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Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on indices used as benchmarks in financial instruments and financial contracts**

(Text with EEA relevance)

{SWD(2013) 336}
{SWD(2013) 337}

# EXPLANATORY MEMORANDUM

## 1. CONTEXT OF THE PROPOSAL

### 1.1. General context, grounds for and objectives of the proposal

An index is a measure, typically of a price or quantity, determined from time to time from a representative set of underlying data. When an index is used as a reference price for a financial instrument or contract it becomes a benchmark. A wide variety of benchmarks are currently produced using different methodologies by different providers, ranging from public entities to independent dedicated benchmark providers.

The settlements reached by several competent authorities with a number of banks concerning the manipulation of the LIBOR and EURIBOR interest rate benchmarks have highlighted the importance of benchmarks and their vulnerabilities. Allegations of attempted manipulation of commodity price assessments provided by commodity price reporting agencies (PRAs) are also under investigation by the competent authorities and IOSCO has carried out a review of oil price assessments by PRAs. The integrity of benchmarks is critical to the pricing of many financial instruments, such as interest rate swaps, and commercial and non-commercial contracts, such as mortgages. If a benchmark is manipulated this will cause significant losses to some of the investors that own financial instruments whose value is determined by reference to the benchmark. By sending out deceptive signals about the state of an underlying market it may distort the real economy. More generally concerns about the risk of benchmark manipulation undermine market confidence. Benchmarks are susceptible to manipulation where conflicts of interest and discretion exists in the benchmark process and these are not subject to adequate governance and controls.

The first part of the Commission's response to the alleged manipulation of LIBOR and EURIBOR was to amend the existing proposals for a market abuse Regulation (MAR) and criminal sanctions for market abuse Directive (CSMAD) to clarify that any manipulation of benchmarks is clearly and unequivocally illegal and subject to administrative or criminal sanctions.

However, changing the sanctioning regime alone will not improve the way in which benchmarks are produced and used; sanctioning does not remove the risks of manipulation arising from the inadequate governance of the benchmark process where conflicts of interest and discretion exist. Secondly, in order to protect investors and consumers, it is necessary that benchmarks are robust, reliable and fit for purpose. In the light of these considerations, this proposal for a regulation has four main objectives that aim to improve the framework under which benchmarks are provided, contributed to and used:

– 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;

– 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;

– 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. Where necessary the relevant competent authority should have the power to mandate contributors to continue to contribute to benchmarks; and

– 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.

### 1.2. Existing provisions in the area of the proposal

Union law currently addresses certain aspects of the use of benchmarks:

– The proposals for a Market Abuse Regulation (MAR)[1] in Articles 2(3)(d) and 8(1)(d) and for a Criminal Sanctions for Market Abuse Directive (CSMAD)[2] (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.

– The Regulation on Energy Market Integrity and Transparency (REMIT)[3] provides that the manipulation of benchmarks that are used for wholesale energy products is illegal.

– The Markets in Financial Instruments Directive[4] requires that any financial instruments admitted to trading in a regulated market are capable of being traded in a fair, orderly and efficient manner. The Implementing Regulation[5] of that Directive further specifies that the price or other value measure of the underlying must be reliable and publicly available.

– Article 30 of the European Commission Proposal on the Markets in Financial Instruments Regulation (MiFIR)[6] (which is currently being negotiated by the European Parliament and the Council) contains a provision requiring the non-exclusive licencing of benchmarks for clearing and trading purposes.

– The Prospectus Directive and Implementing Regulation[7] provide that where a prospectus contains a reference to an index, the issuer should set out the type of the underlying and details of where information on the underlying can be obtained, an indication of where information about the past and the further performance of the underlying and its volatility can be obtained, and the name of the index. If the index in question is composed by the issuer, the issuer also needs to include a description of the index. If the index is not composed by the issuer, the issuer needs to clarify where information about the index can be obtained, and where the underlying is an interest rate the issuer needs to provide a description of the interest rate.

– The Undertakings for Collective Investment in Transferable Securities Directive[8] provides that UCITS funds may only hold a maximum share of instruments issued by the same body in their portfolio. Member States may raise the limits that apply to how much of its total portfolio a UCITS may hold to a maximum of 20% for investment in shares or debt securities issued by the same body when it concerns an

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1 COM(2011) 651 final 2011/0295 (COD) http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0651:FIN:EN:PDF

2 Brussels, 20.10.2011 COM(2011) 654 final 2011/0297 (COD) http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0654:FIN:EN:PDF

3 REMIT regulation: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:326:0001:01:EN:HTML

4 MIFID Article 40(1): http://ec.europa.eu/internal_market/securities/isd/mifid_en.htm

5 MIFID Implementing Regulation Article 37(1)b http://ec.europa.eu/internal_market/securities/isd/mifid2_en.htm

6 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0652:FIN:EN:PDF

7 Directive 2003/71/EC and Regulation (EC) No 809/2004, Annex XII, item 4.2.2

8 Undertakings for Collective Investment in Transferable Securities Directive (2009/65/EC), Article 53

index which the UCITS wants to replicate, provided the composition of the index is sufficiently diversified, the index represents an adequate benchmark for the market to which it refers and it is published in an appropriate manner.

## 2. RESULTS OF CONSULTATIONS WITH INTERESTED PARTIES AND IMPACT ASSESSMENTS

### 2.1. Consultations

A three month public consultation was launched on 3 September and closed on 29 November 2012. 84 contributions were received from contributors, benchmark providers and users including exchanges, banks, investors, consumer groups, trade bodies and public bodies. Stakeholders acknowledged the weaknesses in the production and use of benchmarks, and broadly supported action at EU level. Respondents also emphasised the need for international coordination, and careful calibration of the scope of any initiative.

ESMA and the EBA jointly investigated shortcomings in the provision of EURIBOR by the EBF-EURIBOR and on 11 January 2013 launched a consultation on the Principles for Benchmarks-Setting Processes in the EU[9]. In a letter dated 7 March 2013 the EBA, ESMA and EIOPA provided advice on the content of this proposed legislation in light of this work. The Commission services participated in an ESMA-EBA open hearing on 13 February 2013[10] on these Principles for Benchmarks-Setting Processes. The Commission services also participated in the public hearing on tackling the culture of market manipulation - global action post LIBOR/EURIBOR held by the European Parliament on 29 September 2012.

### 2.2. Impact Assessment

In line with its "Better Regulation" policy, the Commission conducted an impact assessment of policy alternatives. The policy options encompassed options to limit incentives for manipulation, minimise discretion and ensure benchmarks are based on sufficient, reliable and representative data, ensure internal governance and controls address risks, ensure effective supervision of benchmarks and enhance transparency and investor protection. Each policy option was assessed against the following criteria: impact on stakeholders, effectiveness and efficiency.

The following fundamental rights of the Charter of Fundamental Rights are of particular relevance: respect for private and family life, protection of personal data, freedom of expression and information.

Limitations on these rights and freedoms are allowed under Article 52 of the Charter. The objectives as defined above are consistent with the EU's obligations to respect fundamental rights. However, any limitation on the exercise of these rights and freedoms must be provided for by law and respect the essence of these rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet the objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others. In the case of benchmarks, the general interest objective which justifies certain limitations of fundamental rights is the objective of ensuring market integrity. The need to protect the right to property (Article 17 of the Charter) also justifies certain limitations of fundamental rights, as investors are entitled to see the value of their property (e.g. loans, derivatives) protected from losses caused by market distortions.

[9] http://www.esma.europa.eu/consultation/Consultation-Principles-Benchmarks-Setting-Processes-EU

[10] http://www.esma.europa.eu/system/files/2013-150.pdf

The right to freedom of expression and information requires that the freedom of the media shall be respected. This Regulation should be interpreted and applied in accordance with this fundamental right. Therefore where a person merely publishes or refers to a benchmark as part of his or her journalistic activities but does not have control over the provision of that benchmark, that person should not be subject to the requirements imposed on administrators by this Regulation. This therefore leaves journalists free when performing journalistic activities to report on financial and commodities markets. Accordingly the definition of the administrator of a benchmark has been tightly defined to ensure that it encompasses the provision of a benchmark but does not capture within its scope journalistic activities.

## 3. LEGAL ELEMENTS OF THE PROPOSAL

### 3.1. Legal basis

The proposal is based on Article 114 of the Treaty on the Functioning of the European Union ("TFEU").

### 3.2. Subsidiarity and proportionality

The Commission proposal to regulate benchmarks is in line with the principle of subsidiarity as laid down in Article 5(3) of the Treaty on European Union (TEU), which requires the Union to take action only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Union.

While many benchmarks are national, the benchmark industry as a whole is international in both production and use. While action at national level in relation to national indices may help ensure that any intervention is appropriately tailored to the problems at a national level, this may lead to a patchwork of divergent rules, could create an un-level playing field within the single market and result in an inconsistent and un-coordinated approach. Benchmarks are used to price a wide variety of cross border transactions, in particular in the interbank funding market and derivatives. A patchwork of national rules would impede the opportunity to produce cross border benchmarks and therefore impede these cross border transactions. This problem has been recognised by the G20 and FSB which charged IOSCO with producing a global set of principles to apply to financial benchmarks. An EU initiative will help enhance the single market by creating a common framework for reliable and correctly used benchmarks across different Member States.

While in most Member States there is currently no regulation at national level on the production of benchmarks, two Member States have already adopted national legislation on interest rate benchmarks in their national currencies. Moreover, IOSCO has 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. In the absence of a harmonised European framework for benchmarks, some Member States are likely to adopt legislation at national level which would be divergent. For example, at this point of time, the scope of the legislation of one Member State would appear as wide as IOSCO's while the legislation of the other Member State that has introduced rules regarding benchmarks only covers interest rate benchmarks. These divergent approaches would result in fragmentation of the internal market, since administrators and users of benchmarks would be subject to different rules in different Member States. In the absence of a Union legislative framework, the individual national actions would also be ineffective, as there is no obligation or incentive on Member States to cooperate with each other and the absence of such cooperation leaves scope for regulatory arbitrage.

Certain aspects of investor protection in this field are generally covered by MiFID. In particular, there is the requirement under MiFID for firms to carry out an assessment of appropriateness. This test shall determine whether the client has the necessary experience and knowledge in order to understand the risks involved in relation to the product or investment service offered or demanded. Thus, it provides a sufficient level of investor protection.

Concerning consumer protection, the Consumer Credit Directive includes rules on the disclosure of adequate information, as well as the soon to be adopted Mortgage Credit Directive which also includes the requirement to recommend suitable credit agreements. However, those EU consumer protection rules do not address the particular issue of the suitability of benchmarks in financial contracts. Furthermore, unequal bargaining power and the use of standard terms means that consumers may have a limited choice about the benchmark used. Consumers lack the necessary knowledge or experience to appropriately assess benchmark suitability. Therefore this proposal should complement the existing EU legislation in this area by ensuring that the responsibility for assessing the suitability of benchmarks for retail contracts rests with the lenders or creditors. This will also ensure harmonised EU consumer protection rules on the use of benchmarks to reference financial contracts. A common regulatory framework for consumers and creditors in relation to financial contracts is also required to enable the use of cross border benchmarks rather than a fragmented national approach. As a result of consumer complaints and litigation relating to the use of unsuitable benchmarks in several Member States, it is likely that divergent measures on consumer protection would be adopted at national level. This could result in fragmentation of the internal market.

