(h) the administrator takes reasonable steps, including contingency plans, to avoid undue operational risk related to the participation of the service provider in the benchmark determination process.

Chapter 2

Input data ▌, methodology and reporting of ***infringements***

Article 11

Input data ▌

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

The input data shall be transaction data, if available ***and appropriate. If*** transaction data is not sufficient ***or is not appropriate*** to represent accurately and reliably the market or economic reality that the benchmark is intended to measure, input data which is not transaction data may be used***, including estimated prices, quotes and committed quotes, or other values***;

(b) the input data referred to in point (a) shall be verifiable;

(c) the administrator shall draw up and publish clear guidelines regarding the types of input data, the priority of use of the different types of input data and the exercise of expert judgement, to ensure compliance with point (a) and the methodology;

(d) where a benchmark is based on input data from contributors, the administrator shall obtain***, where appropriate,*** the input data from a reliable and representative panel or sample of contributors so as to ensure that the ***resulting*** benchmark is reliable and representative of the market or economic reality that the benchmark is intended to measure ▌;

(e) the administrator shall not use input data from a contributor if the administrator has any indication that the contributor does not adhere to the code of conduct referred to in Article 15, and in such a case shall obtain representative publicly available data.

2. ***Administrators shall ensure that their controls in respect of input data include:***

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

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

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

3. Where the input data of a benchmark is ***contributed from*** a ***front office function, meaning 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) ***obtain data from other sources*** that ***corroborate that*** input data ▌ ; and

(b) ***ensure that contributors have in place adequate internal oversight and verification procedures.***

4. Where an administrator ***considers*** that the input data does not represent ***the*** market ***or economic reality that a benchmark is intended*** to ***measure***, that administrator shall***, within a reasonable time period,*** either change the input data, the contributors or the methodology in order to ensure that the input data does represent such market ***or economic reality***, or else cease to provide that benchmark.

5. ***ESMA shall develop draft regulatory technical standards to specify further how to ensure that input data is appropriate and verifiable, as required under points (a) and (b) of paragraph 1, as well as the internal oversight and verification procedures of a contributor that the administrator has to ensure are in place, in compliance with point (b) of paragraph 3, in order to ensure the integrity and accuracy of input data. However, the ESMA draft regulatory technical standards shall not cover or apply to administrators of non-significant benchmarks.***

ESMA shall take into account the different types of benchmarks and sectors as set out in this Regulation, the nature of input data, the characteristics of the underlying market or economic reality and the principle of proportionality, the vulnerability of the benchmarks to manipulation 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 ... [nine months after the date of entry into force of this Regulation].

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.

6. ***ESMA may issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010, addressed to administrators of non-significant benchmarks to specify the elements referred to in paragraph 5 of this Article.***

Article 12

Methodology

1. An administrator shall use a methodology for determining a 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, where appropriate, back-testing against available transaction data;***

(d) ***is resilient and ensures that the benchmark can be calculated in the widest set of possible circumstances, without compromising its integrity;***

(e) ***is traceable and verifiable.***

2. When developing a benchmark methodology, a 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 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. An 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 is to be calculated in such circumstances.

Article 13

Transparency of methodology

1. An administrator shall develop, operate and administer the benchmark and methodology transparently. ***To that end, the administrator shall publish or make available the following information:***

(a) the key elements of the methodology that the administrator uses for each benchmark provided and published or, when applicable, for each family of benchmarks provided and published;

(b) details of the internal review and the approval of a given methodology, as well as the frequency of such review;

(c) the procedures for consulting on any proposed material change in the administrator's methodology and the rationale for such changes, including a definition of what constitutes a material change and the circumstances in which the administrator is to notify users of any such changes.

2. The procedures required under point (c) of paragraph 1 shall provide for:

(a) advance notice, with a clear timeframe, that gives the opportunity to analyse and comment upon the impact of such proposed material changes; and

(b) the comments referred to in point (a) of this paragraph, and the administrator's response to those comments, to be made accessible after any consultation, except where confidentiality has been requested by the originator of the comments.

3. ***ESMA shall develop draft regulatory technical standards to specify further the information to be provided by an*** administrator ***in compliance*** with the requirements ***laid down in paragraphs 1 and 2, distinguishing for different types of benchmarks and sectors as*** set out ***in this Regulation. ESMA shall take into account the need to disclose those elements of the methodology that provide for sufficient detail to allow users to understand how a benchmark is provided and to assess its representativeness, its relevance to particular users and its appropriateness as a reference for financial instruments and contracts and the principle of proportionality. However, the ESMA draft regulatory technical standards shall not cover or apply to administrators of non-significant benchmarks***.

ESMA shall submit those draft regulatory technical standards to the Commission by ... [nine months after the date of entry into force of this Regulation].

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

4. ESMA may issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010, addressed to administrators of non-significant benchmarks to specify further the elements referred to in paragraph 3 of this Article.

Article 14

Reporting of ***infringements***

1. An administrator shall ***establish*** adequate systems and effective controls to ensure the integrity ***of*** input data in order to ***be able to*** identify ***and report to the competent authority*** any conduct that may involve manipulation or attempted manipulation of a benchmark, ***under Regulation (EU) No 596/2014***.

2. ***An administrator shall monitor input data*** and ***contributors in order to be able to*** notify the ▌ competent authority ▌ and provide all relevant information where the administrator suspects that, in relation to a benchmark, ***any*** conduct has taken place that may involve manipulation or attempted manipulation of the benchmark, ***under Regulation (EU) No 596/2014, including*** collusion to ***do so***.

The competent authority of the administrator shall, where applicable, transmit such information to the relevant authority under Regulation (EU) No 596/2014.

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

Chapter 3

Code of conduct and requirements for contributors

Article 15

Code of conduct

1. ***Where a benchmark is based on input data from contributors, its*** administrator shall ***develop*** a code of conduct for each benchmark clearly specifying ▌ contributors' responsibilities ▌ with respect to the ***contribution*** of ***input data and*** shall ***ensure that such code of conduct complies with this Regulation. The administrator shall be satisfied that contributors adhere to the code of conduct on a continuous basis and at least annually and in case of changes to it.***

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 input data is provided*** in accordance with ***Articles 11 and 14;***

(b) identification of the persons that may contribute input data to the administrator and procedures to verify the identity of a contributor and any submitters, as well as authorisation of any submitters that contribute input data on behalf of a contributor;

(c) policies to ensure that a contributor provides all relevant input data;

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

(i) procedures for contributing input data, including requirements for the contributor to specify whether input data is transaction data and whether input data conforms to the administrator's requirements;

(ii) policies on the use of discretion in contributing input data;

(iii) any requirement for the validation of input data before it is provided to the administrator;

(iv) record-keeping policies;

(v) reporting requirements concerning suspicious input data;

(vi) requirements concerning the management of conflicts of interest.

3. Administrators may develop a single code of conduct for each family of benchmarks they provide.

4. In the event that a relevant competent authority, in the use of its powers referred to in Article 41, finds that there are elements of a code of conduct which do not comply with this Regulation, it shall notify the administrator concerned. The administrator shall adjust the code of conduct to ensure that it complies with this Regulation within 30 days of such a notification.

5. Within 15 working days from the date of application of the decision to include a critical benchmark in the list referred to in Article 20(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. In the event that the relevant competent authority finds elements which do not comply with this Regulation, paragraph 4 of this Article shall apply.

6. ***ESMA shall develop draft regulatory technical standards to specify further the elements 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 shall take into account the different characteristics of benchmarks and contributors, in particular in terms of differences in input data and methodologies, the risks of input data of being manipulated and international convergence of supervisory practices in relation to benchmarks.

▌

ESMA shall submit those draft regulatory technical standards to the Commission by ... [nine months after the date of entry into force of this Regulation].

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.

Article 16

Governance and control ***requirements for supervised contributors***

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

(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 referred to in Article 15;

(b) the supervised contributor shall have in place a control framework that ensures the integrity, accuracy and reliability of input data and that input data is provided in accordance with this Regulation and the code of conduct referred to in Article 15.

2. A supervised contributor shall ***have in place effective*** systems and controls ***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 holding a position senior to that of the submitter;

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

(c) measures for the management of conflicts of interest, including organisational separation of employees where appropriate and consideration of how to remove incentives, created by remuneration polices, to manipulate a benchmark;

(d) record-keeping, for an appropriate period of time, of communications in relation to provision of input data, of all information used to enable the contributor to make each submission, and of all existing or potential conflicts of interest including, but not limited to, the contributor's exposure to financial instruments which use a benchmark as a reference;

(e) record-keeping of internal and external audits.

3. ***Where input data relies on expert judgement, supervised contributors shall establish, in addition to the systems and controls referred to in paragraph 2, policies guiding any use of judgement or exercise of discretion and shall retain records of the rationale for any such judgement or discretion. Where proportionate, supervised contributors shall take into account the nature of the benchmark and its input data.***

4. 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 ***paragraphs 2 and 3***.

5. ***ESMA*** shall ***develop draft regulatory technical standards*** to ***specify*** further ▌ the requirements concerning governance, systems and controls, and policies set out in ***paragraphs 1, 2 and 3***.

ESMA shall take into account the different characteristics of benchmarks and supervised contributors, in particular 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. ***However, the ESMA draft regulatory technical standards shall not cover or apply to supervised contributors of non-significant benchmarks.***

▌

ESMA shall submit those draft regulatory technical standards to the Commission by ... [nine months after the date of entry into force of this Regulation].

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.***

6. ***ESMA may issue guidelines*** in ***accordance with Article 16 of Regulation*** (***EU) No 1095/2010, addressed to supervised contributors to non-significant benchmarks to specify the*** elements ***referred to in paragraph 5 of this Article.***

TITLE III

REQUIREMENTS FOR DIFFERENT TYPES OF BENCHMARKS

Chapter 1

Regulated-data benchmarks

Article 17

Regulated-data benchmarks

1. ***Article 11(1)(d) and (e), Article 11(2) and (3), Article 14(1) and (2), and Articles 15 and 16 shall not apply to the provision of and the contribution to regulated-data benchmarks. Article 8(1)(a) shall not apply to the provision of regulated-data benchmarks with reference to input data that are contributed entirely and directly as specified in point (24) of Article 3(1).***

2. ***Articles 24 and 25 or Article 26 shall, as applicable, apply to the provision of, and the contribution to, regulated-data benchmarks that are used directly or indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance of investment funds, having a total value of up to EUR 500 billion, on the basis of all the range of maturities or tenors of the benchmark, where applicable.***

Chapter 2

Interest rate benchmarks

Article 18

Interest rate benchmarks

The specific requirements laid down in Annex I shall apply to the provision of, and contribution to, interest rate benchmarks in addition to, or as a substitute for, the requirements of Title II.

Articles 24, 25 and 26 shall not apply to the provision of, and contribution to, interest rate benchmarks.

