Procedure file

Basic information

COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	2013/0314(COD)	Procedure completed

Indices used as benchmarks in financial instruments and financial contracts

Amending Directive 2008/48/EC 2002/0222(COD)
Amending Directive 2014/17/EU 2011/0062(COD)
Amending Regulation (EU) No 596/2014 2011/0295(COD)
Amended by 2017/0230(COD)
Amended by 2018/0180(COD)
Amended by 2020/0154(COD)

Subject
2.50.03 Securities and financial markets, stock exchange, CIUTS, investments
2.50.04 Banks and credit
2.50.08 Financial services, financial reporting and auditing
2.50.10 Financial supervision
2.80 Cooperation between administrations
4.60.06 Consumers' economic and legal interests

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ECON Economic and Monetary Affairs		22/07/2014
	VAN NIEUWENHUIZEN Cora	
	Shadow rapporteur	
	NIEDERMAYER Luděk	
	FERNÁNDEZ Jonás	
	SWINBURNE Kay	
	LAMBERTS Philippe	

Former committee responsible

ECON Economic and Monetary Affairs

Committee for opinion	Rapporteur for opinion	Appointed
BUDG Budgets	The committee decided not to give an opinion.	
ITRE Industry, Research and Energy		
IMCO Internal Market and Consumer Protection	The committee decided not to give an opinion.	
JURI Legal Affairs	The committee decided not to give an opinion.	

Former committee for opinion

	BUDG Budgets		
	ITRE Industry, Research and Energy		
	IMCO Internal Market and Consumer Protection		
	JURI Legal Affairs		
Council of the European Union	Council configuration	Meeting	Date
	Agriculture and Fisheries	3464	17/05/2016
European Commission	Commission DG	Commissioner	
	Financial Stability, Financial Services and Capital Markets Union	HILL Jonathan	
European Economic and Social Committee			

Key events

18/09/2013	Legislative proposal published	COM(2013)0641	Summary
10/10/2013	Committee referral announced in Parliament, 1st reading		
20/10/2014	Committee referral announced in Parliament, 1st reading		
31/03/2015	Vote in committee, 1st reading		
10/04/2015	Committee report tabled for plenary, 1st reading	A8-0131/2015	Summary
18/05/2015	Debate in Parliament		
19/05/2015	Results of vote in Parliament		
19/05/2015	Decision by Parliament, 1st reading	T8-0195/2015	Summary
19/05/2015	Matter referred back to the committee responsible		
07/04/2016	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	PE604.731	
28/04/2016	Decision by Parliament, 1st reading	T8-0146/2016	Summary
17/05/2016	Act adopted by Council after Parliament's 1st reading		
08/06/2016	Final act signed		
08/06/2016	End of procedure in Parliament		
29/06/2016	Final act published in Official Journal		

Technical information

Procedure reference	2013/0314(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation

	Amending Directive 2008/48/EC 2002/0222(COD) Amending Directive 2014/17/EU 2011/0062(COD) Amending Regulation (EU) No 596/2014 2011/0295(COD) Amended by 2017/0230(COD) Amended by 2018/0180(COD) Amended by 2020/0154(COD)
Legal basis	Treaty on the Functioning of the EU TFEU 114
Mandatory consultation of other institutions	European Economic and Social Committee
Stage reached in procedure	Procedure completed
Committee dossier	ECON/8/00239