The proposed Regulation is also proportionate, as required by Article 5(4) of TEU. It targets only those indices that are used to reference financial instruments, or financial contracts such as mortgages, because these are the benchmark that may have a direct and certain economic impact if they are manipulated. In addition, the proposed Regulation contains provisions to tailor its requirements to different sectors and the different types of benchmark such as commodity, interbank interest rate and benchmarks that use exchange data. A proportionate approach is ensured since the vast majority of obligations are imposed on the administrator of the benchmark. Many administrators of benchmarks already comply with at least some of these requirements, implying that the administrative burden should not increase disporportionately. Moreover, processes for internal governance and control are only required from supervised contributors, meaning that the impact on non supervised contributors to a benchmark, for example a nonregistered trader, will not be substantial. Finally, in all important parts, this Regulation is aligned with the internationally agreed IOSCO Principles for financial benchmarks published on 17 July 2013, which has been extensively consulted with stakeholders. This will limit adaptation costs.

Against this background, EU action is appropriate in terms of the principles of subsidiarity and proportionality.

### 3.3. Choice of instrument

A Regulation is considered to be the most appropriate legal instrument to introduce uniform rules concerning the provision of benchmarks, the contribution of input data to those benchmarks, and the use of benchmarks in the Union. The provisions of this proposal are laying down certain requirements for administrators, contributors and users of benchmarks. The cross border nature of many benchmarks creates a need for maximum harmonisation of these requirements. Since the regulation of benchmarks involves measures specifying precise requirements that relate to data and methodologies, even small divergences in the approach taken could lead to significant impediments in the cross border provision of benchmarks. The

use of a Regulation, which is directly applicable without requiring national legislation, will restrict the possibility of divergent measures being taken by competent authorities at national level, and will ensure a consistent approach and greater legal certainty throughout the EU.

### 3.4. Detailed explanation of the proposal

*3.4.1. Scope (Article 2)*

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.

Where there is discretion in the benchmark process which is subject to a conflict of interest, there is a risk of manipulation in the absence of adequate governance and controls. Therefore indices which involve discretion should be subject to regulatory measures. While the degree of discretion varies, all indices involve some discretion. Therefore, the scope should include all benchmarks, regardless of the method of calculation or the nature of the contributions.

The scope should include all indices, including published indices, since any doubts about the accuracy and reliability of such indices are likely to inflict more damage on a wider population than indices which are not public.

Where benchmarks are used as a reference price for a financial instrument or contract, any manipulation causes economic loss. In the case where the contributor also uses the financial instrument that references it, an inherent conflict of interest exists and there is an incentive to manipulate. Furthermore, were benchmarks are used to measure the performance of financial instruments, they may be subject to conflicts of interests and their manipulation will lead to suboptimal investment choices by investors. Therefore, it is important to target all benchmarks that price a financial instrument or consumer contract or that measure the performance of investment funds.

For widely used benchmarks, even a minor manipulation may have a significant impact but the vulnerability and importance of a benchmark varies over time. Restricting the scope by reference to important or vulnerable indices would not address the risks that any benchmark may pose in the future.

Given all these considerations and in order to ensure a clear and comprehensive application of the Regulation, the scope is also not dependent on the nature of the input data i.e. whether the input data is an economic (e.g. a share price) or non-economic (e.g. a weather parameter) number or value. This is because the critical element when determining the scope is how the output value determines the value of a financial instrument, financial contract or measures the performance of an investment fund. In this context, once a value is used to reference a financial contract or instrument, its previous non-economic nature becomes irrelevant.

As regards the administrators of benchmarks, all administrators are potentially subject to conflicts of interest, exercise discretion and may have inadequate governance and control systems in place. Thus, they need to be subject to appropriate regulation. Moreover, as they control the benchmark process, an authorisation requirement is imposed on all benchmark administrators as supervision is the most effective way to ensure the integrity of benchmarks.

Concerning contributors to benchmarks, these are also potentially subject to conflicts of interest, exercise discretion and so may be the source of manipulation. Contributing to a benchmark is a voluntary activity. If any initiative requires contributors to significantly change their business models, they may cease to contribute to the benchmark concerned. However, for entities already subject to regulation and supervision, (so-called supervised contributors), requiring good governance and control systems is not expected to lead to

substantial costs or disproportionate administrative burden. It is therefore appropriate to include all supervised contributors within the scope of this Regulation.

For contributors not subject to regulation and supervision (non-supervised contributors), authorisation or otherwise becoming subject to rules could impose significant costs and administrative burden. Regulators would also be ineffective supervising firms for which they have no expertise. Imposing supervision on currently non-supervised entities and persons would therefore impose significant costs and provide minimal benefits. Nonetheless, certain parts of this Regulation, as for example the need to provide accurate and reliable input data are indirectly relevant for all contributors since they remain subject to the Market Abuse Regulation and will be contractually bound to comply with the requirement of the administrator's code of conduct under this Regulation.

The proposal exempts from its scope central banks that are members of the European System of Central Banks.

Finally, in some cases a person may produce an index but not be aware that this index is a benchmark because, for example, it is used as a reference to a financial instrument without the knowledge of the producer. The regulation therefore provides a mechanism to notify the producers that their index has or may become a benchmark and give them the power to refuse that it be used as a benchmark. If the producer consents, he will become subject to the proposed Regulation in respect of that benchmark. If he refuses, the index may not be used as a benchmark and the administrator requirements in this Regulation will not apply.

*3.4.2. Governance and Control of Administrators (Article 5-6)*

The proposal ensures that conflicts of interest are avoided and ensures that governance and controls are effective. These are addressed by requirements on governance and controls, with more detailed requirements included in the annex.

*3.4.3. Input Data and Methodology (Articles 7)*

The proposal sets out three requirements, detailed in the annex, in respect of the input data and methodology used to produce a benchmark to reduce discretion and enhance integrity and reliability:

– the input data should be sufficient and accurate so that it represent the actual market or economic reality that the benchmark is intended to measure;

– the input data should be obtained from a reliable and representative panel or sample of contributors; and

– the administrator should use robust and reliable methodology for determining the benchmark.

*3.4.4. Contributor Requirements (Articles 9 and 11)*

The administrator is required to draw up a contributor code of conduct which clearly specifies the obligations and responsibilities of the contributors when they provide input data for the determination of the benchmark. Where the contributors are already regulated entities they are also required to avoid conflicts of interest and implement adequate controls.

*3.4.5. Sectoral Requirements (Article 10 and 12-14)*

In order to ensure proportionality and ensure that the proposal is adequately tailored to different benchmark types and sectors, annexes II and III contain more detailed provisions on commodity benchmarks and interest rate benchmarks. Additional requirements are imposed on critical benchmarks, including the power for the relevant competent authority to mandate

contributions. Benchmarks whose input data is provided by regulated venues are also released from certain obligations to avoid dual regulation.

*3.4.6. Transparency and Consumer Protection (Articles 15-18)*

Investor protection is enhanced through transparency provisions. Administrators are required to provide a statement setting out what the benchmark measures, its vulnerabilities, along with the publication of underlying data to allow users to choose the most appropriate and suitable benchmark. This statement also provides notice that the users should make adequate provision in the event that the administrator ceases to provide the benchmark. Finally a suitability assessment is imposed on banks in their dealings with consumers in financial contracts such as loans secured by mortgages.

*3.4.7. Supervision and Authorisation Procedure for Administrators (Articles 22 -37)*

The activity of the provision of benchmarks will be subject to prior authorisation and on-going supervision. The proposal lays down the conditions and the procedure for administrators of benchmarks located in the Union to obtain authorisation from the relevant competent authority. The proposal creates a mechanism to ensure effective enforcement of the Regulation. It gives competent authorities the necessary powers to ensure that administrators comply with the Regulation.

For critical benchmarks colleges of supervisors should be formed to enhance the exchange of information and ensure uniform authorisation and supervision.

## 4. BUDGETARY IMPLICATION

The proposal has implications for the Community budget.

The specific budget implications of the proposal relate to task allocated to ESMA, as specified in the legislative financial statements accompanying this proposal. 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.

Notably, the resources needed by the agency for the new tasks will be consistent and compatible with the human and financing programming for ESMA set by the recent Communication to the European Parliament and the Council – Programming of human and financial resources for decentralised agencies 2014-2020' (COM(2013)519).

Specific budgetary implications for the Commission are also assessed in the financial statement accompanying this proposal.In summary, the main budgetary implications of the proposal are:

a) DG MARKT staff: 1 AD staff member (full-time) for drafting delegated acts, as well as for the evaluation, monitoring of the implementation and potential review of the initiative. The total estimated costs are € 0.141 M yearly.

b) ESMA:

(i) Staff costs: two temporary agents for participating and mediating in the colleges of supervisors for critical benchmarks, providing technical advice to the Commission on the implementation of this Regulation, coordinating the development of cooperation arrangements with third countries, drafting guidelines to promote convergence and cross-sector consistency of penalty regimes and maintaining registers of notifications on the use of benchmarks and a list of registered benchmark administrators.

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.

(ii) 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. This expense relates mainly to IT systems for ESMA to fulfil the requirements of:

- Maintaining a list of administrators registered in accordance with this Regulation and third country firms providing benchmarks in the Union.

- Receiving notifications of the use of a benchmark in a financial instrument or financial contract within the Union, and maintaining a register and ensuring that administrators are aware of this use.

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.

2013/0314 (COD)

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**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on indices used as benchmarks in financial instruments and financial contracts**

(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 Economic and Social Committee[11],

Having regard to the opinion of the European Central Bank,

Acting in accordance with the ordinary legislative procedure,

Whereas:

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

(2) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments[12] 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 of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading[13] contains certain requirements on benchmarks used by issuers. 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)[14] contains certain requirements on the use of benchmarks by UCITS investment funds.

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11 [ xxx]

12 OJ L 145, 30.4.2004, p. 1.

13 OJ L 345, 31.12.2003, p. 64.

14 OJ L302, 17.11.2009, p. 32

Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity[15] contains certain provisions which prohibit the manipulation of benchmarks that are used for wholesale energy products. However these legislative acts only cover certain aspects of certain benchmarks and do not address all the vulnerabilities in the process of producing all benchmarks.

(3) Benchmarks are vital in pricing cross-border transactions and thereby facilitating the effective functioning of the internal market in a wide variety of financial instruments and services. Many benchmarks used as reference rates in financial contracts, in particular mortgages, are produced in one Member State but used by credit institutions and consumers in other Member States. In addition, these credit institutions often hedge their risks or obtain the funding for granting these financial contracts in the cross border interbank market. Only two Member States have adopted national legislation on benchmarks, but their respective legal frameworks on benchmarks already show divergences regarding aspects such as the scope of application. In addition, the International Organisation Securities Commissions (IOSCO) has recently agreed principles on benchmarks and, since these principles provide a certain flexibility as to their exact scope and means of their implementation and in relation to certain terms, Member States are likely to adopt legislation at national level which would implement such principles divergently.

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

(5) EU consumer protection rules do not cover the particular issue of the suitability of benchmarks in financial contracts. As a result of consumer complaints and litigation relating to the use of unsuitable 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 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 therefore appropriate to lay down a regulatory framework for benchmarks at Union level.

(7) It is appropriate and necessary for those rules to take the legislative form of a Regulation in order to ensure that provisions directly imposing obligations on persons involved in benchmark production, contribution and use are applied in a uniform manner throughout the Union. Since a legal framework for the provision of benchmarks necessarily involves measures specifying precise requirements on all different aspects inherent to the provision of benchmarks, even small divergences on the approach taken regarding one of these aspects could lead to significant impediments in the cross border provision of benchmarks. Therefore, the use of a

[15] OJ L 326 , 8.12.2011, p. 1.