Chapter 3

Commodity benchmarks

Article 19

Commodity benchmarks

1. ***The specific requirements laid down in Annex II shall apply instead of the requirements of Title II, with the exception of Article 10, to the provision of, and contribution to, commodity benchmarks, unless the benchmark in question is a regulated-data benchmark or is based on submissions by contributors the majority of which are supervised entities.***

Articles 24, 25 and 26 shall not apply to the provision of, and contribution to, commodity benchmarks.

2. ***Where a commodity benchmark is a critical benchmark and the underlying asset is gold, silver or platinum, the requirements of Title II shall apply instead of Annex II.***

Chapter 4

Critical benchmarks

Article ***20***

Critical benchmarks

1. The Commission shall adopt ***implementing acts in accordance with the examination procedure referred to in Article 50(2) to establish and review at least every two years*** a list of benchmarks ***provided by administrators*** located within the Union which are critical benchmarks, ***provided that one of the following conditions is fulfilled:***

   (a) the benchmark is used directly or indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance of investment funds, having a total value of at least EUR 500 billion on the basis of all the range of maturities or tenors of the benchmark, where applicable;

   (b) the benchmark is based on submissions by contributors the majority of which are located in one Member State and is recognised as being critical in that Member State in accordance with the procedure laid down in ***paragraphs 2, 3, 4 and 5 of this Article;***

(c) the benchmark fulfils all of the following criteria:

(i) the benchmark is used directly or indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance of investment funds having a total value of at least EUR 400 billion on the basis of all the range of maturities or tenors of the benchmark, where applicable, but not exceeding the value provided for in point (a);

(ii) the benchmark has no, or very few, appropriate market-led substitutes;

(iii) in the event that the benchmark ceases to be provided, or is provided on the basis of input data no longer fully representative of the underlying market or economic reality or on the basis of unreliable input data, there would be significant and adverse impacts on market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in one or more Member States.

If a benchmark meets the criteria set out in point (c)(ii) and (iii) but does not meet the criterion set out in point (c)(i), the competent authorities of the Member States concerned together with the competent authority of the Member State where the administrator is established may agree that such benchmark should be recognised as critical under this subparagraph. In any case, the competent authority of the administrator shall consult the competent authorities of the Member States concerned. In the event of disagreement between the competent authorities, the competent authority of the administrator shall decide whether the benchmark should be recognised as critical under this subparagraph, taking into account the reasons for the disagreement. The competent authorities or, in the event of disagreement, the competent authority of the administrator, shall transmit the assessment to the Commission. After receiving the assessment, the Commission shall adopt an implementing act in accordance with this paragraph. In addition, in the event of disagreement, the competent authority of the administrator shall transmit its assessment to ESMA, which may publish an opinion.

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2. Where the competent authority of a Member State referred to in point (b) of paragraph 1 considers that an administrator under its supervision provides a benchmark that should be recognised as critical, it shall notify ESMA and transmit to ESMA a documented assessment.

3. For the purposes of paragraph 2, the competent authority shall assess whether the cessation of the benchmark or its provision on the basis of input data or of a panel of contributors no longer representative of the underlying market or economic reality would have an adverse impact on market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in its Member State. The competent authority shall take into consideration in its assessment:

(a) the value of financial instruments and financial contracts that reference the benchmark and the value of investment funds referencing the benchmark for measuring their performance within the Member State and their relevance in terms of the total value of financial instruments and of financial contracts outstanding, and of the total value of investment funds, in the Member State;

(b) the value of financial instruments and financial contracts that reference the benchmark and the value of investment funds referencing the benchmark for measuring their performance within the Member State and their relevance in terms of the gross national product of the Member State;

(c) any other figure to assess on objective grounds the potential impact of the discontinuity or unreliability of the benchmark on market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in the Member State.

The competent authority shall review its assessment of the criticality of the benchmark at least every two years, and shall notify and transmit the new assessment to ESMA.

4. Within six weeks of receipt of the notification referred to in paragraph 2, ESMA shall issue an opinion on whether the assessment of the competent authority complies with the requirements of paragraph 3 and shall transmit such opinion to the Commission, together with the competent authority's assessment.

5. The Commission, after receiving the opinion referred to in paragraph 4, shall adopt implementing acts in accordance with paragraph 1.

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 49 in order to:

(a) specify how the nominal amount of financial instruments other than derivatives, the notional amount of derivatives and the net asset value of investment funds are to be assessed, including in the event of an indirect reference to a benchmark within a combination of benchmarks, in order to be compared with the thresholds referred to in paragraph 1 of this Article and in point (a) of Article 24(1);

(b) review the calculation method used to determine the thresholds referred to in paragraph 1 of this Article in the light of market, price and regulatory developments as well as the appropriateness of the classification of benchmarks with a total value of financial instruments, financial contracts, or investment funds referencing them that is close to the thresholds; such review shall take place at least every two years as from ... [18 months after the date of entry into force of this Regulation];

(c) specify how the criteria referred to in point (c)(iii) of paragraph 1 of this Article are to be applied, taking into consideration any data which helps assess on objective grounds the potential impact of the discontinuity or unreliability of the benchmark on market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in one or more Member States.

Where applicable, the Commission shall take into account relevant market or technological developments.

Article 21

Mandatory administration of a critical benchmark

1. ***If an administrator of a critical benchmark intends to cease providing such benchmark, the administrator shall:***

(a) ***immediately notify its competent authority; and***

(b) ***within four weeks of such notification submit an assessment of how the benchmark:***

(i) ***is to be transitioned to a new administrator; or***

(ii) ***is to be ceased to be provided, taking into account the procedure established in Article 28(1).***

During the period referred to in point (b) of the first subparagraph, the administrator shall not cease provision of the benchmark.

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

(a) inform ESMA and, where applicable, the college established under Article 46; and

(b) within four weeks, make its own assessment of how the benchmark is to be transitioned to a new administrator or be ceased to be provided, taking into account the procedure established in accordance with Article 28(1).

During the period of time referred to in point (b) of the first subparagraph of this paragraph, the administrator shall not cease the provision of the benchmark without the written consent of the competent authority.

3. Following completion of the assessment referred to in point (b) of paragraph 2, the competent authority shall have the power to compel the administrator to continue publishing the benchmark until such time as:

(a) the provision of the benchmark has been transitioned to a new administrator;

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

(c) the benchmark is no longer critical.

For the purposes of the first subparagraph, the period for which the competent authority may compel the administrator to continue to publish the benchmark shall not exceed 12 months.

By the end of that period, the competent authority shall review its decision to compel the administrator to continue to publish the benchmark and may, where necessary, extend the time period by an appropriate period not exceeding a further 12 months. The maximum period of mandatory administration shall not exceed 24 months in total.

4. Without prejudice to paragraph 1, in the event that the administrator of a critical benchmark is to be wound down due to insolvency proceedings, the competent authority shall make an assessment of whether and how the critical benchmark can be transitioned to a new administrator or can cease to be provided in an orderly fashion, taking into account the procedure established in accordance with Article 28(1).

Article 22

Mitigation of market power of critical benchmark administrators

Without prejudice to the application of Union competition law, when providing a critical benchmark, the administrator shall take adequate steps to ensure that licences of, and information relating to, the benchmark are provided to all users on a fair, reasonable, transparent and non-discriminatory basis.

Article 23

Mandatory contribution ***to a critical benchmark***

1. ***This Article shall apply to critical benchmarks based on submissions by*** contributors ***the majority of which are supervised entities***.

2. ***Administrators of one or more critical benchmarks shall, every two years, submit to their competent authority an assessment of the capability of each critical benchmark they provide to measure the underlying market or economic reality.***

3. ***If a supervised*** contributor to a critical benchmark ***intends to cease contributing input data, it shall promptly notify in writing*** the ***benchmark administrator, which shall inform without delay its*** competent authority ▌. ***Where*** the ***supervised contributor is located in another Member State, the competent authority of the administrator shall inform, without delay, the competent authority of that contributor. The benchmark administrator shall submit to its competent authority an assessment of the implications on the capability of the benchmark to measure the underlying market or economic reality as soon as possible but no later than 14 days after the notification made by the supervised contributor.***

4. ***Upon receipt of an assessment of the benchmark administrator referred to in paragraphs 2 and 3 of this Article and on the basis of such assessment, the competent authority of the administrator shall promptly inform ESMA and, where applicable, the college established under Article 46, and make its own assessment on the capability of the benchmark to measure the underlying market and economic reality, taking into account the administrator's procedure for cessation of the benchmark established in accordance with Article 28(1).***

5. ***From the date on which the competent authority of the administrator is notified of the intention of a contributor to cease contributing input data and until such time as the assessment referred to in paragraph 4 is complete, it shall have the power to require the contributors which made the notification in accordance with paragraph 3 to continue contributing input data, in any event for a period of no more than four weeks, without imposing an obligation on supervised entities to either trade or commit to trade.***

6. ***In the event that the competent authority, after the period specified in paragraph 5 and on the basis of its own assessment referred to in paragraph 4, considers that the representativeness of a critical benchmark is put at risk, it*** shall have the power to:

(a) require supervised entities selected in accordance with ***paragraph 7 of this Article, including entities that are not yet contributors to the relevant critical benchmark***, to contribute input data to the administrator in accordance with the administrator's methodology, the code of conduct referred to in Article 15 and other rules***. Such requirement shall be in place for an appropriate period of time not exceeding 12 months from the date on which the initial decision requiring mandatory contribution was taken pursuant to paragraph 5 or, for those*** entities that are not yet contributors, from the date on which the decision requiring mandatory contribution is taken under this point;

(b) extend the period of mandatory contribution by an appropriate period of time not exceeding 12 months, following a review under paragraph 9 of any measures adopted pursuant to point (a) of this paragraph;

(c) determine the form in which, and the time by which, any input data is to be contributed ***without imposing an obligation on supervised entities to either trade or commit to trade;***

(d) ***require the administrator to*** change the methodology, ***the code of conduct referred to in Article 15*** or other rules of the critical benchmark.

The maximum period of mandatory contribution under points (a) and (b) of the first subparagraph shall not exceed 24 months in total.

7. ***For the purposes of paragraph 6,*** supervised entities that are to be required to contribute input data shall be selected by the competent authority of the administrator***, with the close cooperation of the competent authorities of the supervised entities,*** on the basis of ▌ the size of the supervised entity's actual and potential participation in the market that the benchmark intends to measure.

▌

8. The competent authority of a supervised contributor that has been required to contribute to a benchmark through measures taken in accordance with point (a), (b) or ***(c)*** of paragraph 6 shall ***cooperate with*** the competent authority of the administrator in the enforcement of such measures.