Documentation gateway

Legislative proposal		COM(2013)0641	18/09/2013	EC	Summary
Document attached to the procedure		SWD(2013)0336	18/09/2013	EC	
Document attached to the procedure		SWD(2013)0337	18/09/2013	EC	
European Central Bank: opinion, guideline, report		CON/2014/0002 OJ C 113 15.04.2014, p. 0001	07/01/2014	ECB	Summary
Economic and Social Committee: opinion, report		CES6390/2013	21/01/2014	ESC	
Committee opinion	ITRE	PE524.509	24/01/2014	EP	
Committee draft report		PE544.150	11/12/2014	EP	
Amendments tabled in committee		PE546.741	23/01/2015	EP	
Amendments tabled in committee		PE546.742	23/01/2015	EP	
Committee report tabled for plenary, 1st reading/single reading		A8-0131/2015	10/04/2015	EP	Summary
Text adopted by Parliament, partial vote at 1st reading/single reading		T8-0195/2015	19/05/2015	EP	Summary
Text agreed during interinstitutional negotiations		PE604.731	16/03/2016	EP	
Text adopted by Parliament, 1st reading/single reading		T8-0146/2016	28/04/2016	EP	Summary
Commission response to text adopted in plenary		SP(2016)372	31/05/2016	EC	
Draft final act		00072/2015/LEX	08/06/2016	CSL	
Follow-up document		COM(2023)0455	14/07/2023	EC	
Follow-up document		COM(2024)0244	12/06/2024	EC	

Additional information

National parliaments	IPEX
European Commission	EUR-Lex

Final act

Regulation 2016/1011
OJ L 171 29.06.2016, p. 0001 Summary

Final legislative act with provisions for delegated acts

Delegated acts

2017/2883(DEA)	Examination of delegated act
2018/2810(DEA)	Examination of delegated act
2018/2811(DEA)	Examination of delegated act
2018/2812(DEA)	Examination of delegated act
2018/2813(DEA)	Examination of delegated act
2017/2884(DEA)	Examination of delegated act
2017/2885(DEA)	Examination of delegated act
2017/2889(DEA)	Examination of delegated act
2018/2818(DEA)	Examination of delegated act
2018/2820(DEA)	Examination of delegated act
2018/2815(DEA)	Examination of delegated act
2018/2814(DEA)	Examination of delegated act
2018/2817(DEA)	Examination of delegated act
2018/2819(DEA)	Examination of delegated act
2020/2749(DEA)	Examination of delegated act
2020/2748(DEA)	Examination of delegated act
2021/2685(DEA)	Examination of delegated act
2022/2559(DEA)	Examination of delegated act
2022/2558(DEA)	Examination of delegated act
2020/2747(DEA)	Examination of delegated act
2021/2677(DEA)	Examination of delegated act
2021/2681(DEA)	Examination of delegated act
2021/2682(DEA)	Examination of delegated act
2021/2684(DEA)	Examination of delegated act
2023/2805(DEA)	Examination of delegated act

Indices used as benchmarks in financial instruments and financial contracts

PURPOSE: to establish a regulatory framework at Union level for indices used as benchmarks in financial instruments and financial contracts whilst ensuring a high level of consumer and investor protection.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: the pricing of many financial instruments and financial contracts - such as interest rate swaps, and commercial and non-commercial contracts, such as mortgages - depends on the accuracy and integrity of benchmarks. An index is calculated using a formula or some other methodology on the basis of underlying values. When an index is used as a reference price for a financial instrument or contract it becomes a benchmark. Therefore, it is important to target all benchmarks that price a financial instrument or consumer contract or that measure the performance of investment funds.

Cases of manipulation of interest rate benchmarks such as LIBOR (London Interbank Offered Rate) and EURIBOR (Euro Interbank Offered Rate), as well as allegations that energy, oil and foreign exchange benchmarks have been manipulated, have demonstrated that benchmarks whose setting processes share certain characteristics, such as being subject to conflicts of interest, the use of discretion and weak governance, may be vulnerable to manipulation.

Failures in, or doubts about, the accuracy and integrity of indices used as benchmarks may undermine market confidence, cause losses to consumers and investors and distort the real economy. It is therefore necessary to ensure the accuracy, robustness and integrity of benchmarks and the benchmark setting process.