Regulation, which is directly applicable without requiring national legislation, should reduce the possibility of divergent measures being taken at national level, and should ensure a consistent approach, greater legal certainty and prevent the appearance of significant impediments in the cross-border provision of benchmarks.

(8) The scope of this Regulation should be as broad as necessary to create a preventive regulatory framework. The production of benchmarks involves discretion in their determination and is inherently subject to certain types of conflicts of interest, which implies the existence of opportunities and incentives to manipulate those benchmarks. These risk factors are common to all benchmarks, and all of them should be made subject to adequate governance and control requirements. Since the vulnerability and importance of a benchmark varies over time, restricting the scope by reference to currently important or vulnerable indices would not address the risks that any benchmark may pose in the future. In particular, benchmarks that are currently not widely used may be so used in the future, so that, in their regard, even a minor manipulation may have significant impact.

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

(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 the indices or reference rates referred to in [Directive 2013/…/EU of the European Parliament and of the Council of on credit agreements for consumers relating to residential immovable property and amending Directive 2008/48/EC.]

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

(12) All benchmark administrators are potentially subject to conflicts of interest, exercise discretion and may have inadequate governance and control systems in place. Further, as administrators control the benchmark process, requiring authorisation and supervision of administrators is the most effective way of ensuring the integrity of benchmarks.

(13) Contributors are subject to potential conflicts of interest, exercise discretion and so may be the source of manipulation. Contributing to a benchmark is a voluntary activity. If any initiative requires contributors to significantly change their business models, they may cease to contribute. However, for entities already subject to regulation and supervision, requiring good governance and control systems is not

expected to lead to substantial costs or disproportionate administrative burden. Therefore this Regulation imposes certain obligation on supervised contributors.

(14) An administrator is the natural or legal person that has control over the provision of a benchmark, in particular who administers the benchmark, collects and analyses the input data, determines the benchmark and in some cases publishes the benchmark. However, where a person merely publishes or refers to a benchmark as part of his or her journalistic activities but does not have control over the provision of that benchmark, that person should not be subject to the requirements imposed on administrators by this Regulation.

(15) An index is calculated using a formula or some other methodology on the basis of underlying values. Discretion exists in constructing this formula, performing the calculation or determining the input data. This discretion creates a risk of manipulation and therefore all benchmarks sharing this characteristic should be covered by this Regulation. 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, there is no calculation, input data or discretion. Therefore single price or single value reference prices should not be considered benchmarks for the purposes of this Regulation. Reference prices or settlement prices produced by Central Counterparties (CCPs) should not be considered 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.

(16) Benchmarks that are provided by central banks in the Union are subject to control by public authorities and meet principles, standards and procedures which ensure the accuracy, integrity and independence of their benchmarks as provided for by this Regulation. It is therefore not necessary that these benchmarks should be subject to this Regulation. However third country central banks may also provide benchmarks that are used in the Union. It is necessary to determine that only those central banks of third countries that produce benchmarks are exempted from the obligations under this Regulation that are subject to similar standards to those established by this Regulation.

(17) Vulnerabilities in the process of providing a benchmark that are not subject to adequate governance create the possibility to manipulate a benchmark. Where benchmarks are available to the public the full extent of these risks may not be taken into account and so insufficient controls and governance may be implemented. In order to ensure the integrity of benchmarks, benchmark administrators should be required to implement adequate governance arrangements to control these conflicts of interest and to safeguard confidence in the integrity of benchmarks. Even where effectively managed, most administrators are subject to some conflicts of interest and may have to make judgements and decisions which affect a diverse group of stakeholders. It is therefore necessary that administrators have an independent function to oversee the implementation and effectiveness of the governance arrangements that provide effective oversight.

(18) 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 providing transparency about a benchmark's purpose and input data which facilitates more efficient and fairer resolution of any potential claims in accordance with national or Union law.

(19) Auditing and the effective enforcement of this Regulation requires ex post analysis and evidence and it is therefore necessary that benchmark administrators keep

adequate records relating to the calculation of the benchmark for a sufficient period of time. The reality that a benchmark seeks to measure and the environment in which it is measured are likely to change over time. Therefore it is necessary that the process and methodology of the provision of benchmarks are audited or reviewed on a periodic basis to identify shortcomings and possible improvements. Many stakeholders may be impacted by failures in the provision of the benchmark and can help identify these shortcomings. It is therefore necessary that an independent complaints procedure is established to ensure that those stakeholders are able to notify the benchmark administrator of complaints and that the benchmark administrator objectively evaluates the merits of any complaint.

(20) The provision of benchmarks frequently involves the outsourcing of important functions such as calculating the benchmark, gathering the 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 a benchmark administrator of any of its obligations and responsibilities, and is done in such a way that it does not interfere with either the administrators ability to meet these obligations or responsibilities, or the relevant competent authority's ability to supervise them.

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

(22) Employees of the administrator may identify possible breaches of this Regulation or potential vulnerabilities that could lead to manipulation or attempted manipulation. This Regulation should therefore ensure that adequate arrangements are in place to enable employees to alert administrators confidentially of possible breaches of this Regulation.

(23) 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 input data where possible but other data may be used in those cases where the transaction data is insufficient to ensure the integrity and accuracy of the benchmark.

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

(25) It may be necessary to change the methodology to ensure the continued accuracy of the benchmark, but any changes in the methodology have an impact on the users and stakeholders in 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 actions in light of these changes or notify the administrator if they have concerns about these changes.

(26) The integrity and accuracy of benchmarks depends on the integrity and accuracy of the input data provided by contributors. It is essential that the obligations of the contributors in respect of this input data are clearly specified, can be relied on and are consistent with the benchmark administrator's controls and methodology. It is

therefore necessary that the benchmark administrator produces a code of conduct to specify these requirements and that the contributors are bound by that code of conduct.

(27) Many benchmarks are determined from input data that is provided by regulated venues, energy exchanges and emission allowance auctions. These venues are subject to regulation and supervision that ensures the integrity of the input data, provides for governance requirements and procedures for the notification of breaches. Therefore these benchmarks are released from certain obligations in order to avoid dual regulation and because their supervision ensures the integrity of the input data used.

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

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

(30) The failure of certain critical benchmarks may have a significant impact on financial stability, market orderliness or investors and it is therefore necessary that additional requirements apply to ensure the integrity and robustness of these critical benchmarks. Where a benchmark references a significant value of financial instruments it will have such an impact. It is therefore necessary that the Commission determines those benchmarks that reference financial instruments above a certain threshold and should be considered critical benchmarks.

(31) Contributors ceasing to contribute may undermine the credibility of critical benchmarks. In order to address this vulnerability, it is therefore necessary to include a power for the relevant competent authority to require mandatory contributions to critical benchmarks.

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

(33) Consumers may enter into financial contracts, in particular mortgages and consumer credit contracts that reference a benchmark, but unequal bargaining power and the use of standard terms mean that they may have a limited choice about the benchmark used. It is therefore necessary to ensure that the responsibility for assessing the suitability of such a benchmark for the consumer rests with the lenders or creditors who are supervised entities because they have a greater ability to choose the benchmark. However the suitability assessment should not be required by this Regulation for financial instruments referencing a benchmark, as it is already provided for in Directive [MIFID].

(34) This Regulation should take into account the Principles for financial benchmarks issued by the International Organization of Securities Commissions (IOSCO) (hereinafter referred to as 'IOSCO Principles') on the 17 July 2013 which serve as a global standard for regulatory requirements for benchmarks. It is necessary for investor protection that an assessment that the supervisions and regulation in any third country are equivalent to Union supervision and regulation of benchmarks takes place before any benchmark provided from that third country can be used in the Union.

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

(36) In some circumstances a person may provide an index but be unaware that this index is being used as a reference for a financial instrument. This is particularly the case where the users and benchmark administrator are located in different Member States. It is therefore necessary that competent authorities, whenever they become aware of the use of a benchmark in a financial instrument, notify a central coordinating authority such as ESMA, who should notify the administrator.

(37) A set of effective tools and powers and resources for the competent authorities of Member States guarantees supervisory effectiveness. This Regulation therefore should in particular provide for a minimum set of supervisory and investigative powers with which competent authorities of Member States should be entrusted 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.

(38) For the purpose of detecting breaches of this Regulation, it is necessary for competent authorities to be able to access, in accordance with national law, the premises of natural and legal persons in order to seize documents. The access to such premises is necessary when there is reasonable suspicion that documents and other data related to the subject matter of an inspection or investigation exist and may be relevant to prove a breach of this Regulation. Additionally the access to such premises is necessary where: the person to whom a demand for information has already been made fails to comply with it; or where there are reasonable grounds for believing that if a demand were to be made, it would not be complied with, or that the documents or information to which the information requirement relates, would be removed, tampered with or destroyed. If prior authorisation is needed from the judicial authority of the Member State concerned, in accordance with national law, such power for access into premises shall be used after having obtained that prior judicial authorisation.

(39) Existing recordings of telephone conversations and data traffic records from supervised entities may constitute crucial, and sometimes the only evidence to detect and prove the existence of breaches of this Regulation, notably the compliance with governance and control requirements. Such records and recordings can help to verify the identity of the person responsible for the submission, those responsible for its approval, and whether physical separation of employees is maintained. Therefore, competent authorities should be able to require existing recordings of telephone conversations, electronic communications and data traffic records held by supervised entities, in those cases where a reasonable suspicion exists that such recordings or records related to the subject-matter of the inspection or investigation may be relevant to prove a breach of this Regulation.

(40) Some of the provisions of this Regulation apply to natural or legal persons in third countries who may use benchmarks or be contributors to benchmarks or may be

otherwise involved in the benchmark process. Competent authorities should therefore enter into 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.

(41) This Regulation respects the fundamental rights and observes the principles recognised in the Treaty on the Functioning of the European Union (TFEU) and in the Charter of Fundamental Rights of the European Union, in particular the right to respect for private and family, the protection of personal data, the right to freedom of expression and information, the freedom to conduct a business, the right to property, the right to consumer protection, the right to an effective remedy, the right of defence. Therefore, this Regulation should be interpreted and applied in accordance with those rights and principles.

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

(43) 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 as laid down in 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[16]. Any exchange or transmission of information by ESMA should take place in accordance with the rules on the transfer of personal data as laid down in 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[17].

(44) Taking into consideration the principles set out in the Commission's communication 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 lay down rules on penalties and administrative measures applicable to infringements of the provisions of this Regulation and should ensure that they are implemented. Those penalties and administrative measures should be effective, proportionate and dissuasive.

(45) Therefore, a set of administrative measures, sanctions and fines should be provided for to ensure a common approach in Member States and to enhance their deterrent effect. Sanctions applied in specific cases should be determined taking into account where appropriate factors such as the repayment of any identified financial benefit, the gravity and duration of the breach, any aggravating or mitigating factors, the need for fines to have a deterrent effect and, where appropriate, include a reduction in return for cooperation with the competent authority. In particular, the actual amount of administrative fines to be imposed in a specific case may reach the maximum level provided for in this Regulation, or the higher level provided for in national law, for very serious breaches, while fines significantly lower than the maximum level may be applied to minor breaches or in case of settlement. The possibility to impose a temporary ban to exercise management functions within benchmark administrators or

[16] OJ L 281, 23.11.1995, p. 31.
[17] OJ L 8, 12.1.2001, p. 1.

contributors should be available to the competent authority. This Regulation should not limit Member States in their ability to provide for higher levels of administrative sanctions.