9. ***By the end of the period referred to in point (a) of the first subparagraph of paragraph 6, the*** competent authority of the administrator shall review the measures adopted under paragraph 6. ▌ It shall revoke ***any of them if it considers that:***

(a) the contributors are likely to continue contributing input data for at least one year if the measure were revoked, which 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 if the measure were revoked;

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

(b) ***the provision of the benchmark is able to continue once the contributors mandated to contribute input data have ceased contributing;***

(c) an acceptable substitute benchmark is available and users of the critical benchmark can switch to this substitute at minimal costs which shall be evidenced by at least a written report by the administrator detailing the means of transition to a substitute benchmark and the ability and costs to users of transitioning to this benchmark***; or***

(d) ***no appropriate alternative contributors can be identified and the cessation of contributions from the relevant supervised entities would weaken the benchmark to such an extent to require the cessation of the benchmark.***

10. ***In the event that a critical benchmark is to be ceased to be provided, each supervised contributor to that benchmark shall continue to contribute input data for a period of time determined by the competent authority, but not exceeding the maximum 24-month period laid down in the second subparagraph of paragraph 6.***

11. The administrator shall notify the relevant competent authority in the event that any contributors breach the requirements set out in paragraph 6 as soon as reasonably possible.

12. ***In the event that a benchmark is recognised as critical in accordance with the procedure laid down in Article 20(2), (3), (4) and (5), the competent authority of the administrator shall have the power to require input data in accordance with paragraph 5, and points (a), (b) and (c) of paragraph 6, of this Article only from supervised contributors located in its Member State.***

Chapter 5

Significant benchmarks

Article 24

Significant benchmarks

1. ***A benchmark which does not fulfil any of the conditions laid down in Article 20(1) is significant when:***

(a) ***it is used directly or indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance of investments funds having a total average value of at least EUR 50 billion on the basis of all the range of maturities or tenors of the benchmark, where applicable, over a period of six months; or***

(b) ***it has no or very few appropriate market-led substitutes and, in the event that the benchmark ceases to be provided or is provided on the basis of input data no longer fully representative of the underlying market or economic reality or unreliable input data, there would be a significant and adverse impact on market integrity, financial stability, consumers, the real economy or the financing of households or businesses in one or more Member States.***

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 49 in order to review the calculation method used to determine the threshold referred to in point (a) of paragraph 1 of this Article in the light of market, price and regulatory developments as well as the appropriateness of the classification of benchmarks with a total value of financial instruments, financial contracts or investment funds referencing them that is close to that threshold. Such review shall take place at least every two years as from ... [18 months after the date of entry into force of this Regulation].

3. An administrator shall immediately notify its competent authority when its significant benchmark falls below the threshold mentioned in point (a) of paragraph 1.

Article 25

Exemptions from specific requirements for significant benchmarks

1. ***An administrator may choose not to apply Article 4(2), points (c), (d) and (e) of Article 4(7), point (b) of Article 11(3) or Article 15(2) with respect to its significant benchmark where that administrator considers that the application of one or more of those provisions would be disproportionate taking into account the nature or impact of the benchmark or the size of the administrator.***

2. ***In the event that an administrator chooses not to apply one or more of the provisions referred to in paragraph 1, it shall immediately notify the competent authority and provide it with all relevant information confirming the administrator´s assessment that the application of one or more of those provisions would be disproportionate taking into account the nature or impact of the benchmarks or the size of the administrator.***

3. ***A competent authority may decide that the administrator of a significant benchmark is nevertheless to apply one or more of the requirements laid down in Article 4(2), points (c), (d) and (e) of Article 4(7), point (b) of Article 11(3) and Article 15(2) if it considers that it would be appropriate taking into account the nature or the impact of the benchmarks or the size of the administrator. In its assessment, the competent authority shall, based on the information provided by the administrator, take into account the following criteria:***

(a) the vulnerability of the benchmark to manipulation;

(b) the nature of the input data;

(c) the level of conflicts of interest;

(d) the degree of discretion of the administrator;

(e) the impact of the benchmark on markets;

(f) the nature, scale and complexity of the provision of the benchmark;

(g) the importance of the benchmark to financial stability;

(h) the value of financial instruments, financial contracts or investment funds that reference the benchmark;

(i) the administrator's size, organisational form or structure.

4. Within 30 days of receipt of a notification from an administrator under paragraph 2, the competent authority shall notify that administrator of its decision to apply an additional requirement pursuant to paragraph 3. In the event that the notification to the competent authority is made during the course of an authorisation or registration procedure, the deadlines set out in Article 34 shall apply.

5. When exercising its supervisory powers in accordance with Article 41, a competent authority shall regularly review whether its assessment pursuant to paragraph 3 of this Article is still valid.

6. If a competent authority finds, on reasonable grounds, that the information submitted to it pursuant to paragraph 2 of this Article is incomplete or that supplementary information is needed, the 30-day time- limit referred to in paragraph 4 of this Article shall apply only from the date on which such complementary information is provided by the administrator, unless the deadlines of Article 34 apply pursuant to paragraph 4 of this Article.

7. Where an administrator of a significant benchmark does not comply with one or more of the requirements laid down in Article 4(2), points (c), (d) and (e) of Article 4(7), point (b) of Article 11(3) and Article 15(2), it shall publish and maintain a compliance statement that clearly states why it is appropriate for that administrator not to comply with those provisions.

8. ESMA shall develop draft implementing technical standards to develop a template for the compliance statement referred to in paragraph 7.

ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by ... [nine months after the date of entry into force of this Regulation].

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 (EU) No 1095/2010.

9. ***ESMA shall develop draft regulatory technical standards to specify further the criteria referred to in paragraph 3.***

ESMA shall submit those draft regulatory technical standards to the Commission by ... [nine months after the date of entry into force of this Regulation].

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

Chapter 6

Non-significant benchmarks

Article 26

Non-significant benchmarks

1. ***An administrator may choose not to apply Articles 4(2), points (c), (d) and (e) of Article 4(7), Articles 4(8), 5(2), 5(3), 5(4), 6(1), 6(3), 6(5), 7(2), point (b) of Article 11(1), points (b) and (c) of Article 11(2), and Articles 11(3), 13(2), 14(2), 15(2), 16(2) and (3) with respect to its non-significant benchmarks.***

2. ***An administrator shall immediately notify its competent authority when the administrator's non-significant benchmark exceeds the threshold mentioned in point (a) of Article 24(1). In that case, it shall comply with the requirements applicable to significant benchmarks within three months.***

3. Where an administrator of a non-significant benchmark chooses not to apply one or more of the provisions referred to in paragraph 1, it shall publish and maintain a compliance statement which shall clearly state why it is appropriate for that administrator not to comply with those provisions. The administrator shall provide the compliance statement to its competent authority.

4. The relevant competent authority shall review the compliance statement referred to in paragraph 3 of this Article. The competent authority may also request additional information from the administrator in respect of its non-significant benchmarks in accordance with Article 41 and may require changes to ensure compliance with this Regulation.

5. ESMA shall develop draft implementing technical standards to develop a template for the compliance statement referred to in paragraph 3.

ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by ... [nine months after the date of entry into force of this Regulation].

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 (EU) No 1095/2010.

TITLE IV

TRANSPARENCY AND CONSUMER PROTECTION

Article 27

Benchmark statement

1. ***Within two weeks of the inclusion of an administrator in the register referred to in Article 36, the*** administrator shall publish***, by means that ensure fair and easy access,*** a benchmark statement for each benchmark ***or, where applicable, for each family of benchmarks, that may be used in the Union in accordance with Article 29.***

Where that administrator begins providing a new benchmark or family of benchmarks that may be used in the Union in accordance with Article 29, the administrator shall publish, within two weeks and by means that ensure a fair and easy access, a benchmark statement for each new benchmark or, where applicable, family of benchmarks.

The administrator shall review and, where necessary, update the benchmark statement for each benchmark or family of benchmarks in the event of any changes to the information to be provided under this Article and at least every two years.

The benchmark 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) ***lay*** down technical specifications that clearly and unambiguously identify the elements of the calculation ***of the benchmark in*** relation to which discretion may be exercised, the criteria applicable to the exercise of such discretion and the ***position of the*** persons ***that can exercise*** discretion▌ , and how such discretion may be subsequently 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 ***users*** that ***changes to, or the cessation of, the benchmark may*** have an ***impact upon the*** financial contracts ***and*** financial instruments that reference the benchmark ***or the measurement of the performance of investment funds***.

▌

2. A ***benchmark statement shall contain at least:***

(a) the definitions for all key terms relating 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 minimum data needed to determine a benchmark, 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 judgement or discretion by the administrator or any contributors, to ensure consistency in the use of such judgement or discretion;

(e) ***the procedures which govern the determination of the benchmark 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***;

(f) ***the procedures for dealing with errors*** in input data ***or in the determination of the benchmark, including when a re-determination of the benchmark is required; and***

(g) ***the identification of potential limitations of the benchmark, including its operation in illiquid or fragmented markets and the possible concentration of inputs.***

3. ***ESMA shall develop draft regulatory technical standards to specify further the contents of a benchmark statement and the cases in which an update of such statement is required.***

ESMA shall distinguish between the different types of benchmarks and sectors as set out in this Regulation and shall take into account the principle of proportionality.

ESMA shall ***submit those draft regulatory technical standards to the Commission by ... [nine months after the date of entry into force of this Regulation]***.

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.

Article 28

Changes to and cessation of a benchmark

1. An administrator shall publish***, together with the benchmark statement referred to in Article 27,*** a procedure concerning the actions to be taken by the administrator in the event of changes to or the cessation of a benchmark ***which may be used in the Union in accordance with Article 29(1). The procedure may be drafted, where applicable, for families of benchmarks and shall be updated and published whenever a material change occurs***.

2. Supervised entities ***other than an administrator as referred to in paragraph 1*** 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 provided. ***Where feasible and appropriate, such plans shall nominate one or several alternative benchmarks that could be referenced to substitute the benchmarks no longer provided, indicating why such benchmarks would be suitable alternatives.*** The supervised entities shall***, upon request,*** provide the relevant competent authority with those plans ***and any updates and shall reflect them in the contractual relationship with clients***.

TITLE V

USE OF BENCHMARKS ***IN THE UNION***

Article 29

Use of ***a benchmark***

1. A supervised entity may use a benchmark ***or a combination of benchmarks*** in the Union ***if the benchmark is provided by an administrator located in the Union and included in the register referred to in Article 36 or is a benchmark which is included in the register referred to in Article 36.***

2. ***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 products 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*** is provided by an administrator ***included in the register referred to in Article 36 of this Regulation***.

Article 30

Equivalence

1. ***In order for a benchmark or a combination of benchmarks provided by an administrator located in a third country to be used in the Union in accordance with Article 29(1), the benchmark and the administrator shall be included in the register referred to in Article 36. The following conditions shall be complied with in order to be included in the register***:

(a) an equivalence decision is adopted by the Commission in accordance with paragraph 2 ***or 3 of this Article***;

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

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

(d) the cooperation arrangements referred to in paragraph 4 of this Article are operational.

