

Indices used as benchmarks in financial instruments and financial contracts

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The Committee on Economic and Monetary Affairs adopted the report by Cora van NIEUWENHUIZEN (ADLE, NL) 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.

The Regulation introduced a common framework to ensure the accuracy and integrity of indices (such as LIBOR and EURIBOR) used as benchmarks in financial instruments and financial contracts in the Union.

The committee recommended that Parliament's position adopted in first reading following the ordinary legislative procedure should amend the Commission proposal as follows:

Requirements regarding governance and conflicts of interests: the administrator, meaning a natural or legal person that had control over the provision of a benchmark, should have **robust governance arrangements** and:

- publish all existing or potential conflicts of interest;
- establish adequate policies and procedures for the identification, disclosure, management, and avoidance of conflicts of interest in order to protect the integrity and independence of benchmark determinations;
- ensure that employees and any other natural persons whose services were placed at its disposal and who were directly involved in the provision of a benchmark had the necessary experience for the duties assigned to them and were subject to effective supervision, and were not subject to undue influence or conflicts of interest;
- establish specific control procedures to ensure the integrity and reliability of the employee.

Oversight function requirements: the administrator should establish a **permanent and effective** oversight function to ensure oversight of all aspects of the provision of its benchmarks. Robust procedures regarding its oversight function must be made available to the relevant competent authorities.

The oversight function should operate **independently** and include certain responsibilities, which should be adjusted for the complexity, use and vulnerability of the benchmark.

Oversight should be carried out by a separate committee or by another appropriate governance arrangement.

The administrator must also:

- have a **control framework** that ensures that the benchmark is provided and published or made available in accordance with this Regulation;
- have an **accountability framework** covering record keeping, auditing and review, and complaints process that provides evidence of compliance with the requirements of this Regulation;
- keep **records of all input data**;
- publish written procedures for receiving, investigating and retaining records concerning **complaints** made about an administrator's calculation process, the handling of complaints and keeping records regarding the complaint.

Input data: input data must be **verifiable**. In order to determine the benchmark, the administrator must: (i) use a method that was solid and reliable, traceable and verifiable; (ii) transparently develop, operate and administer the benchmark data and methodology; (iii) have procedures in place to report internally infringements of the Regulation.

Code of conduct: where a benchmark is based on input data from contributors, the administrator shall draw up, a code of conduct for each benchmark clearly specifying the contributors' responsibilities with respect to the contribution of input data.

Critical benchmarks: it was specified that a benchmark, that was not based on regulated data, should be deemed to be a critical benchmark if the benchmark was used as a reference for financial instruments and financial contracts having an average value of at least **EUR 500 000 000 000**, as measured over an appropriate period of time.

Benchmarks provided by administrators from third countries: the amended regulation:

- introduced a **recognition regime** allowing administrators of benchmarks located in a third country to provide their benchmarks in the Union provided they fully comply with the requirements set out in this Regulation or with the provisions in the relevant IOSCO principles;
- introduced an **endorsement regime** allowing administrators located in the Union and authorised or registered in accordance with its provisions to endorse benchmarks provided in third countries, under certain conditions.

Authorisation and monitoring: the administrator of a critical benchmark should be authorised and supervised by the competent authority of the Member State where that administrator is located. An administrator that provided only noncritical benchmarks should be registered with, and supervised by, the competent authority. ESMA should maintain a **register of administrators at Union level**.

Withdrawal or suspension of authorisation or registration: where an existing benchmark did not comply with the requirements of the Regulation but changing the benchmark to bring it into compliance with the Regulation would result in a force majeure event or breach the terms of a financial contract or financial instrument, the relevant competent authority might permit the continued use of the benchmark until such a time as it was possible for the benchmark to cease being used or to be substituted by another benchmark .

Freedom of expression in the media: in order to respect the freedoms set out in the Charter of Fundamental Rights, the Regulation should not apply to the press, other media and journalists where they merely published or referred to a benchmark as part of their journalistic activities with no control over the provision of that benchmark.