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

(47) Critical benchmarks may 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 may significantly undermine its integrity may have an impact in more than one Member State meaning that the supervision of such a benchmark by the competent authority of the Member State in which it is located alone will not be efficient and effective in terms of addressing the risks that the critical benchmark poses. To ensure the effective exchange of supervisory information among competent authorities, coordination of their activities and supervisory measures, colleges of competent authorities 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. ESMA's legally binding mediation is a key element of the achievement of coordination, supervisory consistency and convergence of supervisory practices. Benchmarks may reference financial instruments and financial contracts that have a long duration. In certain cases such benchmarks may no longer be 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. However, prohibiting the continued provision of such a benchmark may 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.

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

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

(50) In order to ensure uniform conditions for the implementation of this Regulation, in regard to certain of its aspects implementing powers should be granted to the Commission. Those aspects concern the ascertainment of the equivalence of the legal framework to which central banks and providers of benchmarks of third countries are subject, as well of the fact that a benchmark is critical in nature.Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011[18] laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

(51) The Commission should also be empowered to adopt implementing technical standards developed by ESMA establishing 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. 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, and can therefore 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,

HAVE ADOPTED THIS REGULATION:

# TITLE 1
# 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 in the Union. The 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 shall apply to the provision of benchmarks, the contribution of input data to a benchmark and and the use of a benchmark within the Union.

2. This Regulation shall not apply to:

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

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

[18] OJ L 55, 28.2.2011, p. 13.

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

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

*Article 3*
*Definitions*

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

(1) ‘index’ means any figure:

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

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

(c) where this determination is made on the basis of the value of one or more underlying assets, or prices, including estimated prices, or other values.

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

(3) ‘provision of a benchmark’ means:

(a) administering the arrangements for determining a benchmark; and

(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.

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

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

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

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

(8) ‘supervised contributor’ means a supervised entity that contributes input data to an administrator located in the Union;

(9) ‘submitter’ means the natural person employed by the contributor for the purpose of contributing input data;

(10) ‘input data’ means the data in respect of the value of one or more underlying assets, or prices, including estimated prices, or other values, used by the administrator to determine the benchmark;

(11) ‘regulated data’ means input data that is contributed directly from a trading venue as defined in point (25) of paragraph 1 of Article 2 of [MIFIR] or approved publication arrangement as defined in point (18) of paragraph 1 of Article 2 of [MIFIR ] or an approved reporting arrangement as defined in point (20) of paragraph 1 of Article 2 of [MIFIR] in accordance with mandatory post trade data requirements or an electricity exchange as referred to in point (j) of paragraph 1 of Article 37 of Directive 2009/72/EC[19] or a natural gas exchange as referred to in point (j) of paragraph 1 of Article 41 of Directive 2009/73/EC[20] or an auction platform referred to in Article 26 or in Article 30 of Regulation (EU) No 1031/2010 of the European Parliament and of the Council;

(12) ‘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;

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

(14) ‘supervised entity’ means the following entities:

(a) credit institutions as defined in point (1) of Article 3 of Directive 2013/36/EU[21];

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

(c) insurance undertakings as defined in point (1) of Article 13 Directive 2009/138/EC[22];

(d) reinsurance undertakings as defined in point (1) of Article 13 Directive 2009/138/EC;

(e) undertakings for collective investment in transferable securities (UCITS) as defined in Article 1(2) of Directive 2009/65/EU[23];

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

(g) central counterparties as defined in point (1) of Article 2 of Regulation (EU) No 648/2012 of the European Parliament and of the Council[25];

(h) trade repositories as defined in point (2) of Article 2 of Regulation (EU) No 648/2012;

(i) an administrator;

(15) ‘financial contract’ means:

(a) any credit agreement as defined in point (c) of Article 3 of Directive 2008/48/EC of the European Parliament and of the Council[26];

19 OJ L 211 14.8.2009 p. 55.
20 OJ L 9 14.8.2009 p. 112.
21 OJ L 176 27.6.2013 p. 338.
22 OJ L 335, 17.12.2009, p. 1.
23 OJ L302 17.11.2009 p. 32.
24 OJ L 174, 1.7.2011, p. 1.
25 OJ L 174, 1.7.2011, p. 1.

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

(16) 'investment fund' means AIFs as defined in point (a) of paragraph 1 of Article 4 of Directive 2011/61/EU of the European Parliament and of the Council, or collective investment undertakings falling within the scope of Directive 2009/65/EU of the European Parliament and of the Council;

(17) 'management body' means the governing body, comprising the supervisory and the management function, which has ultimate decision-making authority and is empowered to set the entity's strategy, objectives and overall direction;

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

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

(20) 'commodity benchmark' means a benchmark where the underlying asset for the purposes of point (1)(c) of this Article is a commodity within the meaning of point (2) of Article 2 of Commission Regulation (EC) No 1287/2006[27]; Emission allowances as defined in point (11) of Section C of Annex I of [MiFID] shall not be considered commodities for the purpose of this Regulation;

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

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

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 37 with a view to specify further technical elements of the definitions laid down in paragraph 1, in particular specifying what constitutes making available to the public for the purposes of the definition of an index, and in order to take account of market or technological developments.

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

*Article 4*

*Exclusion of administrators unaware of the use of benchmarks provided by them and non consenting administrators*

1. This Regulation shall not apply to an administrator in respect of a benchmark provided by him where that administrator is unaware and could not reasonably have

[26] OJ L 133, 22.5.2008, p. 66.

[27] OJ L 241, 2.9.2006 p. 1.

been aware that that benchmark is used for the purposes referred to in point (2) of Article 3(1).

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

# TITLE II
# BENCHMARK INTEGRITY AND RELIABILITY

## Chapter 1
## Governance and Control of Administrators

### *Article 5*
### *Governance requirements*

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

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

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

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

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

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

2. An administrator shall comply with the governance and control requirements set out in Section A of Annex 1.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 37 to further specify the governance and control requirements under Section A of Annex 1. The Commission shall take account of the following:

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

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

   (c) existing or potential conflicts of interest in the provision of benchmarks, the vulnerability of the benchmarks to manipulation and the importance of benchmarks to financial stability, markets and investors.

*Article 6*
*Outsourcing*

1. Administrators 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 outsourcing takes place, an administrator shall ensure that the outsourcing requirements set out in Section B of Annex 1 are satisfied.

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

## Chapter 2
## Input data and methodology and reporting of breaches

*Article 7*
*Input data and methodology*

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

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

   The input data shall be transaction data. If available transaction data is not sufficient to represent accurately and reliably the market or economic reality that the benchmark is intended to measure, input data which is not transaction data may be used provided that such data is verifiable.

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

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

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

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

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

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

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

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

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

*Article 8*
*Reporting of breaches*

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

2. The administrator shall monitor the input data and contributors in order to identify breaches of the [Market Abuse Regulation] and any conduct that may involve manipulation or attempted manipulation of the benchmark and notify the relevant competent authority in accordance with Article 11(2) of the [Market Abuse Regulation] and provide all relevant information where it suspects that, in relation to the benchmark, there has been:

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

   (b) conduct that may involve manipulation or attempted manipulation of a benchmark; or

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

3. An administrator shall have procedures for the managers, employees and any other natural persons whose services are placed at its disposal or under its control to report breaches of this Regulation internally through a specific, autonomous channel.

## Chapter 3
## Code of conduct and requirements for contributors

*Article 9*
*Code of conduct*

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

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

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 37 concerning measures to further specify the terms of the code of conduct in

Section D of Annex I for different types of benchmarks, and in order to take account of developments in benchmarks and financial markets.

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

*Article 10*
*Regulated data*

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

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

*Article 11*
*Governance and controls*

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 (‘Conflicts of interest’).

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

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

3. A supervised contributor shall fully cooperate with the administrator and the relevant competent authority in the auditing and supervision of the provision of a benchmark and make available the information and records kept in accordance with Section E of Annex 1.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 37 concerning measures to further specify the requirements concerning systems and controls set out in Section E of Annex I for different types of benchmarks.

   The Commission shall take into account the different characteristics of benchmarks and supervised contributors, notably in terms of differences in input data provided and methodologies used, the risks of manipulation of the input data and the nature of the activities carried out by the supervisedcontributors, and the developments in benchmarks and financial markets in light of international convergence of supervisory practices in relation to benchmarks.

# TITLE III
# SECTORAL REQUIREMENTS AND CRITICAL BENCHMARKS

## Chapter 1
## Benchmark sectors

*Article 12*
*Specific requirements for different types of benchmarks and sectors*

1. In addition to the requirements of the Title II, the specific requirements set out in Annex II shall apply to inter-bank interest rate benchmarks.

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

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 39 to specify, or adjust, in light of market and technological developments and international developments, the following elements of Annexes II and III:

   (a) The period of time after which input data shall be published (Annex II point 6)

   (b) The processes for election and nomination and responsibilities of the oversight committee (Annex II points 8, 9 and 10)

   (c) The frequency of audits (Annex II point 12)

   (d) The processes by which input data is provided to be specified in the code of conduct (Annex II point 13)

   (e) The systems and controls of a contributor (Annex II point 16)

   (f) The records which are to be kept by a contributor and the medium in which they are to be kept(Annex II point 17 and 18

   (g) The findings to be reported to management by the compliance function of the contributor (Annex II point 19)

   (h) The frequency of internal reviews of input data and procedures (Annex II point 20)

   (i) The frequency of external audits of the contributor’s input data (Annex II point 21)

   (j) The criteria and procedures for developing the benchmark (Annex III point 1 a)

   (k) The elements to be included in the methodology and the description of the methodology (Annex III point 1 and 2)

   (l) The requirements of the administrator regarding the quality and the integrity of the benchmark calculation and the content of the description attached to each calculation (Annex III point 5 and 6)

## Chapter 2
## Critical benchmarks

*Article 13*
*Critical benchmarks*

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

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

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

*Article 14*
*Mandatory contribution*

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

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

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

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

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

   (a) the size of the supervised entity’s actual and potential participation in the market that the benchmark seeks to measure;

   (b) the supervised entity’s expertise and ability to provide input data of the necessary quality.

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

4. The competent authority of the administrator shall review each measure adopted under paragraph 1 one year following its adoption. It shall revoke it if:

   (a) judges that the contributors are likely to continue contributing input data for at least 1 year if the power were revoked which shall be evidenced by at least:

(1) 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 mandatory contribution power were revoked;

(2) 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 participation has been revoked.

(b) judges that 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 transferring to this benchmark.

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

# TITLE IV
# TRANSPARENCY AND CONSUMER PROTECTION

*Article 15*
*Benchmark statement*

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

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

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

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

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

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

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

*Article 16*
*Transparency of input data*

1. An administrator shall publish the input data used to determine the benchmark immediately after publication of the benchmark except where publication would

have serious adverse consequences for the contributors or adversely affect the reliability or integrity of the benchmark. In such cases publication may be delayed for a period that significantly diminishes these consequences. Any personal data included in input data shall not be published.

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

*Article 17*
*Cessation of a benchmark*

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

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

*Article 18*
*Assessment of suitability*

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

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

## TITLE V
## USE OF BENCHMARKS PROVIDED BY AUTHORISED ADMINISTRATORS OR BY ADMINISTRATORS FROM THIRD COUNTRIES

*Article 19*
*Use of robust benchmarks*

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

*Article 20*
*Equivalence*

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

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

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

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

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

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

2. The Commission may adopt a 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 resulting from this Regulation, in particular taking into account if the legal framework and supervisory practice of a third country ensures compliance with the IOSCO principles on financial benchmarks published on 17 July 2013; and

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

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

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

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

   (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;

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

4. ESMA shall develop draft regulatory technical standards to determine the minimum content of the cooperation arrangements referred to in paragraph 3 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 [XXX].