2. The Commission may adopt an implementing decision stating that the legal framework and supervisory practice of a third country ensures that:

(a) administrators authorised or registered in that third country comply with binding requirements which are equivalent to the requirements under this Regulation, in particular taking account of whether the legal framework and supervisory practice of a third country ensures compliance with the IOSCO principles for financial benchmarks ***or, where applicable, with the IOSCO principles for PRAs; and***

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

Such implementing decision shall be adopted in accordance with the examination procedure referred to in Article 50(2).

3. Alternatively, the Commission may adopt an implementing decision stating that:

(a) binding requirements in a third country with respect to specific administrators or specific benchmarks or families of benchmarks are equivalent to the requirements under this Regulation, in particular taking account of whether the legal framework and supervisory practice of a third country ensures compliance with the IOSCO principles for financial benchmarks or, where applicable, with the IOSCO principles for PRAs; and

(b) such specific administrators or specific benchmarks or families of benchmarks are subject to effective supervision and enforcement on an on-going basis in that third country.

Such implementing decision shall be adopted in accordance with the examination procedure referred to in Article 50(2).

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

(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;

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

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

5. ESMA shall develop draft regulatory technical standards to determine the minimum content of the cooperation arrangements referred to in paragraph 4 so as to ensure that the competent authorities and ESMA are able to exercise all their supervisory powers under this Regulation.

ESMA shall submit those draft regulatory technical standards to the Commission by ... [***nine months after the date of entry into force of this Regulation***].

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.

Article 31

Withdrawal of registration ***of an administrator located in a third country***

1. ***ESMA shall withdraw the registration of an administrator located in a third country by removing that administrator*** from the register ***referred to in Article 36 where it*** has well-founded reasons, based on documented evidence, ▌ that the administrator:

(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 in the third country or other provisions applicable to it in the third country and on the basis of which the Commission has adopted the implementing decision in accordance with Article 30(2) ***or (3).***

2. ESMA shall take a decision under paragraph 1 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 orderly functioning of the markets in the Union, or has failed to demonstrate that the administrator concerned complies with the requirements applicable to it in the third country;

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

3. ESMA shall inform the other competent authorities of any measure adopted in accordance with paragraph 1 without delay and shall publish its decision on its website.

Article 32

Recognition of an administrator located in a third country

1. Until such time as an equivalence decision in accordance with Article 30(2) or (3) is adopted, a benchmark 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 the competent authority of its Member State of reference in accordance with this Article.

2. An administrator located in a third country intending to obtain prior recognition as referred to in paragraph 1 of this Article shall comply with the requirements established in this Regulation, excluding Article 11(4) and Articles 16, 20, 21 and 23. The administrator may fulfil that condition by applying the IOSCO principles for financial benchmarks or the IOSCO principles for PRAs, as applicable, provided that such application is equivalent to compliance with the requirements established in this Regulation, excluding Article 11(4), and Articles 16, 20, 21 and 23.

For the purposes of determining whether the condition referred to in the first subparagraph is fulfilled, and in order to assess compliance with the IOSCO principles for financial benchmarks or the IOSCO principles for PRAs, as applicable, the competent authority of the Member State of reference may rely on an assessment by an independent external auditor or, where the administrator located in a third country is subject to supervision, on the certification provided by the competent authority of the third country where the administrator is located.

If, and to the extent that, an administrator is able to demonstrate that a benchmark it provides is a regulated-data benchmark or a commodity benchmark that is not based on submissions by contributors the majority of which are supervised entities, there shall be no obligation on the administrator to comply with requirements not applicable to the provision of regulated-data benchmarks and of commodity benchmarks as provided for in Article 17 and Article 19(1) respectively.

3. ***An administrator located in a third country intending to obtain prior recognition as referred to in paragraph 1 shall have a legal representative established in its Member State of reference. The legal representative shall be a natural or legal person located in the Union, and which, expressly appointed by the administrator located in a third country, acts on behalf of such administrator vis-à-vis the authorities and any other person in the Union with regard to the administrator's obligations under this Regulation. The legal representative shall perform the oversight function relating to the provision of benchmarks performed by the administrator under this Regulation together with the administrator and, in that respect, shall be accountable to the competent authority of the Member State of reference.***

4. ***The Member State of reference of an administrator located in a third country shall be determined as follows:***

(a) where an administrator is part of a group that contains one supervised entity located in the Union, the Member State of reference shall be the Member State where that supervised entity is located. Such supervised entity shall be appointed as the legal representative for the purposes of paragraph 3;

(b) if point (a) does not apply, where an administrator is part of a group that contains more than one supervised entity located in the Union, the Member State of reference shall be the Member State where the highest number of supervised entities are located or, in the event that there is an equal number of supervised entities, the Member State of reference shall be the one where the value of financial instruments, financial contracts or investment funds that reference the benchmark is highest. One of the supervised entities located in the Member State of reference determined pursuant to this point shall be appointed as the legal representative for the purposes of paragraph 3;

(c) if neither point (a) nor (b) of this paragraph applies, where one or more benchmarks provided by the administrator are used as a reference for financial instruments admitted to trading in a trading venue as defined in point (24) of Article 4(1) of Directive 2014/65/EU in one or more Member States, the Member State of reference shall be the Member State where the financial instrument referencing any of these benchmarks was admitted to trading or traded on a trading venue for the first time and is still traded. If the relevant financial instruments were admitted to trading or traded for the first time simultaneously on trading venues in different Member States, and are still traded, the Member State of reference shall be the one where the value of financial instruments, financial contracts or investment funds that reference the benchmark is highest;

(d) if points (a), (b) and (c) do not apply, where one or more benchmarks provided by the administrator are used by supervised entities in more than one Member State, the Member State of reference shall be the Member State where the highest number of such supervised entities are located or, in the event that there is an equal number of supervised entities, the Member State of reference shall be the one where the value of financial instruments, financial contracts or investment funds that reference the benchmark is highest;

(e) if points (a), (b), (c) and (d) do not apply and if the administrator enters into an agreement consenting to the use of a benchmark it provides with a supervised entity, the Member State of reference shall be the Member State where such supervised entity is located.

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

Within 90 working days of receipt of the application referred to in the first subparagraph of this paragraph, the competent authority shall verify that the conditions laid down in paragraphs 2, 3 and 4 are fulfilled.

If the competent authority considers that the conditions laid down in paragraphs 2, 3 and 4 are not fulfilled, it shall refuse the recognition request and set out the reasons for that refusal. In addition, no recognition shall be granted unless the following additional conditions are fulfilled:

(a) where an administrator located in a third country is subject to supervision, an appropriate cooperation arrangement is in place between the competent authority of the Member State of reference and the competent authority of the third country where the administrator is located, in compliance with the regulatory technical standards adopted pursuant to Article 30(5), in order to ensure an efficient exchange of information that allows the competent authority to carry out its duties in accordance with this Regulation;

(b) the effective exercise by the competent authority of its supervisory functions under this Regulation is neither prevented by the laws, regulations or administrative provisions of the third country where the administrator is located, nor, where applicable, by limitations in the supervisory and investigatory powers of that third country's supervisory authority.

6. ***In the event that the competent authority of the Member State of reference considers that an administrator located in a third country provides a benchmark that fulfils the conditions of a significant or non-significant benchmark, as provided for in Articles 24 and 26 respectively, it shall, without undue delay, notify ESMA thereof. It shall support such assessment with the information provided by the administrator in the relevant application for recognition.***

Within one month of receipt of the notification referred to in the first subparagraph, ESMA shall issue advice to the competent authority about the type of the benchmark and the requirements applicable to its provision, as provided for in Articles 24, 25 and 26. The advice may, in particular, address whether ESMA considers that the conditions for such type are fulfilled on the basis of the information provided by the administrator in the application for recognition.

The period of time referred to in paragraph 5 shall be suspended from the date on which the notification is received by ESMA, until such time as ESMA issues advice in accordance with this paragraph.

If the competent authority of the Member State of reference proposes to grant recognition contrary to ESMA's advice referred to in the second subparagraph, it shall inform ESMA thereof, stating its reasons. ESMA shall publish the fact that the competent authority does not comply or intend to comply with that advice. ESMA may also decide, on a case-by-case basis, to publish the reasons provided by the competent authority for not complying with that advice. The competent authority concerned shall receive advance notice of such publication.

7. ***The competent authority of the Member State of reference shall notify ESMA of any decision to recognise an administrator located in a third country within five working days, along with the list of the benchmarks provided by the administrator which may be used in the Union and, where applicable, the competent authority responsible for its supervision in the third country.***

8. ***The competent authority of the Member State of reference shall suspend or, where appropriate, withdraw the recognition granted in accordance with paragraph 5 if it 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 the administrator has seriously infringed the relevant requirements set out in this Regulation, or that the administrator made false statements or used any other irregular means to obtain the recognition.***

9. ***ESMA may develop draft regulatory technical standards to determine the form and content of the application referred to in paragraph 5 and, in particular, the presentation of the information required in paragraph 6.***

In the event that such draft regulatory technical standards are developed, ESMA shall submit them to the Commission.

Power is conferred on 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.

Article 33

Endorsement of benchmarks provided in a third country

1. ***An administrator located in the Union and authorised or registered in accordance with Article 34, or any other supervised entity located in the Union with a clear and well-defined role within the control or accountability framework of a third country administrator, which is able to monitor effectively the provision of a benchmark, may apply to the relevant competent authority to endorse a benchmark or a family of benchmarks provided in a third country for their use in the Union, provided that all of the following conditions are fulfilled:***

(a) ***the endorsing administrator or other supervised entity has verified and is able to demonstrate on an on-going basis to its competent authority that the provision of the benchmark or family of benchmarks to be endorsed fulfils, on a mandatory or on a voluntary basis, requirements which are at least as stringent as the requirements of this Regulation;***

(b) the endorsing administrator or other supervised entity has the necessary expertise to monitor effectively the activity of the provision of a benchmark in a third country and to manage the associated risks;

(c) there is an objective reason to provide the benchmark or family of benchmarks in a third country and for said benchmark or family of benchmarks to be endorsed for their use in the Union.

For the purpose of point (a), when assessing whether the provision of the benchmark or family of benchmarks to be endorsed fulfils requirements which are at least as stringent as the requirements of this Regulation, the competent authority may take into account whether the compliance of the provision of the benchmark or family of benchmarks with the IOSCO principles for financial benchmarks or the IOSCO principles for PRAs, as applicable, would be equivalent to compliance with the requirements of this Regulation.