In most Member States there is currently no regulation at national level on the production of benchmarks. The International Organisation Securities Commissions (IOSCO) recently agreed principles on benchmarks which are to be implemented by its members. However these principles provide flexibility as to the scope and means of their implementation and in relation to certain terms. An EU initiative will help enhance the single market by creating a common framework for reliable and correctly used benchmarks across different Member States.

This proposal supplements the proposed Regulation on Market Abuse (MAR) and the proposed Directive for a Criminal Sanctions for Market Abuse (CSMAD) (MAR has been the subject of a political agreement by the European Parliament and the Council in June 2013) clarify that any manipulation of benchmarks is clearly and unequivocally illegal and subject to administrative or criminal sanctions.

IMPACT ASSESSMENT: the Commission conducted an impact assessment of policy alternatives. The policy options encompassed options to: (i) limit incentives for manipulation, (ii) minimise discretion and ensure benchmarks are based on sufficient, reliable and representative data, (iii) ensure internal governance and controls address risks, (iv) ensure effective supervision of benchmarks and, (v) enhance transparency and investor protection.

LEGAL BASIS: Article 114 of the Treaty on the Functioning of the European Union.

CONTENT: the proposed Regulation seeks to introduce a common framework to ensure the accuracy and integrity of indices used as benchmarks in financial instruments and financial contracts in the Union.

The proposal has four main objectives that aim to improve the framework under which benchmarks are provided, contributed to and used:

1. to improve the governance and controls over the benchmark process and in particular ensure that administrators avoid conflicts of interest, or at least manage them adequately;
2. to improve the quality of the input data and methodologies used by benchmark administrators and in particular ensure that sufficient and accurate data is used in the determination of benchmarks. The administrator shall obtain the input data from a reliable and representative panel or sample of contributors so as to ensure that the resultant benchmark is reliable and representative of the market or economic reality that the benchmark is intended to measure (Representative contributors);
3. to ensure that contributors to benchmarks are subject to adequate controls, in particular to avoid conflicts of interest and that their contributions to benchmarks are subject to adequate controls. The integrity and accuracy of benchmarks depends on the integrity and accuracy of the input data provided by contributors. It is essential that the obligations of the contributors in respect of this input data are clearly specified, can be relied on and are consistent with the benchmark administrators controls and methodology. It is therefore necessary that the benchmark administrator produces a code of conduct to specify these requirements and that the contributors are bound by that code of conduct;
4. to ensure adequate protection for consumers and investors using benchmarks by enhancing transparency, ensuring adequate rights of redress and ensuring suitability is assessed where necessary. In order for users of benchmarks to make appropriate choices of, and understand the risks of, benchmarks, they need to know what the benchmark measures and their vulnerabilities. Therefore the benchmark administrator should publish a statement specifying these elements as well as publish the input data used to determine the benchmark.

The proposed Regulation applies to all published benchmarks that are used to reference a financial instrument traded or admitted to trading on a regulated venue, or a financial contract (such as mortgages) and benchmarks that measure the performance of an investment fund. The proposal exempts from its scope central banks that are members of the European System of Central Banks.

BUDGETARY IMPLICATION: the specific budget implications of the proposal relate to task allocated to ESMA. The new tasks will be carried out with the human resources available within the annual budgetary allocation procedure, in the light of budgetary constraints which are applicable to all EU bodies and in line with the financial programming for agencies.

In summary, the main budgetary implications of the proposal are:

DG MARKT staff: 1 AD staff member (full-time): the total estimated costs are 0.141 M yearly.

ESMA:

- Staff costs (two temporary agents): the total yearly costs of these 2 temporary agents would be of 0.326 M, towards which the Commission would contribute 40% (0.130 M) and Member States 60% (0.196 M) yearly.
- Operational and infrastructure costs: an initial expense of 0.25 M is also estimated for ESMA, towards which the Commission would contribute 40% (0.1 M) and Member States 60% (0.15 M) in 2015.

ESMA will also need to produce a report on the application of this Regulation by 1 January 2018 with a total cost of 0.3 M towards which the Commission would contribute 40% (0.12 M) and Member States 60% (0.18 M) in 2017.