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

*Article 21*
*Registration*

1. ESMA shall register the administrators that have notified it of their consent referred to in Article 20(1)(c). The register shall be publicly accessible on the website of ESMA and shall contain information on the benchmarks which the relevant administrators are permitted to provide and the competent authority responsible for their supervision in the third country.

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

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

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

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

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

4. ESMA shall inform the other competent authorities of any measure adopted in accordance with paragraph 2 without delay and shall publish its decision on its website.

# TITLE VI
# AUTHORISATION AND SUPERVISION OF ADMINISTRATORS

## Chapter 1
## Authorisation

*Article 22*
*Requirement for authorisation*

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

2. An authorised administrator shall comply at all times with the conditions for authorisation and shall notify the competent authority of any material changes to the conditions for initial authorisation.

*Article 23*
*Application for authorisation*

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

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

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

   (b) within 30 working days of the administrator giving its consent in accordance with paragraph 2 of Article 25 to the referencing of the index in the financial instrument referred to in paragraph 1 of Article 25.

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

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

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

6. The competent authority shall notify ESMA of any decision to authorise an applicant administrator or refuse authorisation and ESMA shall publish a list of administrators authorised in accordance with this Regulation. That list shall be updated within 7 working days of any notification referred to in this paragraph.

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

*Article 24*
*Withdrawal or suspension of authorisation*

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

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

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

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

**Chapter 2**

**Notification of benchmarks**

*Article 25*
*Notification to ESMA of use of an index in a financial instrument*

1. Whenever a competent authority becomes aware that an index is being used as a reference to a financial instrument, or that a request for admission to trading has been made to a trading venue supervised by that competent authority in respect of a financial instrument that references an index, that competent authority shall notify ESMA within 10 working days.

2. Within 10 working days of any notification ESMA shall notify the relevant administrator of the benchmark providing full details of its use and requesting the administrator to confirm that it consents to this use of the benchmark within 10 working days.

3. Without predjudice to Article 30 [MIFIR], where the administrator does not confirm to ESMA its consent within the time limit set out in paragraph 2, ESMA shall notify the relevant competent authority which shall request that the trading venue withdraw the listing of that financial instrument or refuse its admission to trading within 10 working days.

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

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

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

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

**Chapter 3**

**Supervisory cooperation**

*Article 26*

*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. Delegation of tasks shall not affect the responsibility of the delegating competent authority and the competent authorities shall notify ESMA of any proposed delegation 60 days prior to such delegation taking effect.

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

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 27*

*Disclosure of information from another Member State*

1. The 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) where such disclosure is necessary for legal proceedings.

*Article 28*

*Cooperation in case of a request with regard to on-site inspections or investigations*

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

2. The competent authority making the 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 an on-site inspection or investigation;

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

**Chapter 4**

**Role of Competent Authorities**

*Article 29*
*Competent authorities*

1. For administrators and supervised contributors, each Member State shall designate the relevant competent authority responsible for carrying out the duties resulting from 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 the 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 paragraph 1.

*Article 30*
*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) have 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 including those who are successively involved in the transmission of orders or conduct of the operations concerned, as well as their principals, and if necessary, to summon and question any such person with a view to obtain information;

   (c) in relation to benchmarks whose input data is commodities, request information from market participants on related spot markets according to standardized formats, obtain reports on transactions, and have 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 natural and legal persons 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) suspend trading of the financial instrument concerned that references a benchmark;

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

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

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

2. The competent authorities shall exercise their functions and powers, referred to in paragraph 1, 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. A person shall not be considered in breach of any restriction on disclosure of information posed by a contract or by any legislative, regulatory or administrative provision when making information available in accordance with paragraph 2.

*Article 31*
*Administrative measures and sanctions*

1. Without prejudice to the supervisory powers of competent authorities in accordance with Article 34, Member States shall, in conformity with national law, provide for competent authorities to have the power to take appropriate administrative measures and impose administrative measures and sanctions at least for:

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

(b) failure to cooperate or comply in an investigation or with an inspection or request covered by Article 30.

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

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

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

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

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

(e) a temporary ban prohibiting any natural person, who is held responsible for such breach, from exercising management functions in administrators or 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 breach where those can be determined; or

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

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

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

(2) in respect of a legal person up to maximum administrative pecuniary sanctions of at least:

(i) for breaches of Articles 5(1), 6, 7(1), 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 22 and 23, whichever is the higher of EUR 1,000,000 or 10 % of its total annual turnover according to the last available accounts approved by the management body. Where the legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts according to Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income according to Directive 86/635/EC for banks and Directive 91/674/EC for insurance companies according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking or if the person is an association, 10% of the aggregate turnovers of its members; or

(ii) for breaches of points (b) and (c) of Articles 6(1), whichever is the higher of EUR250,000 or 2 % of its total annual turnover according to the last available accounts approved by the management body; where the legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts according to Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income according to Directive 86/635/EC for banks and Directive 91/674/EC for insurance companies according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking or if the person is an association, 10% of the aggregate turnovers of its members.

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

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

*Article 32*
*Exercise of supervisory and sanctioning powers*

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

   (a) the gravity and duration of the breach;

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

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

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

   (e) 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;

   (f) previous breaches by the person concerned;

   (g) measures taken, after the breach, by a responsible person to prevent the repetition of the breach.

2. In the exercise of their sanctioning powers under circumstances defined in Article 31 competent authorities shall cooperate closely to ensure that the supervisory and investigative powers and administrative sanctions 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 and fines to cross border cases.

*Article 33*
*Publication of decisions*

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

2. Where the publication of the identity of the legal persons or personal data of natural persons is considered by the competent authority to be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data, or where publication jeopardises the stability of financial markets or an on-going investigation, competent authorities shall either:

   (a) delay the publication of the decision to impose a sanction or a measure until the moment where the reasons for non-publication cease to exist;

   (b) publish the decision to impose a sanction or a measure on an anonymous basis in a manner which is in conformity with national law, if such anonymous publication ensures an effective protection of the personal data concerned; In the case of a decision to publish a sanction or measure on an anonymous basis the publication of the relevant data may be postponed for a reasonable period

of time if it is foreseen that within that period the reasons for anonymous publication shall cease to exist;

(c) not publish the decision to impose a sanction or measure at all in the event that the options set out in (a) and (b) above are considered insufficient to ensure:

(1) that the stability of financial markets would not be put in jeopardy; or

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

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

4. Competent authorities shall ensure that any publication, in accordance with this Article, shall remain on their 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.

*Article 34*
*Colleges of competent authorities*

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

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

3. Competent authorities of other Member States shall have the right to be member of the college where, if that critical benchmark were to cease to be provided, it would have a significant adverse impact on the financial stability, or the orderly functioning of markets, or consumers, or the real economy of those Member States

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

4. ESMA shall contribute to promoting and monitoring the efficient, effective and consistent functioning of colleges of supervisors 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.

5. The competent authority of the 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.

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

(a) information to be exchanged between competent authorities;

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

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

(d) the assistance to be provided under Article 14(3) in the enforcement of the measures referred to in Article14(1) (a) and (b).

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

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

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

Any decision of the competent authority of the administrator to take such measures shall take account of the impact on the other competent authorities and their respective Member States, in particular the potential impact on the stability of the financial system in any other Member States concerned.

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

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

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

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

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

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

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

*Article 35*
*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 [XXXX].

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

*Article 36*
*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 except by virtue of provisions laid down by law.

4. All the 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 such disclosure is necessary for legal proceedings.

# TITLE VII
# DELEGATED AND IMPLEMENTING ACTS

*Article 37*
*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), 5(3), 7(3), 9(3), 11(4), 12(3), 16(2), and 23(7) shall be conferred on the Commission for an indeterminate period of time from [date of entry into force of this Regulation].

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

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

5. A delegated act adopted pursuant to Articles 3(2), 5(3), 7(3), 9(3), 11(4), 12(3), 16(2), and 23(7) shall enter into force only if no objection has been expressed by either the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

*Article 38*
*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 39*
*Transitional provisions*

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

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

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

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

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

*Article 40*
*Review*

By 1 July 2018, the Commission shall review and report to the European Parliament and the Council on this Regulation and in particular:

(a) the functioning and effectiveness of the critical benchmark and mandatory participation regime under Articles 13 and 14 and the definition of a critical benchmark in Article 3;

(b) the effectiveness of the supervisory regime in Title VI and the colleges under Article 34 and the appropriateness of supervision of certain benchmarks by a Union body; and

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

*Article 41*
*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 [12 months after entry into force].

However, Article 13(1) and 34 shall apply from [6 months after entry into force].

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

Done at Brussels,

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

## ANNEX I

**Section A Governance and Control Requirements to ensure compliance with Article 5(1)**

**I. Governance and conflicts of interest requirements to ensure compliance with Article 5(1)(a)**

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

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

3. An administrator shall establish adequate policies and procedures for the identification, disclosure, management or mitigation and avoidance of conflicts of interest in order to protect the integrity and independence of benchmark determinations. These should be reviewed regularly and updated. The policies and procedures should take into account and address the level of conflicts of interest, the degree of discretion exercised in the benchmark process and the risks that the benchmark poses, and shall ensure:

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

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

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

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

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

    (c) their interests and business connections shall not compromise the administrator's functions;

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

    (e) are subject to effective procedures to control the exchange of information with other employees, any other involved in activities that may create a

risk of conflicts of interest or where that information may affect the benchmark.

5. 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.

6. Points 7 and 8 of this section apply where input data is contributed from front office function which means any department, division, group, or personnel of contributors or any of its affiliates that performs any pricing trading, sales, marketing, advertising, solicitation, structuring, or brokerage activities.

7. Where Administrators receive input data from employees of a front office function, the Administrator shall obtain data from other sources that can corroborate that input data.

8. The Administrator shall not accept input data from front office functions unless there are adequate internal oversight and verification procedures for front office function data that meet the following requirements:

   (a) There is validation of input before it is used in the determination of a benchmark including procedures for multiple reviews by senior staff to check inputs and internal sign off procedures by management for submitting inputs;

   (b) There is physical separation of employees in the front office function and reporting lines;

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

**II. Oversight requirements to ensure compliance with Article 5(1)(b)**

9. An administrator shall establish and maintain a permanent and effective oversight function which operates independently and which has some, or all, of the following responsibilities, which shall be adjusted for the complexity, use and vulnerability of the benchmark:

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

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

   (c) overseeing the administrator's control framework and the code of conduct and the management and operation of the benchmark;

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

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

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

(g) monitoring the input data and contributors and the actions of the administrator in challenging or validating contributions of input data;

(h) taking effective measures in respect of any breaches of the code of conduct; and

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

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

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

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

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

11. The oversight function may exercise oversight of more than one benchmark provided by an administrator provided that it otherwise complies with the other requirements of this section.

**III. Control requirements to ensure compliance with Article 5(1)(c)**

12. An administrator shall ensure that there is an appropriate control framework for the provision of the benchmark. The control framework should be proportionate to the level of conflicts identified, the extent of discretion in the benchmark process and the nature of benchmark input data, and include:

(a) the management of operational risk;

(b) adequate and effective business continuity and disaster recovery plans.

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

(a) establish measures to ensure that that contributors comply with the code of conduct and the applicable standards for the input data;

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

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

**IV. Accountability requirements to ensure compliance with Article 5(1)(d)**

15. An administrator shall appoint an internal function, with the necessary capability to review and report on the administrator's adherence to the benchmark methodology and this Regulation.