2. ***An administrator or other supervised entity that makes an application for endorsement as referred to in paragraph 1 shall provide all information necessary to satisfy the competent authority that, at the time of application, all the conditions referred to in that paragraph are fulfilled.***

3. ***Within 90 working days of receipt of the application for endorsement referred to in paragraph 1, the relevant competent authority shall examine the application and adopt a decision either to authorise the endorsement or to refuse it. An endorsed benchmark or an endorsed family of benchmarks shall be notified by the competent authority to ESMA.***

4. ***An endorsed benchmark or an endorsed family of benchmarks shall be considered to be a benchmark or family of benchmarks provided by the endorsing administrator or other supervised entity. The endorsing administrator or other supervised entity shall not use the endorsement with the intention of avoiding the requirements of this Regulation.***

5. An administrator or other supervised entity that has endorsed a benchmark or a family of benchmarks provided in a third country shall remain fully responsible for such a benchmark or family of benchmarks and for compliance with the obligations under this Regulation.

6. Where the competent authority of the endorsing administrator or other supervised entity has well-founded reasons to consider that the conditions laid down under paragraph 1 of this Article are no longer fulfilled, it shall have the power to require the endorsing administrator or other supervised entity to cease the endorsement and shall inform ESMA thereof. Article 28 shall apply in case of cessation of the endorsement.

7. ***The Commission shall be empowered to adopt delegated acts in accordance with Article 49 concerning measures to determine the conditions under which the relevant competent authorities may assess whether there is an objective reason for the provision of a benchmark or family of benchmarks in a third country and their endorsement for their use in the Union. The Commission shall take into account elements such as the specificities of the underlying market or economic reality the benchmark intends to measure, the need for proximity of the provision of the benchmark to such market or economic reality, the need for proximity of the provision of the benchmark to contributors, the material availability of input data due to different time zones, and specific skills required in the provision of the benchmark.***

TITLE VI

AUTHORISATION***, REGISTRATION*** AND SUPERVISION OF ADMINISTRATORS

Chapter 1

Authorisation ***and registration***

Article ***34***

Authorisation and registration of an administrator

1. ***A natural or legal person located in the Union that intends to act as an administrator shall apply to the competent authority designated under Article 40 of the Member State in which that person is located in order to receive:***

(a) ***authorisation*** if it provides or intends to provide indices which are used or intended to be used as benchmarks ***within the meaning of this Regulation;***

(b) ***registration if it is a supervised entity, other than an administrator, that provides or intends to provide indices which are used or intended to be used as benchmarks within the meaning of this Regulation, on condition that the activity of provision of a benchmark is not prevented by the sectoral discipline applying to the supervised entity and that none of the indices provided would qualify as a critical benchmark; or***

(c) ***registration if it provides or intends to provide only indices which would qualify as non-significant benchmarks.***

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

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

5. 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, the applicant shall submit the additional information required by the relevant competent authority. ***The time- limit referred to in this paragraph shall apply from the date on which such additional information is provided by the applicant.***

6. ***The relevant competent authority shall:***

(a) examine the application for authorisation and adopt a decision to authorise or refuse to authorise the applicant within four months of receipt of a complete application;

(b) examine the application for registration and adopt a decision to register or refuse to register the applicant within 45 working days of receipt of a complete application***.***

Within five working days of the adoption of a decision referred to in the first subparagraph, the competent authority shall notify it to the applicant. Where the competent authority refuses to authorise ***or to register*** the applicant, it shall give reasons for its decision.

7. The competent authority shall notify ESMA of any decision to authorise ***or to register*** an applicant ▌ within ***five*** working days ▌ of the date of adoption of said decision.

8. ***ESMA shall develop draft regulatory technical standards to*** specify further the information to be provided in the application for authorisation ***and in the application for registration,*** taking into account ***that authorisation and registration are distinct processes where authorisation requires a more extensive assessment of the administrator's application,*** the principle of proportionality***, the nature of the supervised entities applying for registration under point (b) of paragraph 1*** and the costs to the ***applicants*** and competent authorities.

ESMA shall submit those draft regulatory technical standards to the Commission by ... [nine months after the date of entry into force of this Regulation].

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.

Article 35

Withdrawal or suspension of authorisation ***or registration***

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

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

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

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

(d) has seriously or repeatedly infringed the provisions of this Regulation.

2. The competent authority shall notify ESMA of its decision within ***five*** working days of the adoption of said decision.

▌

ESMA shall promptly update the register provided for in Article 36.

3. Following the adoption of a decision to suspend the authorisation or registration of an administrator, and where cessation of the benchmark would result in a force majeure event, or frustrate or otherwise breach the terms of any financial contract or financial instrument, or the rules of any investment fund, ***which references that benchmark, as specified in the delegated act adopted pursuant to Article 51(6), the provision of the benchmark in question may be permitted by the relevant competent authority of the Member State where the administrator is located until the decision of suspension has been withdrawn. During that period of time, the use of such benchmark by supervised entities shall be permitted only for financial contracts, financial instruments and investment funds that already reference the benchmark.***

4. Following the adoption of a decision to withdraw the authorisation or registration of an administrator, Article 28(2) shall apply.

Article 36

Register of administrators and benchmarks

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

   (a) the identities of the administrators authorised or registered pursuant to Article 34 and the competent authorities ***responsible*** for ***the supervision thereof;***

   (b) the identities of administrators that comply with the conditions laid down in Article 30(1), the list of benchmarks referred to in point (c) of Article 30(1) and the third country competent authorities ***responsible for the supervision thereof;***

   (c) the identities of the administrators that acquired recognition in accordance with Article 32, the list of benchmarks referred to in Article 32(7) and, where applicable, the third country competent authorities ***responsible for the supervision thereof;***

(d) the benchmarks that are endorsed in accordance with the procedure laid down in Article 33, the identities of their administrators, and the identities of the endorsing administrators or endorsing supervised entities.

2. The register referred to in paragraph 1 ***shall be publicly accessible on the website of ESMA and shall be updated promptly, as necessary.***

Chapter 2

Supervisory cooperation

Article 37

Delegation of tasks between competent authorities

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 consent.***

   The competent authorities shall notify ESMA of any proposed delegation 60 days prior to such delegation taking effect.

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

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.

Article 38

Disclosure of information from another Member State

A competent authority may disclose information received from another competent authority only if:

(a) it has obtained the written agreement of that competent authority and the information is disclosed only for the purposes for which that competent authority gave its agreement; or

(b) such disclosure is necessary for legal proceedings.

Article 39

Cooperation ***on*** on-site inspections ***and*** investigations

1. A competent authority may request the assistance of another competent authority with regard to on-site inspections or investigations. ***The competent authority receiving the request shall cooperate to the extent possible and appropriate.***

2. A competent authority making a request referred to in paragraph 1 shall inform ESMA thereof. In the event of an investigation or inspection with cross-border effect, the competent authorities may request ESMA to coordinate the on-site inspection or investigation.

3. Where a competent authority receives a request from another competent authority to carry out an on-site inspection or an investigation, it may:

(a) carry out the on-site inspection or investigation itself;

(b) allow the competent authority which submitted the request to participate in the on-site inspection or investigation;

(c) appoint auditors or experts to ***support or*** carry out the on-site inspection or investigation.

Chapter 3

Role of competent authorities

Article 40

Competent authorities

1. For administrators and supervised ***entities***, each Member State shall designate the relevant competent authority responsible for carrying out the duties under this Regulation and shall inform the Commission and ESMA thereof.

2. Where a Member State designates more than one competent authority, it shall clearly determine their respective roles and shall designate a single authority to be responsible for coordinating cooperation and the exchange of information with the Commission, ESMA and other Member States' competent authorities.

3. ESMA shall publish on its website a list of the competent authorities designated in accordance with ***paragraphs*** 1 ***and 2***.

Article 41

Powers of competent authorities

1. In order to fulfil their duties under this Regulation, competent authorities shall have, in conformity with national law, at least the following supervisory and investigatory powers:

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

(b) require or demand information from any person ▌ involved in the ***provision*** of***, and contribution to, a benchmark, including any service provider to which functions, services or activities in the provision of a benchmark have been outsourced as provided for in Article 10***, as well as their principals, and if necessary, ▌ summon and question any such person with a view to ***obtaining*** information;

(c) ▌ request, in relation to ***commodity*** benchmarks, information from ***contributors*** on related spot markets according***, where applicable, to standardised*** formats ***and*** reports on transactions, and direct access to traders' systems;

(d) carry out on-site inspections or investigations, at sites other than the private residences of natural persons;

(e) ***enter*** premises of ▌ legal persons, ***without prejudice to Regulation (EU) No 596/2014,*** in order to seize documents and other data in any form, where a reasonable suspicion exists that documents and other data related to the subject-matter of the inspection or investigation may be relevant to prove a breach of this Regulation. Where prior authorisation is needed from the judicial authority of the Member State concerned, in accordance with national law, such power shall only be used after having obtained that prior authorisation;

(f) require existing recordings of telephone conversations, electronic communications or other data traffic records held by supervised entities;

(g) request the freezing or sequestration of assets or both;

▌

(h) require temporary cessation of any practice that the competent authority considers contrary to this Regulation;

(i) impose a temporary prohibition on the exercise of professional activity;

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

2. Competent authorities shall exercise their functions and powers referred to in paragraph 1 of this Article ***and the powers to impose sanctions referred to in Article 42, in accordance with their national legal frameworks,*** in any of the following ways:

(a) directly;

(b) in collaboration with other authorities or with market undertakings;

(c) under their responsibility by delegation to such authorities or to market undertakings;

(d) by application to the competent judicial authorities.

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.

3. Member States shall ensure that appropriate measures are in place so that competent authorities have all the supervisory and investigatory powers that are necessary to fulfil their duties.

4. ***An administrator or any other supervised entity making information available to a competent authority in accordance with paragraph 1*** shall not be considered to be in breach of any restriction on disclosure of information posed by any contractual, legislative, regulatory or administrative provision ▌ .

Article 42

Administrative sanctions and other administrative measures

1. Without prejudice to the supervisory powers of competent authorities in accordance with Article ***41***, and the right of Member States to provide for and impose criminal sanctions, Member States shall, in conformity with national law, provide for competent authorities to have the power to impose appropriate administrative sanctions and other administrative measures in relation to at least the following infringements:

   (a) any ***infringement*** of Articles 4 ▌ , ***5, 6, 7, 8, 9,*** 10, 11***, 12, 13,*** 14, 15, ▌ 16, ***21,*** 23, ***24, 25, 26,*** 27, ▌ 28, ▌ 29 ▌ and 34 ***where they apply***; and

   (b) any failure to cooperate or comply in an investigation or with an inspection or request covered by Article 41.

   Those administrative sanctions and other administrative measures shall be effective, proportionate and dissuasive.