DELEGATED ACTS: the proposal contains provisions empowering the Commission to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union.

Indices used as benchmarks in financial instruments and financial contracts

Opinion of the European Central Bank on a proposal for a regulation on indices used as benchmarks in financial instruments and financial contracts.

The ECB, consulted by the European Council and the European Parliament, supports the proposed regulations objective of establishing a common set of rules at Union level for the benchmark-setting process for financial instruments and financial contracts in the interest of integrity and reliability of the financial benchmarks and the wider concern of protection of investors and consumers.

The restoring of integrity and public confidence in financial benchmarks is all the more important in the wake of recent alleged manipulation of the key interbank interest rate benchmarks Libor and Euribor, which have led in a number of instances to significant fines and allegations of misuse of other indices.

The ECB stressed the systemic importance of the Euribor benchmark for financial stability and made specific recommendations on both short and medium to longer term measures for improving the integrity and reliability of Euribor and other such benchmarks.

The ECB also makes a few forward looking remarks on the reform of critical interest rate benchmarks. The ECB:

- supports market initiatives that aim at identifying transaction-based reference rates that could constitute viable complements or substitutes to Euribor and support facilitating market choices in a changing financial system so that users can choose reference rates which better match their needs;
- encourages market participants to be actively involved in the rate design process, in order to ensure that the resulting rate meets the markets needs;
- stresses that this transitional phase to new reference rates that any Union framework is workable for market participants.

Lastly, the ECB also makes specific remarks on the reform of critical interest rate benchmarks. These remarks concern the following issues:

Scope, exclusion of indices and benchmarks provided by central banks and definition: the ECB supports the wide scope of application of the proposed regulation. It welcomes the express exclusion from the scope of the proposed regulation of central banks that are members of the European System of Central Banks (ESCB). However, it suggests extending the exemption to all central banks as the benchmarks and indices provided by them are already subject to control by public authorities.

Furthermore, as regards the definition of interbank interest rate benchmark, the ECB notes that the special regime laid down in Annex II covers only such benchmarks which are based on interest rates at which banks may lend to or borrow from each other. In the ECBs view the regime should be less restrictive and also include benchmarks where the underlying asset is the rate at which a bank may lend to or borrow from the wholesale market.

Benchmark integrity and reliability and the authorisation and supervision of administrators: the Union legislative bodies should take particular care to ensure that, in pursuing the justified goals of the proposal, the toughening of the regulatory requirements on administrators does not inadvertently dissuade new entrants to such a critical function nor discourage too strongly current administrators from this function, especially during the current period of transition to possible new reference rates. Given the systemic importance of Euribor for the Union financial markets and its role in monetary policy transmission, the European Supervisory Authorities (ESAs) should be involved in the supervision of the Euribor rate-setting process. The ECB also welcomes the fact that competent authorities may dele gate some of their tasks under the proposed regulation to ESMA, subject to the latters agreement.

Sectoral requirements, critical benchmarks and mandatory contribution: the ECB is concerned that the current definition of a critical benchmark may not provide a secure enough basis for the emergence of new critical benchmarks, such as for interbank interest rates. For this reason, the ECB sees merit in retaining a more flexible definition based on financial stability considerations.

The ECB has serious concerns about the proposed wording of the threshold for triggering the power to require mandatory contribution. It strongly recommends not to rely on a numerical test, which may be easily circumvented and whose trigger may never be reached, but to replace it with qualitative criteria related to financial stability considerations. The ECB also recommends that the administrator be required to evaluate at regular intervals and whenever the panel size decreases whether the panel remains representative.

Supervisory cooperation: in relation to each critical benchmark, the proposed regulation provides for the establishment of a college of competent authorities. The ECB has concerns however about the workability of such a procedure in the case of critical financial benchmarks, particularly in the case of an emergency such as a market failure.