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

17. Upon the request of the relevant competent authority or any user of the benchmark the administrator shall provide or publish details of the reviews in point 15 or audits under point 16.

18. An administrator shall keep records of:

(a) all input data;

(b) the use of this input data to determine the benchmark and the methodology utilized;

(c) any exercise of judgment or discretion by the administrator in the benchmark determination, including the full reasoning for the judgement or discretion, records of the disregard of any input data, in particular where it conformed to the requirements of the benchmark methodology, and the rationale for its disregard;

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

(e) all documents relating to any complaint, including those submitted by the complainant as well as the administrator's records; and

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

19. The administrator shall keep the records set out in point 1 for at least five years in such a form that it is possible to replicate and fully understand the benchmark calculations and enable an audit or evaluation of the input data, calculations, judgements and discretion. Records of telephone conversation or electronic communications recorded in accordance with point 18(f) shall be provided to the persons involved in the conversation or communication upon request and shall be kept for a period of three years.

20. The administrator shall establish and publish procedures for the communication, management and timely resolution of complaints related to the benchmark by a person, or persons, who are independent of any persons connected to the complaint**.**

**Section B Outsourcing requirements to ensure compliance with Article 6**

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

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

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

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

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

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

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

**Section C Data and Methodology requirements to ensure compliance with Article 7(1)**

**I. Sufficient and accurate data and representative contributor requirements to ensure compliance with Article 7(1)(a) and (b)**

1. An administrator shall ensure that the controls in respect of the input data include:

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

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

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

**II. Robust and reliable methodology requirements to ensure compliance with Article 7(1)(d)**

2. When developing the benchmark methodology the benchmark administrator,

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

(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 use benchmark methodologies that:

(a) are rigorous, continuous and capable of validation, including back-testing; and

(b) are resilient and ensure that the benchmark can be calculated in the widest set of possible circumstances.

4. The administrator shall have in place clear published arrangements that identify those circumstances where the quantity or quality of input data falls below the standards necessary for the methodology to determine the benchmark accurately and reliably, and that describe whether and how the benchmark will be calculated in such circumstances.

**III. Transparency requirements to ensure compliance with Article 7(1)(e)**

5. An administrator shall specify how changes to the methodology will be consulted on. An administrator shall publish procedures and the rationale for any proposed material change in its methodology, including a definition of what constitutes a material change and when it will notify users of any changes. Those procedures shall:

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

(b) provide for comments, and the administrator's response to those comments, to be made accessible after any consultation, except where confidentiality has been requested.

**Section D Code of Conduct requirements to ensure compliance with Article 9**

1. The code of conduct produced pursuant to Article 9 shall include at least the following elements:

(a) the requirements necessary to ensure that the input data is provided in accordance with Articles 7 and 8; who may contribute input data to the administrator and procedures to evaluate the identity of a contributor and any submitters and the authorisation of any submitters;

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

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

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

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

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

– record keeping policies;

– suspicious input data reporting requirements;

– conflict management requirements.

2. The administrator shall ensure that the code of conduct complies with this Regulation.

**Section E Contributor governance and controls requirements** applied to supervised contributors **to ensure compliance with Article 11**

1. A supervised contributor shall have 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 senior to the submitter;

   (b) appropriate training for submitters, covering at least this Regulation and the [Market Abuse Regulation];

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

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

2. Where the input data is not transaction data, supervised contributors shall establish in addition to the systems and controls referred to in point (1) policies guiding any use of judgment or exercise of discretion and retain records of the rationale for any such judgement or discretion, where proportionate taking into account the nature of the benchmark and input data.

**Section F Benchmark statement requirements to ensure compliance with Article 15**

At minimum the benchmark statement shall contain:

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

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

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

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

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

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

## ANNEX II

**Interest Rate Benchmarks**

1. This Annex applies to interbank interest rate benchmarks.

2. The following requirements shall apply in addition or in substitution to those set out in Annexes I.

**Accurate and Sufficient Data**

3. Points 4 and 5 shall apply to interbank interest rate benchmarks where the input data is estimates or quotes.

4. Transactions data for the purposes of Article 7(1)(a) shall be:

   (a) a contributor's transactions which correspond with the input data requirements in the code of conduct in:

   – the unsecured inter-bank deposit market;

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

   – other related markets overnight index swaps, repurchase agreements, foreign exchange forwards, interest rate futures and options and central bank operations.

   (b) A contributor's observations of third party transactions in the transactions described in paragraph 2(a).

5. In the absence of sufficient transaction data in paragraph 1, in accordance with Article 7(1)(a), quotes by third parties to contributors in the same markets and expert judgement may be used to determine the input data. Input data may also be adjusted to ensure the input data is representative of, and consistent with, the inter-bank market. In particular, the input data in paragraph 1 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; and

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

**Transparency of Input Data**

6. If the input data is estimates, the administrator shall publish the input data three months after its provision, otherwise input data shall be published in accordance with Article 16.

**Oversight Function**

7. Points 7, 8 and 9 of Section A, Annex I shall not apply.

8. Administrators shall have an independent oversight committee. Contributors shall constitute a minority of the membership of the oversight committee. Details of the membership shall be made public, along with any declarations of conflicts of interests and the processes for election or nomination of the oversight committee members.

9. The oversight committee shall hold no less than one meeting every two months and promptly thereafter shall publish transparent minutes.

10. The responsibilities of the oversight function shall include:

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

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

(c) overseeing the administrator's control framework and the code of conduct and the management and operation of the benchmark;

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

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

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

(g) monitoring the input data and contributors and the actions of the administrator in challenging or validating contributions of input data;

(h) imposing sanctions for breaches of the code of conduct where appropriate; and

(i) reporting to the relevant competent authorities any misconduct by contributors or administrators of which they become aware, and any anomalous or suspicious input data.

**Auditing**

11. Points 15 and 16 of Section A Annex I shall not apply.

12. An external audit of the administrators shall be carried out every two years, the first six months after the introduction of the code of conduct, and subsequently every two years. The oversight committee may require an external audit of contributing firms if dissatisfied with any aspects of their conduct.

**Code of Conduct**

13. The code of conduct shall specify in detail the process by which input data is provided, including, in addition to the requirements of Section D of Annex I:

(a) the use of inter-bank transactions and other transaction data, other relevant and related markets which can be used to develop a precise assessment of the inter-bank funding market;

(b) a requirement to keep accurate internal records of all transactions in the inter-bank market and other relevant markets, alongside a requirement to provide these records to the benchmark administrator and its oversight committee on a regular basis and on request;

(c) procedures for validation of contributions of input data prior to publication and corroboration of contributions of input data after publication;

(d) policies for training of any submitter, including what inputs to take into account when determining contributions of input data and how to use expert judgement and including their regulatory responsibilities;

(e) a requirement for the training for traders who execute trades in derivatives referencing that benchmarks, detailing their role in the determination process and unacceptable contact with submitters; and

(f) a requirement for all contributors to have in place suspicious reporting procedures to the benchmark administrator and oversight committee for review.

**Contributor Systems and Controls**

14. The following requirement shall apply to contributors in addition to the requirements set out in Annex I Section E.

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

16. 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 interests 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.

17. A contributor 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 these queries;

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

(h) the findings of any internal and external audits.

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

19. The compliance function of the contributor shall report any findings, including reverse transactions to management on a regular basis.

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

21. An external audit of the contributor's input data, compliance with code of conduct and the provisions of this regulation shall be carried out every two years, the first six months after the introduction of the code of conduct, and subsequently every two years.

## ANNEX III

**Commodity Benchmarks**

This Annex applies to ‘commodity benchmarks' which means a benchmark where the underlying asset for the purposes of Article 3(1)(c) is a commodity within the meaning of point (2) of Article 2 of Commission Regulation (EC) No 1287/2006[28].

**Methodology**

1. For the purposes of Articles 8, 9 and 16, the methodology and the description of the methodology in the benchmark statement shall include the following elements:

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

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

   (c) the relative importance that shall be assigned to each criterion used in benchmark calculation, in particular the type of market 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 where there is no transaction data;

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

   (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 market data that constitute a significant proportion of the total input data for that benchmark. The administrator shall also define in its criteria and procedures for what constitutes a significant proportion for each benchmark calculation;

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

2. The administrator shall publish the:

[28] OJ L 241, 2.9.2006 p1

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

(c) 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**

3. In accordance with Article 7(1)(e) an administrator 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.

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

**Quality and Integrity of Benchmark Calculations**

5. In accordance with Article 8 and 9, an administrator shall:

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

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

(1) concluded and reported transactions;

(2) bids and offers;

(3) other information.

If concluded and reported transactions are not given priority, the reasons should be explained as called for in point 6(b).

(c) employ sufficient measures designed to use market data submitted and considered in a benchmark calculation, which are bona fide, meaning that the parties submitting the market data have executed, or are prepared to execute, transactions generating such market 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 market data that falls within the administrator's criteria for that calculation. Administrators shall seek, so far as they are able and is reasonable, ensure that data submitted are representative of the contributors' actual concluded transactions; and

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

6. An administrator shall describe and publish with each calculation, to the extent possible 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 market data that have been considered in a calculation; terms referring to the pricing methodology shall be included such as "transaction-based", "spread-based" or "interpolated or extrapolated";

(b) a concise explanation of the extent to which, and the basis upon which, judgment 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**

7. In accordance with Article 5, an administrator shall:

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

(b) have quality control procedures to evaluate the identity of a contributor and any employee of a contributor who reports input data and the authorization of such person to report input data on behalf of a contributor;

(c) specify the criteria applied to employees of a contributor who are permitted to submit input data to an administrator on behalf of a contributor; 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 provision for escalation by the administrator of inquiry within the contributor's company. Controls shall include cross-checking market indicators to validate submitted information.

**Assessors**

8. In accordance with Article 5, an administrator shall:

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

   (b) 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;

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

**Audit Trails**

9. In accordance with Article 5, an administrator shall have rules and procedures in place to document contemporaneously relevant information, including:

   (a) all market 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).

10. In accordance with Article 5, an administrator shall have rules and procedures in place to ensure that an audit trail of relevant information is retained for at least five years in order to document the construction of its calculations.

**Conflicts of Interest**

11. In accordance with Article 5, an administrator's conflicts of interest policies and procedures 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 administrator personnel's personal interests and business connections are not permitted to compromise the administrator's functions, including outside employment, travel, and acceptance of entertainment, gifts and hospitality provided by 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 administrator managers, assessors and other employees from contributing to a benchmark calculation by way of engaging in bids, offers and trades on either a personal basis or on behalf of market participants;

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

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

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

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

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

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

**Complaints**

15. In accordance with Article 5, an administrator shall have in place and publish written procedures for receiving, investigating and retaining records concerning complaints made about an administrator's calculation process. Such complaint mechanisms shall ensure that:

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

(b) an administrator shall ensure that its written complaints handling policy includes, among other things, the process and target timetable for handling of complaints;

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

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

(e) an administrator aims to complete its investigation promptly;

(f) an 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.