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*** impose at least the following administrative sanctions and other administrative measures:

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

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

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

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

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

(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 ***infringement*** where those can be determined;

(g) in respect of a natural person, maximum administrative pecuniary sanctions of at least:

(i) for ***infringements*** of Articles 4 ▌, ***5, 6, 7, 8, 9,*** 10, ***points (a), (b), (c) and (e)*** of Article 11(1)***, Article 11(2) and (3), and Articles 12, 13,***14, 15, ▌ 16, ***21,*** 23, ***24, 25, 26,*** 27, ▌ 28, ▌ 29 ▌ and 34, EUR 500 000 or in the Member States whose official currency is not the euro, the corresponding value in the national currency on ... [the date of entry ***into*** force of this Regulation]; or

(ii) for ***infringements*** of ***point*** (d) ▌ of ***Article*** 11(1) ***or of Article 11(4),***
EUR 100 000 or in the Member States whose official currency is not the euro, the corresponding value in the national currency on ... [the date of entry ***into*** force of this Regulation];

(h) in respect of a legal person, maximum administrative pecuniary sanctions of at least:

(i) for ***infringements*** of Articles 4 ▌, ***5, 6, 7, 8, 9,*** 10, ***points (a), (b), (c) and (e)*** of Article 11(1)***, Article 11(2) and (3), and Articles 12, 13,***14, 15, ▌ 16, ***21,*** 23, ***24, 25, 26,*** 27, ▌ 28, ▌ 29 ▌ and 34, either EUR 1 000 000 or, in the Member States whose official currency is not the euro, the corresponding value in the national currency on ... [the date of entry into force of this Regulation], or 10 % of its total annual turnover according to the last available accounts approved by the management body, whichever is the higher ; or

(ii) for ***infringements*** of ***point*** (d) ▌ of ***Article 11***(1) ***or of Article 11(4)***, either EUR 250 000 or, in the Member States whose official currency is not the euro, the corresponding value in the national currency on... [the date of entry into force of this Regulation], or 2 % of its total annual turnover according to the last available accounts approved by the management body, whichever is the higher.

For the purposes of point (h)(i) and (ii), where the legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts in accordance with Directive 2013/34/EU of the European Parliament and of the Council[32], the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with Council Directive 86/635/EEC[33] for banks and Council Directive 91/674/EEC[34] 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.

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

33 Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (OJ L 372, 31.12.1986, p. 1).

34 Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings (OJ L 374, 31.12.1991, p. 7).

3. By ... [18 months after the date of 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 as provided for in paragraph 1 where the infringements referred to in that paragraph 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 of this paragraph.

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

4. Member States may provide competent authorities under national law to have other powers to impose sanctions in addition to those referred to in paragraph 1 and may provide for higher levels of sanctions than those established in paragraph 2.

Article 43

Exercise of supervisory powers and imposition of sanctions

1. Member States shall ensure that, when determining the type and level of administrative sanctions and other administrative measures, competent authorities take into account all relevant circumstances, including where appropriate:

(a) the gravity and duration of the ***infringement***;

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

(c) the degree of responsibility of the responsible person;

(d) the financial strength of the responsible person, as indicated, in particular, by the total ***annual*** turnover of the responsible legal person or the annual income of the responsible natural person;

(e) the level of the profits gained or losses avoided by the responsible person, insofar as they can be determined;

(f) the level of cooperation of the responsible person with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;

(g) previous ***infringements*** by the person concerned;

(h) measures taken, after the ***infringement***, by a responsible person to prevent the repetition of the ***infringement***.

2. In the exercise of their powers to impose administrative sanctions and other administrative measures under Article 42, competent authorities shall cooperate closely to ensure that the supervisory and investigative powers and administrative sanctions and other administrative measures produce the desired results of this Regulation. They shall also coordinate their action in order to avoid possible duplication and overlap when applying supervisory and investigative powers and administrative sanctions, including pecuniary sanctions, and other administrative measures to cross-border cases.

Article 44

Obligation to cooperate

1. ***Where Member States have chosen, in accordance with Article 42, 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. Those competent authorities shall provide that information to other competent authorities and ESMA, in order to fulfil their obligation to cooperate with each other and ESMA for the purposes of this Regulation.***

2. ***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 pecuniary sanctions.***

Article 45

Publication of decisions

1. Subject to paragraph 2, a competent authority shall publish any decision imposing an administrative sanction or other administrative measure in relation to ***infringements*** of this Regulation on its official website immediately after the person subject to that decision has been informed of that decision. Such publication shall include at least information on the type and nature of the ***infringement*** and the identity of the persons subject to the decision.

   The first subparagraph does not apply to decisions imposing measures that are of an investigatory nature.

2. Where a competent authority considers that the publication of the identity of the legal person or of the personal data of a natural person, would be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data, or where such publication would jeopardise the stability of financial markets or an on-going investigation, it shall do any of the following:

(a) defer publication of the decision until such time as the reasons for that deferral cease to exist;

(b) publish the decision on an anonymous basis in accordance with national law where such anonymous publication ensures an effective protection of the personal data concerned.

(c) not publish the decision at all in the event that the competent authority is of the opinion that publication in accordance with point (a) or (b) will be insufficient to ensure:

(i) that the stability of financial markets is not jeopardised; or

(ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.

Where a competent authority decides to publish a decision on an anonymous basis as referred to in point (b) of the first subparagraph, it may postpone the publication of the relevant data for a reasonable period of time where it is foreseeable that the reasons for anonymous publication shall cease to exist during that period.

3. Where the decision is subject to an appeal before a national judicial, administrative or other authority, the competent authority shall also publish, immediately, on its official website such information and any subsequent information on the outcome of such appeal. Any decision annulling a previous decision to impose a sanction or a measure shall also be published.

4. The competent authority shall ensure that any decision that is published in accordance with this Article shall remain accessible on its official website for a period of at least five years after its publication. Personal data contained in the publication shall only be kept on the official website of the competent authority for the period which is necessary in accordance with the applicable data protection rules.

5. Member States shall annually provide ESMA with aggregated information regarding all administrative sanctions and other administrative measures imposed pursuant to Article 42. 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 42, 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.

Article 46

Colleges

1. Within 30 working days from the ***inclusion*** of ***a benchmark*** referred to in ***points (a) and (c) of*** Article 20(1) ***in the list of*** critical ***benchmarks, with the exception of benchmarks where the majority of contributors are non-supervised entities***, the competent authority shall establish a college.

2. The college shall comprise the competent authority of the administrator, ESMA, and the competent authorities of ***supervised*** contributors.

3. Competent authorities of other Member States shall have the right to be members of the college where, if the critical benchmark in question were to cease to be provided, it would have a significant adverse impact on the market integrity, financial stability, consumers, real economy, or ***financing of households and businesses*** of those Member States.

Where a competent authority intends to become a member of a college, it shall submit a request to the competent authority of the administrator containing evidence that the requirements of the first subparagraph of this paragraph 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 9.

4. ESMA shall contribute to promoting and monitoring the efficient, effective and consistent functioning of colleges referred to in this Article in accordance with Article 21 of Regulation (EU) No 1095/2010. To that end, ESMA shall participate as appropriate and shall be considered to be a competent authority for that purpose.

Where ESMA acts in accordance with Article 17(6) of Regulation (EU) No 1095/2010 regarding a critical benchmark, it shall ensure appropriate exchange of information and cooperation with the other members of the college.

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

Where an administrator provides more than one critical benchmark, the competent authority of that administrator may establish a single college in respect of all the benchmarks provided by that administrator.

6. The competent authority of an administrator shall establish written arrangements within the framework of the college regarding the following matters:

(a) the information to be exchanged between competent authorities;

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

(c) the cases in which the competent authorities must consult each other;

(d) the ***cooperation*** to be provided under Article 23***(7) and (8)***.

▌

7. ▌ The competent authority of an administrator shall give due consideration to any advice provided by ESMA concerning the written ▌ arrangements ***under paragraph 6*** before agreeing their final text. The written ▌ 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 ▌ arrangements to the members of the college and to ESMA.

8. Before taking any measures referred to ***in Article*** 23***(6), (7) and (9),*** and Articles 34, 35 and 42***,*** the competent authority of an 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 of this Article***.

Any decision of the competent authority of the administrator to take such measures shall take ***into*** account ▌the impact on the other ▌Member States ***concerned***, in particular the potential impact on the stability of ***their*** financial ***systems***.

With regard to the decision to withdraw the authorisation or registration of an administrator in accordance with Article 35, whenever the cessation of a benchmark would result in a force majeure event, frustrate or otherwise breach the terms of any financial contract or financial instrument, or the rules of any investment fund, which references that benchmark in the Union, within the meaning specified by the Commission in any delegated act adopted pursuant to Article 51(6), the competent authorities within the college shall consider whether to adopt measures to mitigate the effects referred to in this paragraph, including:

(a) a change to the code of conduct referred to in Article 15, the methodology or other rules of the benchmark;

(b) a transitional period, during which the procedures envisaged under Article 28(2) shall apply.

9. In the absence of agreement between the members of a college ▌, ▌ competent ▌ authorities 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 reach an agreement on the matters set out in paragraph 6;

▌

(d) where there is a disagreement concerning the measures ***to be*** taken in accordance with Articles ▌ 34, 35 and 42***;***

(e) where there is a disagreement concerning the measures to be taken in accordance with Article 23(6);

(f) where there is a disagreement concerning the measures to be taken in accordance with the third subparagraph of paragraph 8 of this Article.

10. ***In the situations referred to in points (a), (b), (c), (d) and (f) of paragraph 9, if the issue is not settled within 30 days after referral to ESMA, the competent authority of an administrator shall take the final decision and provide a detailed explanation of its decision in writing to the competent authorities referred to in that paragraph and to ESMA.***

The period of time referred to in point (a) of Article 34(6) shall be suspended from the date of referral to ESMA until such time as a decision is taken in accordance with the first subparagraph of this paragraph.

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

11. ***In the situation referred to in point (e) of paragraph 9 of this Article, and 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.

The power of the competent authority of an administrator under Article 23(6) may be exercised until such time as ESMA publishes its decision.

Article 47

Cooperation with ESMA

1. The competent authorities shall cooperate with ESMA for the purposes of this Regulation, in accordance with Regulation (EU) No 1095/2010.

2. The competent authorities shall, without delay, provide ESMA with all information necessary to carry out its duties, in accordance with Article 35 of Regulation (EU) No 1095/2010.

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

ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by ... [nine months after the date of entry into force of this Regulation].

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 ***(EU) No*** 1095/2010.

Article 48

Professional secrecy

1. Any confidential information received, exchanged or transmitted pursuant to this Regulation shall be subject to the conditions of professional secrecy laid down in paragraph 2.

2. The obligation of professional secrecy applies to all persons who work or who have worked for the competent authority or for any authority or market undertaking or natural or legal person to whom the competent authority has delegated its powers, including auditors and experts contracted by the competent authority.

3. Information covered by professional secrecy may not be disclosed to any other person or authority except ▌ by virtue of provisions laid down by Union or national law.