To remove any possible doubt that the responsibility for the supervision of the financial conduct of institutions which come under the single supervisory mechanism (SSM) remains with the national competent authorities, the regulation should specify that the competent authority to be designated by Member States must be a national competent authority.

Transparency and consumer protection: the proposed regulation should ensure instead that users can be confident about the reliability of the data by the proper oversight, supervision, archiving and auditing thereof.

In addition, in relation to transaction-based benchmarks, situations may arise where the input data to be published includes data which is commercially sensitive or subject to business confidentiality, for example, if volume data for transactions is included in the input data. Therefore, the administrator should not be required to publish the data even with a delay, unless the relevant contributor has given its prior approval, but it would be sufficient for the administrator to be required to store the data for a certain period during which the competent authority would upon request have access thereto.

The ECB recommends, therefore, that the proposed regulation includes a requirement for the benchmark administrator to develop its own contingency procedures, with full transparency towards the end users of the indices.

Use of benchmarks provided by third country administrators: the ECB is concerned about the workability of the proposed equivalence regime, particularly if it were to be introduced concurrently with the other provisions of the proposed regulation. For these reasons, rather than leaving

the use of non-Union benchmarks in limbo, the ECB invites the Union legislative bodies to consider introducing as a minimum a longer implementation period for the equivalence regime under which selected widely-used benchmarks administered in third countries, in particular G20 countries, could continue to be used in the Union until the end of a longer transitional period of three years.

For such benchmarks, the third country administrator would be required to demonstrate compliance with the IOSCO Principles in the context of its domestic legal framework. As a result, the benchmark would be temporarily exempted from the equivalence requirements provided for in the proposed regulation.

Indices used as benchmarks in financial instruments and financial contracts

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 Parliaments 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.

Indices used as benchmarks in financial instruments and financial contracts

The European Parliament adopted amendments to 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 question was referred back to the competent committee for re-consideration and the vote was deferred to a later session.

The purpose of the Regulation was to establish a common framework to ensure the accuracy and integrity of indices used as benchmarks in financial instruments and financial contracts in the Union. Serious cases of manipulation of interest rate benchmarks such as LIBOR, EURIBOR, had caused considerable losses to consumers and investors and further shattering the confidence of citizens in the financial sector.

The main amendments adopted in plenary amended the Commission proposal as follows :

Scope: the Regulation would apply, in particular, to the provision of critical benchmarks, these being benchmarks that were not based on regulated data, the reference value of which exceeded EUR 500 billion and benchmarks the cessation of which would have a significant adverse impact on financial stability, on the orderly functioning of the markets and on the real economy in one or more Member States.

Certain provisions would not apply to administrators with regard to the provision of non-critical benchmarks.

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 ensured that the benchmark was provided and published or made available in accordance with the Regulation;
- have an accountability framework covering record keeping, auditing and review, and complaints process that provided evidence of compliance with the requirements of the 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.

The European Securities and Markets Authority (ESMA) would develop draft regulatory technical standards concerning governance and control requirements.

Input data: input data must be verifiable and the resulting benchmark must be representative of the market or economic reality that the benchmark is intended to measure. Members introduced detailed provisions regarding the controls that the administrator must put in place for input data. 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 was based on input data from contributors, the administrator should draw up, a code of conduct for each benchmark clearly specifying the contributors responsibilities with respect to the contribution of input data.

Critical benchmarks: once a benchmark had been defined as critical, the college of competent authorities would be formed. ESMA would preside over the college.

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.

Indices used as benchmarks in financial instruments and financial contracts

The European Parliament adopted by 505 votes to 113 with 31 abstentions a legislative resolution on the proposal for a regulation of the European Parliament and of the Council on indices used as benchmarks in financial instruments and financial contracts. The vote had been put back at the plenary sitting of 19 May 2015.

The amended text stressed that 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.

Parliaments position adopted in first reading following the ordinary legislative procedure amended the Commission proposal as follows:

Subject matter: the 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.