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

# LEGISLATIVE FINANCIAL STATEMENT

## FRAMEWORK OF THE PROPOSAL/INITIATIVE

### Title of the proposal/initiative

Regulation of the European Parliament and of the Council on indices used as benchmarks in financial instruments and financial contracts

### Policy area(s) concerned in the ABM/ABB structure[29]

Internal Market – Financial Markets

### Nature of the proposal/initiative

X The proposal/initiative relates to a new action

☐ The proposal/initiative relates to a new action following a pilot project/preparatory action[30]

☐ The proposal/initiative relates to the extension of an existing action

☐ The proposal/initiative relates to an action redirected towards a new action

### Objectives

*The Commission's multiannual strategic objective(s) targeted by the proposal/initiative*

Strengthen investor confidence; reduce the risks of market disorder; reduce systemic risks

*Specific objective(s) and ABM/ABB activity(ies) concerned*

*Specific objectives:*

- Reduce the risk of benchmark manipulation

- Ensure the appropriate use of robust and representative benchmarks

*ABM/ABB activities concerned*

*The specific objectives listed above require the attainment of the following operational objectives:*

- Limit incentives and opportunities for manipulation of benchmarks

- Minimise discretion - ensure benchmarks are based on sufficient & representative data

- Ensure robust governance and controls address risk

- Enhance transparency and ensure the use of benchmarks is based on suitability

- Ensure effective oversight

*Expected result(s) and impact*

*Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.*

The proposal aims at:

- Regulating the provision of benchmarks and the provision of input data to benchmarks

- Ensuring that adequate governance and controls are applied to the provision of benchmarks and that conflicts of interest are avoided

[29] ABM: Activity-Based Management – ABB: Activity-Based Budgeting.

[30] As referred to in Article 49(6)(a) or (b) of the Financial Regulation.

- Ensuring that benchmark methodologies and input data are robust and reliable

- Ensuring that the activity of contributing to benchmarks is subject to adequate controls and that conflicts of interest are avoided

- Ensuring that benchmarks are provided in a transparent manner

- Ensuring that a suitability assessment is performed when benchmarks are used as a reference in a financial contract with a consumer

*Indicators of results and impact*

1. Reduce the risk of benchmark manipulation

- Number of breaches of market abuse regulation in respect of benchmarks

- Number of sanctions and penalties imposed

- Number of onsite inspections

- Number of supervisory measures

2. Ensure the appropriate use of robust and representative benchmarks

- Number of breaches of regulation

- Number of sanctions and penalties imposed

- Number of onsite inspection

- Number of supervisory measures

- Number of civil actions for failure to comply with this regulation by users of the benchmark against administrators and contributors

- Number of complaints received by the Commission from benchmark users

**Grounds for the proposal/initiative**

*Requirement(s) to be met in the short or long term*

As a result of the application of the Regulation in Member States:

- The risk of benchmark manipulation will be reduced

- The use of robust and suitable benchmarks will be ensured

*Added value of EU involvement*

Benchmarks are cross border in respect of their use and provision. In the absence of an EU legislative framework, individual actions by member states would be ineffective, as there is no obligation or incentive on Member States to cooperate with each other and the absence of such cooperation leaves scope for regulatory arbitrage. EU involvement ensures a consistent and co-ordinated response that minimises the inefficiencies that would be created through the divergent approaches and possibilities for regulatory arbitrage that would otherwise exist.

*Lessons learned from similar experiences in the past*

Benchmarks are similar to credit ratings in that they are both reference points for investments or financial contracts. In both cases the financial crisis has revealed how doubts regarding their integrity and accuracy can undermine markets and cause harm to both the real economy and investors. This proposal draws on the regulatory experience in relation to the regulation of credit rating agencies, in particular in respect of the most efficient and effective regulatory and supervisory structures and governance requirements.

*Compatibility and possible synergy with other appropriate instruments*

This proposal has significant synergies with the proposal for a Market Abuse Regulation (MAR) in Articles 2(3)(d) and 8(1)(d) and criminal sanctions for market abuse Directive (CSMAD) which clarify that any manipulation of benchmarks is clearly and unequivocally illegal and subject to administrative or criminal sanctions. The regulation on energy market integrity and transparency (REMIT) also provides that the manipulation of benchmarks that are used for wholesale energy products is illegal. These instruments therefore address the behaviour of individuals in respect of the manipulation of benchmarks while this proposal addresses the weaknesses in framework for the production of benchmarks that facilitates the manipulation of benchmarks.

The Markets in Financial Instruments Directive and implementing regulation of that directive, the Prospectus Directive and implementing regulation and the Undertakings for Collective Investment in Transferable Securities Directive all regulate the use and transparency of benchmarks and so complement the actions of this proposal.

**Duration and financial impact**

☐ Proposal/initiative of **limited duration**

Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY

Financial impact from YYYY to YYYY

X Proposal/initiative of **unlimited duration**

**Management mode(s) envisaged**[31]

X **Centralised direct management** by the Commission

X **Centralised indirect management** with the delegation of implementation tasks to:

executive agencies

X bodies set up by the Communities[32]

national public-sector bodies/bodies with public-service mission

persons entrusted with the implementation of specific actions pursuant to Title V of the Treaty on European Union and identified in the relevant basic act within the meaning of Article 49 of the Financial Regulation

☐ **Shared management** with the Member States

☐ **Decentralised management** with third countries

☐ **Joint management** with international organisations ***(to be specified)***

*If more than one management mode is indicated, please provide details in the "Comments" section.*

Comments

| **Combination of centralised direct management (DG MARKT) and centralised indirect management with the delegation of implementation tasks to a body created by the EC (ESMA)** |
|---|

[31] Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: http://www.cc.cec/budg/man/budgmanag/budgmanag_en.html

[32] As referred to in Article 185 of the Financial Regulation.

## MANAGEMENT MEASURES

### Monitoring and reporting rules

*Specify frequency and conditions.*

Article 81 Regulation (EU) No 1095/2010 of The European Parliament and of the Council of 24 November 2010 establishing the European Securities and Markets Authority provides for evaluation of the experience acquired as a result of the operation of the Authority every three years from the effective start of its operation. Under Article 35 of the Regulation, a report on the application of this Regulation will be produced by 1 January 2019.

### Management and control system

*Risk(s) identified*

An impact assessment has been carried out for the proposal to reform the financial supervision system in the EU to accompany the draft Regulations establishing the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities Markets Authority (ESMA).

The additional resources for ESMA foreseen as a result of the current proposal are needed in order to allow ESMA to carry out its competences, notably its role in:

- Participating in the colleges of supervisors for critical benchmarks and establishing a mediation mechanism, including binding mediation on important subjects specified in this Regulation, to assist in reaching a common view among the competent authorities in the event of any disagreement in relation to this Regulation.

- Coordinating the development of cooperation arrangements with third counties and the exchange between competent authorities of information received from third countries.

- Drafting guidelines to promote convergence and cross-sector consistency of penalty regimes in respect of breaches of this Regulation.

- Maintaining a list of administrators registered in accordance with this Regulation and third country firms providing benchmarks in the Union.

- Receiving notifications of the use of a benchmark in a financial instrument or financial contract within the Union, maintaining a register and ensuring that administrators are aware of this use.

Without the necessary resources a timely and efficient fulfilment of the role of the Authority cannot be ensured.

*Control method(s) envisaged*

Management and control systems as provided for in the ESMA Regulation will also apply with regard to the role of ESMA in the present proposal.

The final set of indicators to assess the performance of ESMA will be decided by the Commission at the time of conducting the first required evaluation. For the final assessment, the quantitative indicators will be as important as the qualitative evidence gathered in the consultations. The evaluation shall be repeated every three years.

*Costs and benefits of controls and probable non-compliance rate*

Costs are estimated on section 3. The main benefits comprise:

- Reducing the risk of manipulation and therefore enhancing market stability and restored confidence in financial markets.

- Enhancing the reliability of benchmarks and thereby enhanced fairness, integrity and efficiency of financial markets.

- Ensuring the appropriate use of robust and representative benchmarks and therefore enhanced consumer and investor protection.

In consequence, this proposal would contribute to enhanced market fairness and ensure consumer and investor protection. Such benefits are difficult to quantify. However, given the global importance of robust and reliable benchmarks for maintaining market stability and restoring confidence in markets, the benefits are substantial in relation to the costs.

A low non-compliance rate is estimated since the initiative proposes clear and enforceable rules with incentives to ensure compliance.

**Measures to prevent fraud and irregularities**

*Specify existing or envisaged prevention and protection measures.*

For the purposes of combating fraud, corruption and any other illegal activity, the provisions of Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) shall apply to ESMA without any restriction.

The Authority shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF) and shall immediately adopt appropriate provisions for all staff of the Authority.

The funding decisions and the agreements and the implementing instruments resulting from them shall explicitly stipulate that the Court of Auditors and OLAF may, if need be, carry out on-the-spot checks on the beneficiaries of monies disbursed by the Authority as well as on the staff responsible for allocating these monies.

## ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

### Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

Existing budget lines

In order of multiannual financial framework headings and budget lines.

| Heading of multiannual financial framework | Budget line | Type of expenditure | Contribution | | | |
|---|---|---|---|---|---|---|
| | Number [Description] | Diff. | from EFTA countries[33] | from candidate countries[34] | from third countries | within the meaning of Article 18(1)(aa) of the Financial Regulation |
| | 12.03.04<br>European Securities and Markets Authority (ESMA) | Diff. | YES | YES | NO | NO |

This legislative initiative will have the following impacts on expenditures:

**a) DG MARKT** for drafting delegated acts, as well as for the evaluation, monitoring of the implementation and potential review of the initiative:

1 AD staff member (full-time) and related costs; estimated yearly costs of € 0.142 M per year.

**b) ESMA**

**(i) HR costs:** two temporary agents for participating and mediating in the colleges of supervisors for critical benchmarks, providing technical advice to the Commission on the implementation of this Regulation, coordinating the development of cooperation arrangements with third countries, drafting guidelines to promote convergence and cross-sector consistency of penalty regimes and maintaining registers of notifications on the use of benchmarks and a list of registered benchmark administrators.

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).

It is not foreseen that the staff members allocated to ESMA could be reduced in the future (after 2020) as the number of benchmarks, including critical benchmarks, is no likely to decrease in the future but rather to increase and ESMA will still need to participate and mediate in the colleges of supervisors for critical benchmarks and carry out other relevant tasks set above.

**(ii) 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). This expense relates mainly to IT systems for ESMA to fulfil the requirements of:

[33] EFTA: European Free Trade Association.

[34] Candidate countries and, where applicable, potential candidate countries from the Western Balkans.

- Maintaining a list of administrators registered in accordance with this Regulation and third country firms providing benchmarks in the Union.

- Receiving notifications of the use of a benchmark in a financial instrument or financial contract within the Union, and maintaining a register and ensuring that administrators are aware of this use.