4. All information exchanged between the competent authorities under this Regulation that concerns business or operational conditions and other economic or personal affairs shall be considered confidential and shall be subject to the requirements of professional secrecy, except where the competent authority states at the time of communication that such information may be disclosed or where such disclosure is necessary for legal proceedings.

TITLE VII

DELEGATED AND IMPLEMENTING ACTS

Article 49

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles ***3(2), 20(6), 24(2), 33(7), 51(6) and 54(3)*** shall be conferred on the Commission for an indeterminate period of time from ... [date of entry into force of this Regulation].

3. The delegation of power referred to in Articles ***3(2), 20(6), 24(2), 33(7), 51(6) and 54(3)*** 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.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016[35].

[35] OJ XXX, XXX, p. XXX.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Articles ***3(2), 20(6), 24(2), 33(7), 51(6) and 54(3)*** shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of ***three*** 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 ***three*** months at the initiative of the European Parliament or of the Council.

Article 50

Committee procedure

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

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply, having regard to the provisions of Article 8 thereof.

TITLE VIII

TRANSITIONAL AND FINAL PROVISIONS

Article 51

Transitional provisions

1. ***An index provider*** providing a benchmark on ... [the date of entry into force of this Regulation] shall apply for authorisation ***or registration*** in accordance with Article 34 by ...[42 months after the date of entry into force of this Regulation.]

2. By ...[42 months after the date of entry into force of this Regulation], the competent authority of the Member State where an index provider applying for authorisation in accordance with Article 34 is located shall have the power to decide to register that index provider as an administrator even if it is not a supervised entity, under the following conditions:

(a) the index provider does not provide a critical benchmark;

(b) the competent authority is aware, on a reasonable basis, that the index or indices provided by the index provider are not widely used, within the meaning of this Regulation, in the Member State where the index provider is located as well as in other Member States.

The competent authority shall notify ESMA of its decision adopted in accordance with the first subparagraph.

The competent authority shall keep evidence of the reasons for its decision adopted in accordance with the first subparagraph, in such a form that it is possible to fully understand the evaluations of the competent authority that the index or indices provided by the index provider are not widely used, including any market data, judgement or other information, as well as information received from the index provider.

3. ***An index provider*** may continue to provide an existing benchmark ***which may be used by supervised entities*** until …[42 months after the date of entry into force of this Regulation] or, where the index provider submits an application for authorisation or registration in accordance with paragraph 1, unless and until such authorisation ***or registration*** is refused.

4. Where an existing benchmark does not meet the requirements of this Regulation, but ***ceasing or*** changing that benchmark to fulfil 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 or the rules of any investment fund, which references that benchmark, ***the use of the benchmark shall be permitted by the competent authority of the Member State where the index provider is located. No financial instruments, financial contracts, or measurements of the performance of an investment fund shall add a reference to such an existing benchmark after ... [42 months after the date of entry into force of this Regulation]***.

5. ***Unless the Commission has adopted an equivalence decision as referred to in Article 30(2) or (3) or unless an*** administrator ***has been recognised pursuant to Article 32, or a benchmark has been endorsed pursuant to Article 33, the use in the Union by supervised entities of a*** benchmark ***provided by an administrator located in a third country where the benchmark is already used in the Union as a reference for*** financial instruments, financial contracts***, or for measuring the performance of an investment fund, shall be permitted only for*** such financial instruments, financial contracts and measurements of the performance of an investment fund that ***already reference*** the benchmark ***in the Union on,*** or which add a reference to such benchmark prior to, ... [42 months after the date of entry into force of this Regulation].

6. ***The Commission shall be empowered to adopt delegated acts in accordance with Article 49 concerning measures to determine the conditions on which the relevant competent authority may assess whether the cessation or the changing of an existing benchmark to conform with the requirements of this Regulation could reasonably result in a force majeure event, frustrate or otherwise breach the terms of any financial contract or financial instrument or the rules of any investment fund which references such benchmark.***

Article 52

Deadline for updating the prospectuses and key information documents

Article 29(2) is without prejudice to outstanding prospectuses approved under Directive 2003/71/EC prior to ... [18 months after the date of entry into force of this Regulation]. For prospectuses approved prior to ... [18 months after the date of entry into force of this Regulation] under Directive 2009/65/EC, the underlying documents shall be updated at the first occasion or at the latest within twelve months after that date.

Article 53

ESMA reviews

1. ***ESMA shall seek to build a common European supervisory culture and consistent supervisory practices and ensure consistent approaches among competent authorities in relation to the application of Articles 32 and 33. To that end, the recognitions granted in accordance with Articles 32 and the endorsements authorised in accordance with Articles 33 shall be reviewed by ESMA every two years.***

ESMA shall issue an opinion to each competent authority that has recognised a third country administrator or endorsed a third country benchmark assessing how that competent authority applies the relevant requirements of Articles 32 and 33 respectively and the requirements of any relevant delegated act and regulatory or implementing technical standard based on this Regulation.

2. ***ESMA shall have the power to require the documented evidence from a competent authority for any of the decisions adopted in accordance with the first subparagraph of Article 51(2), Article 24(1) and Article 25(2).***

Article 54

Review

1. By ... ***[42 months after the date of entry into force of this Regulation],*** the Commission shall review and ***submit a*** report to the European Parliament and ***to*** the Council on this Regulation and in particular on:

(a) the functioning and effectiveness of the critical benchmark***, mandatory administration*** and mandatory ***contribution*** regime under Articles 20***, 21*** and 23 and the definition of a critical benchmark in point (25) of Article 3(1);

(b) the effectiveness of the ***authorisation, registration and supervision*** regime ***of administrators under*** Title VI and the colleges under Article 46 and the appropriateness of supervision of certain benchmarks by a Union body;

(c) the ***functioning and effectiveness*** of ***Article 19(2), in particular*** the ***scope of its application***.

2. ***The Commission shall review the evolution of international principles applicable to benchmarks and of legal frameworks and supervisory practices in third countries concerning the provision of benchmarks and report to the European Parliament and to the Council every five years after ... [18 months after the date of entry into force of this Regulation]. That report shall assess in particular whether there is a need to amend this Regulation and shall be accompanied by a legislative proposal, if appropriate.***

3. ***The Commission shall be empowered to adopt delegated acts in accordance with Article 49 in order to extend the 42-month period referred to in Article 51(2) by 24 months, if the report referred to in point (b) of paragraph 1 of this Article provides evidence that the transitional registration regime*** under Article ***51(2) is not detrimental to a common European supervisory culture and consistent supervisory practices and approaches among competent authorities***.

Article 55

Notification of benchmarks referenced and their administrators

When a benchmark is referenced in a financial instrument covered by Article 4(1) of Regulation (EU) No 596/2014, the notifications under Article 4(1) of that Regulation shall include the name of the benchmark referenced and its administrator.

Article 56

Amendments to Regulation (EU) No 596/2014

Regulation (EU) No 596/2014 is amended as follows:

(1) Article 19 is amended as follows:

(a) the following paragraph is inserted:

"1a. The notification obligation referred to in paragraph 1 shall not apply to transactions in financial instruments linked to shares or to debt instruments of the issuer referred to in that paragraph where at the time of the transaction any of the following conditions is met:

(a) the financial instrument is a unit or share in a collective investment undertaking in which the exposure to the issuer's shares or debt instruments does not exceed 20% of the assets held by the collective investment undertaking;

(b) the financial instrument provides exposure to a portfolio of assets in which the exposure to the issuer's shares or debt instruments does not exceed 20% of the portfolio's assets;

(c) the financial instrument is a unit or share in a collective investment undertaking or provides exposure to a portfolio of assets and the person discharging managerial responsibilities or person closely associated with such a person does not know, and could not know, the investment composition or exposure of such collective investment undertaking or portfolio of assets in relation to the issuer's shares or debt instruments, and furthermore there is no reason for that person to believe that the issuer's shares or debt instruments exceed the thresholds in point (a) or (b).

If information regarding the investment composition of the collective investment undertaking or exposure to the portfolio of assets is available, then the person discharging managerial responsibility or person closely associated with such a person shall make all reasonable efforts to avail themselves of that information.";

(b) in paragraph 7, the following subparagraph is inserted after the second subparagraph:

"For the purposes of point (b), transactions executed in shares or debt instruments of an issuer or derivatives or other financial instruments linked thereto by managers of a collective investment undertaking in which the person discharging managerial responsibilities or a person closely associated with them has invested do not need to be notified where the manager of the collective investment undertaking operates with full discretion, which excludes the manager receiving any instructions or suggestions on portfolio composition directly or indirectly from investors in that collective investment undertaking.".

(2) Article 35 is amended as follows:

(a)in paragraphs (2) and (3), the phrase "and Article 19(13) and (14)" is replaced by ", Article 19(13) and (14) and Article 38";

(b)paragraph (5) is replaced by the following:

"5. A delegated act adopted pursuant to Article 6(5) or (6), Article 12(5), the third subparagraph of Article 17(2), Article 17(3), Article 19(13) or (14) or Article 38, shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three 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 three months at the initiative of the European Parliament or the Council.***"***

(3) In Article 38, the following paragraphs are added:

"By 3 July 2019, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on the level of the thresholds set out in Article 19(1a)(a) and (b) in relation to managers' transactions where the issuer's shares or debt instruments form part of a collective investment undertaking or provide exposure to a portfolio of assets, with a view to assessing whether that level is appropriate or should be adjusted.

The Commission shall be empowered to adopt delegated acts in accordance with Article 35 adjusting the thresholds in Article 19(1a)(a) and (b), if it determines in that report that those thresholds should be adjusted."

Article 57

Amendments to Directive 2008/48/EC

Directive 2008/48/EC is amended as follows:

(1) In Article 5(1), the following subparagraph is inserted after the second subparagraph:

'Where the credit agreement references a benchmark as defined in point 3 of Article 3(1) of Regulation (EU) 2016/.... of the European Parliament and of the Council*[+], the name of the benchmark and of its administrator and the potential implications on the consumer shall be provided by the creditor, or where applicable, by the credit intermediary, to the consumer in a separate document, which may be annexed to the Standard European Consumer Credit Information form.

_____

**** Regulation (EU) 2016/.... of the European Parliament and of the Council of ... on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L, ..., p. ...).'.***

[+] OJ: Please add the serial number of this Regulation and complete the asterisk footnote.

(2) In Article 27(1), the following subparagraph is inserted after the second subparagraph:

' By ... [24 months after the date of entry into force of this Regulation] Member States shall adopt and publish the provisions necessary to comply with the third subparagraph of Article 5(1) and shall communicate them to the Commission. They shall apply those provisions from ... [24 months after the date of entry into force of this Regulation].'.