Governance and conflict of interest requirements: an administrator, being the natural or legal person that has control over the provision of a benchmark, shall have in place robust governance arrangements and:

- 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;
- 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;
- ensure that: (a) 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 have the necessary skills, knowledge and experience for the duties assigned to them and are subject to effective management and supervision; (b) the compensation and performance evaluation of those persons do not create conflicts of interest.
- establish specific internal control procedures to ensure the integrity and reliability of personnel.

Oversight, methodology and transparency: administrators shall maintain a permanent and effective oversight function and robust procedures to ensure oversight of all aspects of the provision of their benchmarks.

The oversight function shall operate with integrity and shall have certain responsibilities, which include reviewing the benchmarks definition and methodology at least annually, overseeing any changes to the benchmark methodology and being able to request the administrator to consult on such changes.

The administrator shall adjust these responsibilities based on the complexity, use and vulnerability of the benchmark. The oversight function shall be carried out by a separate committee or by means of another appropriate governance arrangement.

The administrator shall also:

- have in place a control framework covering particularly: (i) management of operational risk;(ii) adequate and effective business continuity and disaster recovery plans;(iii) contingency procedures that are in place in the event of a disruption to the process of the provision of the benchmark;
- 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 the Regulation; an internal function with the necessary capability to review and report on the administrators compliance with the benchmark methodology and the Regulation;
- ensure record-keeping, including inter alia, all input data, any exercise of judgement or discretion by the administrator and, where applicable, by assessors, in the determination of a benchmark, and telephone conversations or electronic communications between any person employed by the administrator and contributors or submitters in respect of a benchmark. These shall be kept for at least five years (three years for telephone conversations or electronic communication);
- have in place and publish procedures for receiving, investigating and retaining records concerning complaints made, including about the administrator's benchmark determination process.
- ensure that certain conditions are fulfilled when outsourcing takes place;
- publish 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;
- 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,

Input data: the input data shall be verifiable. Controls in respect of input data shall 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 contributors 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.

Code of conduct: 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. Members set out the main elements that must be included in the code of conduct. Administrators must ensure that supervisors adhere to the code of conduct.

Types and size of benchmarks: the text introduces proportionality in the Regulation 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 (used for financial instruments or contracts having a total average value of at least EUR 50 billion), two distinct regimes should be introduced: one for significant benchmarks and one for non-significant benchmarks (which do not fulfil the conditions for significant benchmark).

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 the 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.

Authorisation and supervision: certain administrators should be authorised and supervised by the competent authority of the Member State where the administrator in question is located. Entities that provide only indices that qualify as non-significant benchmarks should be registered and supervised by the relevant competent authority.

Benchmarks provided by administrators in third countries: the amended Regulation:

- introduces a process for the recognition of administrators located in a third country on condition that they comply with the requirements of the Regulation, and the apply the principles of the International Organization of Securities Commissions (IOSCO);
- 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.

Commodity benchmarks: certain commodity benchmarks are exempt from the Regulation but would need to nevertheless respect the relevant IOSCO principles.

Freedom of expression: the Regulation does not apply to 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.

Indices used as benchmarks in financial instruments and financial contracts

PURPOSE: to establish an effective and coherent regulatory framework in response to the vulnerability of benchmarks in the context of financial instruments.

LEGISLATIVE ACT: Regulation (EU) 2016/1011 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

CONTENT: the 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. 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 aim is to enhance the robustness and reliability of benchmarks, thereby strengthening confidence in financial markets and ensuring a high level of consumer and investor protection.

Scope: the Regulation applies to the provision of benchmarks, the contribution of input data to a benchmark and the use of a benchmark within the Union. It does not apply to a central bank, or in certain circumstances to a public authority nor a central counterparty.