Article 58

Amendments to Directive 2014/17/EU

Directive 2014/17/EU is amended as follows:

(1) In the second subparagraph of Article 13(1), the following point is inserted:

'(ea) where contracts that reference a benchmark as defined in point (3) of Article 3(1) of Regulation (EU) 2016/.... of the European Parliament and of the Council*[+] are available, the names of the benchmarks and of their administrators and the potential implications on the consumer;

**** Regulation (EU) 2016/.... of the European Parliament and of the Council of ... on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L, ..., p. ...).';***

[+] OJ: Please add the serial number of this Regulation and complete the asterisk footnote.

(2) In Article 42(2), the following subparagraph is inserted after the first subparagraph:

'By ... [24 months after the date of entry into force of this Regulation], Member States shall adopt and publish the provisions necessary to comply with point (ea) of the second subparagraph of Article 13(1) and shall communicate them to the Commission. They shall apply those provisions from ... [24 months after the date of entry into force of this Regulation].';

(3) In Article 43(1), the following subparagraph is added:

'Point (ea) of the second subparagraph of Article 13(1) shall not apply to credit agreements existing before ... [24 months after the date of entry into force of this Regulation].'.

Article 59

Entry into force

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall apply from ... [***18*** months after entry into force].

Notwithstanding the second paragraph of this Article, Articles 3(2), 5(5), 11(5), 13(3), 15(6), 16(5), Article 20 (excluding point (b) of paragraph (6)), Articles 21 and 23, Articles 25(8), 25(9), 26(5), 27(3), 30(5), 32(9), 33(7), 34(8), Article 46, and Articles 47(3) and ***51(6)*** shall apply ***from the day following that of the publication of this Regulation in the Official Journal of the European Union***.

Notwithstanding the second paragraph of this Article, Article 56 shall apply from 3 July 2016.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ...,

For the European Parliament	*For the Council*
The President	*The President*

Annex ***I***

Interest rate benchmarks

▌

Accurate and sufficient data

▌

1. ***For*** the purposes of ***points (a) and (c) of*** Article 11(1), ***in general the priority of use of input data*** shall be as follows:

   (a) a contributor's transactions ***in*** the ***underlying market*** that a ***benchmark intends to measure or, if not sufficient, its transactions in related markets, such as***:

   – the unsecured inter-bank deposit market;

   – other unsecured deposit markets, including certificates of deposit and commercial paper; and

   – other ▌ markets ***such as*** overnight index swaps, repurchase agreements, foreign exchange forwards, interest rate futures and options ▌ ***, provided that those transactions comply with the input data requirements in the code of conduct;***

(b) a contributor's observations of third party transactions in the markets described in ***point (a)***;

(c) ***committed*** quotes ▌ ;

(d) ***indicative quotes or*** expert ***judgements***.

2. ***For*** the ***purposes of point (a) of Article 11(1) and Article 11(4),*** input data ***may be adjusted.***

In particular, input data ▌ may be adjusted by application of the following criteria:

(a) proximity of transactions to the time of provision of the input data and the impact of any market events between the time of the transactions and the time of provision of the input data;

(b) interpolation or extrapolation from transactions data;

(c) adjustments to reflect changes in the credit standing of the contributors and other market participants.

Oversight function

3. The following requirements shall apply in substitution for the requirements of ***Article 5(4)*** and (5):

(a) the administrator of an interest rate benchmark shall have in place an independent oversight committee. Details of the membership of that committee shall be made public, along with any declarations of any conflict of interest and the processes for election or nomination of its members;

(b) the oversight committee shall hold no less than one meeting every ***four*** months and shall ***keep*** minutes ***of each such meeting***;

(c) the oversight ***committee shall operate with integrity and shall have all*** of the ***responsibilities provided*** for in ***Article 5(3).***

Auditing

4. ***The administrator of an interest rate benchmark shall appoint an independent external auditor to review*** and ***report on the administrator's compliance with the benchmark methodology and this Regulation***. The external audit of the ***administrator*** shall be carried out for the first time six months after the introduction of the code of conduct and subsequently every two years.

The oversight committee may require an external audit of a ***contributor to an interest rate benchmark*** if dissatisfied with any aspects of its conduct.

▌

Contributor systems and controls

5. The following requirements shall apply to contributors to interest rate benchmarks, in addition to the requirements set out in ***Article 16. Article 16(5) shall not apply***.

6. Each contributor's submitter and the direct managers of that submitter shall acknowledge in writing that they have read the code of conduct and that they will comply with it.

7. A contributor's systems and controls shall include:

(a) an outline of responsibilities within each firm, including internal reporting lines and accountability, including the location of submitters and managers and the names of relevant individuals and alternates;

(b) internal procedures for sign-off of contributions of input data;

(c) disciplinary procedures in respect of attempts to manipulate, or any failure to report, actual or attempted manipulation by parties external to the contribution process;

(d) effective conflicts of interest management procedures and communication controls, both within contributors and between contributors and other third parties, to avoid any inappropriate external influence over those responsible for submitting rates. Submitters shall work in locations physically separated from interest rate derivatives traders;

(e) effective procedures to prevent or control the exchange of information between persons engaged in activities involving a risk of conflict of interest where the exchange of that information may affect the benchmark data contributed;

(f) rules to avoid collusion among contributors, and between contributors and the benchmark administrators;

(g) measures to prevent, or limit, any person from exercising inappropriate influence over the way in which persons involved in the provision of input data carries out those activities;

(h) the removal of any direct link between the remuneration of employees involved in the provision of input data and the remuneration of, or revenues generated by, persons engaged in another activity, where a conflict of interest may arise in relation to those activities;

(i) controls to identify any reverse transaction subsequent to the provision of input data.

8. A contributor to an interest rate benchmark shall keep detailed records of:

(a) all relevant aspects of contributions of input data;

(b) the process governing input data determination and the sign-off of input data;

(c) the names of submitters and their responsibilities;

(d) any communications between the submitters and other persons, including internal and external traders and brokers, in relation to the determination or contribution of input data;

(e) any interaction of submitters with the administrator or any calculation agent;

(f) any queries regarding the input data and their outcome of those queries;

(g) sensitivity reports for interest rate swap trading books and any other derivative trading book with a significant exposure to interest rate fixings in respect of input data.

▌

9. Records shall be kept on a medium that allows the storage of information to be accessible for future reference with a documented audit trail.

10. The compliance function of the contributor to an interest rate benchmark shall report any findings, including reverse transactions, to management on a regular basis.

11. Input data and procedures shall be subject to regular internal reviews.

12. An external audit of the input data of a contributor to an interest rate benchmark, compliance with the code of conduct and the provisions of this Regulation shall be carried out for the first time six months after the introduction of the code of conduct, and subsequently every two years.

ANNEX ***II***

Commodity benchmarks

I

Methodology

1. ***The administrator of a commodity benchmark shall formalise, document,*** and ***make public any*** methodology ***that the administrator uses for a benchmark calculation. At a minimum, such*** methodology ***shall contain and describe the following***:

   (a) all criteria and procedures that are used to develop the benchmark, including how the administrator uses 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 judgement by assessors and any other information, such as assumptions, models or extrapolation from collected data that are considered in making an assessment;

   (b) 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 threshold is provided for, the reasons why a minimum threshold is not established shall be explained, including setting out the procedures to be used where no transaction data exist;

(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***. Those criteria shall explain the procedures to be 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 those criteria and procedures 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 of a commodity benchmark shall publish ***or make available*** the ***key elements of the methodology that the administrator uses for each commodity benchmark provided and published or, when applicable, for each family of benchmarks provided and published.***

3. Along with the methodology referred to in paragraph 2, the administrator of a commodity benchmark shall also describe and publish all of the following:

(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 such review;

(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.

Changes to a methodology

4. ***The*** administrator of a commodity benchmark shall adopt and make public to users explicit procedures and the rationale of 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 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.

5. ***The*** administrator of a commodity benchmark 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

6. ***The*** administrator of a commodity benchmark 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 its methodologies:

(i) concluded and reported transactions;

(ii) bids and offers;

(iii) other information.

If concluded and reported transactions are not given priority, the reasons should be explained, as required in point 7(b).

(c) employ sufficient measures designed to use input data submitted and considered in a benchmark calculation which are bona fide, meaning that the parties submitting the input data have executed, or are prepared to execute, transactions generating such input data and the concluded transactions were executed at arms-length from each other and particular attention shall be 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 input data submitted is representative of the contributors' actual concluded transactions; and

(f) employ a system of appropriate measures to ensure that contributors comply with the administrator's ***applicable*** quality and integrity standards for input data.

7. ***The*** administrator of a commodity benchmark shall describe and publish for each calculation, to the extent ***reasonable*** 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 of 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; and

(b) a concise explanation of the extent to which, and the basis upon which, any judgement including the exclusions 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 used in any calculation.

Integrity of the reporting process

8. ***The*** administrator of a commodity benchmark shall:

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

(b) have in place quality control procedures to evaluate the identity of a contributor and any submitter who reports input data and the authorisation of such submitter 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; 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

(d) 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 violate 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, to the extent possible, provision for escalation of the inquiry by the administrator within the contributor's company. Controls shall include cross-checking market indicators to validate submitted information.

Assessors

9. In ***relation to the role of*** an ***assessor, the*** administrator of a commodity benchmark shall:

(a) adopt and have in place 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 in place arrangements 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; and

(d) establish internal control procedures to ensure the integrity and reliability of calculations. At a minimum, such internal controls and procedures shall require the ongoing supervision of assessors to ensure that the methodology was properly applied ***and procedures for internal sign-off by a supervisor prior to releasing prices for dissemination to the market***.

Audit trails

10. ***The*** administrator of a commodity benchmark shall have rules and procedures in place to document contemporaneously relevant information, including:

(a) all input data;

(b) the judgments 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).

11. ***The*** administrator of a commodity benchmark 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

12. ***The administrator of a commodity benchmark shall establish adequate policies and procedures for the identification, disclosure, management or mitigation and avoidance of any conflict of interest and the protection of integrity and independence of calculations. Those 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 personal interests and business connections of the administrator's personnel 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, 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 managers, assessors and other employees of the administrator 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; and

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

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

14. ***The*** administrator of a commodity benchmark shall ensure that it has in place 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.

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

Complaints

16. ***The*** administrator of a commodity benchmark shall have in place and publish a complaints handling policy setting out procedures for receiving, investigating and retaining records concerning complaints made about an administrator's calculation process. Such complaint mechanisms shall ensure that:

(a) subscribers of the benchmark 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 in place a target timetable for the handling of complaints;

(c) formal complaints made against the 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) the administrator aims to complete its investigation promptly;

(f) the administrator advises 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. if a complainant is dissatisfied with the way a complaint has been handled by the relevant administrator or the administrator's decision in the situation no later than six months from the time of the original complaint; 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.

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

External auditing

18. The administrator of a commodity benchmark shall appoint an independent external auditor with appropriate experience and capability to review and report on the administrator's adherence to its stated methodology criteria and with the requirements of this Regulation. Audits shall take place annually and be published three months after each audit is completed with further interim audits carried out as appropriate.