Governance of and control by administrators: the Regulation aims to improve governance and controls over the benchmark process, in particular to ensure that administrators:

- put in place adequate policies and procedures and efficient organisational measures to identify and to prevent or manage conflicts of interest. These policies and procedures will be regularly reviewed and brought up to date;
- 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;
- ensure that their staff who are directly involved in the provision of a benchmark have the necessary skills, knowledge and experience for the duties assigned to them and are subject to effective management and supervision;
- maintain a permanent and effective oversight function to ensure oversight of all aspects of the provision of their benchmarks.

The administrator must also:

- have in place a control framework covering, particularly, management of operational risk and contingency procedures that are in place in the event of a disruption to the process of the provision of the benchmark;
- ensure record-keeping, including inter alia, all input data, and telephone conversations or electronic communications between any person employed by the administrator and contributors in respect of a benchmark. These shall be kept for at least five years (three years for telephone conversations or electronic communication);
- have in place and publish procedures for receiving complaints made;
- ensure that certain conditions are fulfilled when outsourcing takes place;
- publish the key elements of the methodology that the administrator uses for each benchmark provided and published.

The European Securities and Markets Authority (ESMA) will coordinate the supervision of administrators of benchmarks by the competent authority of the country in which they are located.

In the case of critical benchmarks, colleges, comprising competent authorities and ESMA, will be formed and take key decisions.

Authorisation: administrators of benchmarks will have to apply for authorisation and will be subject to supervision by the competent authority of the country in which they are located. If an administrator does not comply with the provisions of the regulation, the competent authority may

withdraw or suspend its authorisation.

Input data: this is 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. Such data shall be sufficient to represent accurately and reliably the market or economic reality that the benchmark is intended to measure. It must be verifiable.

The Regulation states that the input data shall be transaction data, if available and appropriate. If transaction data is not sufficient, other input data may be used.

Administrators controls in respect of input data must include 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.

Code of conduct: where a benchmark was based on input data from contributors, the administrator should draw up, a code of conduct for each benchmark clearly specifying the contributors responsibilities with respect to the contribution of input data. The administrator should be satisfied that contributors adhere to the code of conduct.

Classification of benchmarks: benchmarks must satisfy adequate requirements regarding their scale and nature, and also the minimum requirements corresponding to the principles published by the International Organisation of Securities Commissions (IOSCO) and accepted at international level.

The Regulation puts in place three separate regimes:

- a regime applicable to critical benchmarks (used as a reference for financial instruments or financial contracts or for the determination of the performance of investment funds having a total value of at least EUR 500 billion);
- a regime for significant benchmarks (used as a reference for financial instruments or financial contracts or for the determination of the performance of investments funds having a total average value of at least EUR 50 billion);
- a regime applicable to non-significant benchmarks (which do not fulfil the conditions set for becoming significant benchmarks). These benchmarks are subject to a light regulatory regime.

Specific regimes will be applicable for commodity benchmarks, interest rate benchmarks, and regulated data benchmarks.

Commodity benchmarks of more than EUR 100 million are subject to the principles for oil price reporting agencies (PRA) issued by the IOSCO on 5 October 2012.

Third country regime: benchmarks provided by non-EU countries will be used by supervised entities in the EU through recognition of administrators located in a third country or endorsement of administrators located in a third country regimes, based on compliance with the IOSCO principles.

Penalties: Member States shall adopt rules on administrative sanctions and other administrative measures, including pecuniary sanctions, applicable to infringements of the provisions of the Regulation and ensure that they are implemented. Those administrative sanctions and other administrative measures shall be effective, proportionate and dissuasive.

ENTRY INTO FORCE: 30.6.2016.

APPLICATION: from 1.1.2018.

DELEGATED ACTS: the Commission may adopt delegated acts in order to specify further technical elements of the Regulation. The power to adopt delegated acts is conferred on the Commission for an indeterminate period from 30 June 2013. Parliament or Council may raise objections to a delegated act within three months of the date of notification (which may be extended by three months). If Parliament or Council raise objections, the delegated act may not enter into force.