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

**Estimated impact on expenditure**

*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. Notably, the resources needed by the agency for the new tasks and indicated in the present financial statement will be consistent and compatible with the human and financing programming for ESMA set by the recent Communication to the European Parliament and the Council – Programming of human and financial resources for decentralised agencies 2014-2020' (COM(2013)519).*

*Summary of estimated impact on expenditure*

EUR million (to three decimal places)

| **Heading of multiannual financial framework:** | Number 1A | Competitiveness for Growth and Jobs |
|---|---|---|

| DG: MARKT | | | Year 2015[35] | Year 2016 | Year 2017 | Year 2018 | Year 2019 | Year 2020 | **TOTAL** |
|---|---|---|---|---|---|---|---|---|---|
| • Operational appropriations | | | | | | | | | |
| 12.03.04 - European Securities and Markets Authority (ESMA) | Commitments | (1) | 0.240 | 0.130 | 0.250 | 0.130 | 0.130 | 0.130 | **1.010** |
| | Payments | (2) | 0.240 | 0.130 | 0.250 | 0.130 | 0.130 | 0.130 | **1.010** |
| Appropriations of an administrative nature financed from the envelope of specific programmes[36] | | | | | | | | | |
| Number of budget line | 12.03.04 | (3) | | **0** | **0** | **0** | **0** | **0** | **0** |
| **TOTAL appropriations for DG MARKT** | Commitments | =1+1a +3 | 0.240 | 0.130 | 0.250 | 0.130 | 0.130 | 0.130 | **1.010** |
| | Payments | =2+2a +3 | 0.240 | 0.130 | 0.250 | 0.130 | 0.130 | 0.130 | **1.010** |

35 Year N is the year in which implementation of the proposal/initiative starts.

36 Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| • TOTAL operational appropriations | Commitments | (4) | 0 | 0 | 0 | 0 | 0 | 0 | |
| | Payments | (5) | 0 | 0 | 0 | 0 | 0 | 0 | |
| • TOTAL appropriations of an administrative nature financed from the envelope for specific programmes | | (6) | 0 | 0 | **0** | **0** | **0** | **0** | |
| **TOTAL appropriations under HEADING Number 1A** of the multiannual financial framework | Commitments | =4+ 6 | 0.240 | 0.130 | 0.250 | 0.130 | 0.130 | 0.130 | **1.010** |
| | Payments | =5+ 6 | 0.240 | 0.130 | 0.250 | 0.130 | 0.130 | 0.130 | **1.010** |

| **Heading of multiannual financial framework** | **5** | 'Administrative expenditure' |
|---|---|---|

EUR million (to three decimal places)

| | | Year **2015** | Year **2016** | Year **2017** | Year **2018** | Year **2019** | Year **2020** | **TOTAL** |
|---|---|---|---|---|---|---|---|---|
| DG: MARKT | | | | | | | | |
| • Human resources (of DG MARKT) | | 0.132 | 0.132 | 0.132 | 0.132 | 0.132 | 0.132 | **0.792** |
| • Other administrative expenditure | | 0.010 | 0.010 | 0.010 | 0.010 | 0.010 | 0.010 | **0.060** |
| **TOTAL DG MARKT** | Appropriations | 0.142 | 0.142 | 0.142 | 0.142 | 0.142 | 0.142 | **0.852** |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| **TOTAL appropriations for HEADING 5** of the multiannual financial framework | (Total commitments = Total payments) | 0.142 | 0.142 | 0.142 | 0.142 | 0.142 | 0.142 | **0.852** |

EUR million (to three decimal places)

| | | Year **2015** | Year **2016** | Year **2017** | Year **2018** | Year **2019** | Year **2020** | **TOTAL** |
|---|---|---|---|---|---|---|---|---|
| **TOTAL appropriations under HEADINGS 1 to 5** of the multiannual financial framework | Commitments | 0.382 | 0.272 | 0.392 | 0.272 | 0.272 | 0.272 | **1.862** |
| | Payments | 0.382 | 0.272 | 0.392 | 0.272 | 0.272 | 0.272 | **1.862** |

*Estimated impact on operational appropriations*

☐ The proposal/initiative does not require the use of operational appropriations

X The proposal/initiative requires the use of operational appropriations, as explained below:

A large part of the operational appropriations by the Commission would relate to the increase of the funding of ESMA derived from the requirements under this Regulation. Particularly, ESMA will require 2 additional staff members (temporary agents) with a total cost of €0.326 M yearly, which would be co-financed by the Commission (€ 0.130 M) and MS (€ 0.196 M). They will carry out the activities of:

Participating and mediating in the colleges of supervisors for benchmarks

Providing technical advice to the Commission on the implementation of this Regulation.

Coordinating the development of cooperation arrangements with third countries

Drafting guidelines to promote convergence and cross-sector consistency of penalty regimes

Maintaining registers of notifications on the use of benchmarks and a list of registered benchmark administrator

An initial operational 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). This expense relates mainly to IT systems for ESMA to fulfil the requirements of:

Maintaining a list of administrators registered in accordance with this Regulation and third country firms providing benchmarks in the Union.

Receiving notifications of the use of a benchmark in a financial instrument or financial contract within the Union, and maintaining a register.

This initiative also requires the increase of the funding of ESMA in 2017 to cover the costs of producing a report on the application of this Regulation by 1 January 2018. The total cost of producing this report would be € 0.3 M (to be committed and transferred to ESMA in 2017) towards which the Commission would contribute 40% (€ 0.12M) and Member States 60% (€ 0.18 M) in 2017.

*Estimated impact on appropriations of an administrative nature*

Summary

☐ The proposal/initiative does not require the use of appropriations of an administrative nature

X The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

| | Year 2015[37] | Year 2016 | Year 2017 | Year 2018 | Year 2019 | Year 2020 | TOTAL |
|---|---|---|---|---|---|---|---|
| **HEADING 5 of the multiannual financial framework** | 0.142 | 0.142 | 0.142 | 0.142 | 0.142 | 0.142 | **0.852** |
| Human resources | 0.132 | 0.132 | 0.132 | 0.132 | 0.132 | 0.132 | **0.792** |
| Other administrative expenditure | 0.010 | 0.010 | 0.010 | 0.010 | 0.010 | 0.010 | **0.060** |
| **Subtotal HEADING 5 of the multiannual financial framework** | 0.142 | 0.141 | 0.142 | 0.142 | 0.142 | 0.142 | **0.852** |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| **TOTAL** | **0.142** | **0.142** | **0.142** | **0.142** | **0.142** | **0.142** | **0.852** |

The human resources appropriations required will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Assumptions:

– based on 1 AD grade official working full time on this initiative at DG MARKT (avg. costs of €132,000 per year);

– average annual salary costs of personnel are based on DG BUDG guidance;

– mission costs of €10,000 yearly, estimated based on 2012 draft budget for missions per headcount.

37

Estimated requirements of human resources

☐ The proposal/initiative does not require the use of human resources.

X The proposal/initiative requires the use of 1 Commission official of grade AD at the Commission Headquarters (DG MARKT) as explained below. MARKT is the policy area or budget title concerned. The 1 Commission official of grade AD will be financed through redeployment.

Description of tasks to be carried out: adoption of Delegated Acts further specifying the legislation and including on-going delegated acts further specifying different benchmark sectors in light of market and technological developments. Designating critical cross border benchmarks and further specifying the conditions for these.

*Estimate to be expressed in full time equivalent units*

| | Year **2015** | Year **2016** | Year **2017** | Year **2018** | Year **2019** | Year **2020** |
|---|---|---|---|---|---|---|
| **• Establishment plan posts (officials and temporary agents)** | | | | | | |
| XX 01 01 01 (Headquarters and Commission's Representation Offices) | 1 | 1 | 1 | 1 | 1 | 1 |
| XX 01 01 02 (Delegations) | | | | | | |
| XX 01 05 01 (Indirect research) | | | | | | |
| 10 01 05 01 (Direct research) | | | | | | |
| **• External personnel (in Full Time Equivalent unit: FTE)**[38] | | | | | | |
| XX 01 02 01 (CA, INT, SNE from the "global envelope") | | | | | | |
| XX 01 02 02 (CA, INT, JED, LA and SNE in the delegations) | | | | | | |
| **XX** 01 04 **yy**[39] - at headquarters | | | | | | |
| **XX** 01 04 **yy**[39] - in delegations | | | | | | |
| **XX** 01 05 02 (CA, SNE, INT - Indirect research) | | | | | | |
| 10 01 05 02 (CA, SNE, INT - Direct research) | | | | | | |

[38] CA= Contract Agent; LA = Local Agent; SNE = Seconded National Expert; INT = agency staff ('Intérimaire'); JED= 'Jeune Expert en Délégation' (Young Experts in Delegations).

[39] Sub-ceiling for external staff covered by operational appropriations (former "BA" lines).

| | | | | | | |
|---|---|---|---|---|---|---|
| Other budget lines (specify) | | | | | | |
| **TOTAL** | **1** | **1** | **1** | **1** | **1** | **1** |

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

*Compatibility with the current multiannual financial framework*

X The proposal/initiative is compatible the new multiannual financial framework.

☐ Proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

| Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts. |
|---|
| Na |

☐ Proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework.[40]

| Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts. |
|---|
| Na |

*Third-party contributions*

☐ The proposal/initiative does not provide for co-financing by third parties.

X The proposal/initiative provides for the co-financing estimated below:

Appropriations in EUR million (to three decimal places)

| | Year **2015** | Year **2016** | Year **2017** | Year **2018** | Year **2019** | Year **2020** | **Total** |
|---|---|---|---|---|---|---|---|
| Specify the co-financing body | Member States | Member States | Member States | Member States | Member States | Member States | Member States |
| TOTAL appropriations co-financed | 0.361 | 0.196 | 0.376 | 0.196 | 0.196 | 0.196 | **1.521** |

The third-party contributions for 2015 refer to the co-financing of ESMA by Member Estates. The financed costs relate mainly to:

**a) Staff costs:** Member States will contribute 60% to the financing of the 2 temporary agents required at ESMA headquarters for the implementation of the requirements under this Regulation. This would imply a yearly contribution by Member States of € 0.196 M.

**b) Initial operational expense**: Member States would also need to contribute 60% of the € 0.25 M initial operational expense by ESMA in 2015, totalling € 0.15 M. This expense relates mainly to IT systems for ESMA to fulfil the requirements under this Regulation.

**c) Report on the implementation:** Member States shall also contribute toward the financing of a report on the application of this Regulation by 1 January 2018 by ESMA. The total costs of the report are foreseen as €0.3 M[41] towards which the Member States will contribute 60% (€ 0.18 M) in 2017.

[40] See points 19 and 24 of the Interinstitutional Agreement.

[41] These costs have been estimated based on the average costs of producing similar reports by DG MARKT and applying a correction to reflect the impact of inflation.

Estimated impact on revenue

X Proposal/initiative has no financial impact on revenue.

☐ Proposal/initiative has the following financial impact:

**ANNEX to Legislative Financial Statement for Proposal for Regulation on Benchmarks on estimated cost for ESMA under the requirements of the proposal**

The costs related to the tasks to be carried out by ESMA have been estimated according to three cost categories: the staff costs, the infrastructure costs and the operations costs, in line with the classification in the general draft budget of ESMA.

**a) Staff costs:** the need for increased staffing numbers reflects the new duties for ESMA derived from this Regulation. These relate to ESMA participation and mediation in colleges of supervisors for critical benchmarks. Also to provision of technical advice to the Commission on the implementation of this Regulation, coordination of cooperation arrangements with third countries, drafting guidelines to promote convergence and cross-sector consistency of penalty regimes and maintaining registers of notifications on the use of benchmarks and a list of registered benchmark administrators.

According to current estimations from the Commission's own estimates and ESMA estimates the activities will require 2 temporary agents. This is in addition to the staff members that are currently working on benchmarks at ESMA. The additional yearly staff costs estimated for ESMA are of € 0.326 M towards which the Commission will contribute 40% (€ 0.130 M) and Member States 60% (€ 0.196 M).

**b) Operational and infrastructure costs:** an initial operational 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. This expense relates mainly to IT systems for ESMA to fulfil the requirements of:

- Maintaining a list of administrators registered in accordance with this Regulation and third country firms providing benchmarks in the Union.

- Receiving notifications of the use of a benchmark in a financial instrument or financial contract within the Union, and maintaining a register and ensuring that administrators are aware of this use.

**This initiative also requires the increase the funding of ESMA by € 0.3 M in 2017 to cover the costs of producing a report on the application of this Regulation by 1 January 2018.** The total cost of producing this report are estimated to be €0.3 M (to be committed and paid in 2017) towards which the Commission would contribute 40% (€ 0.12M) and Member States 60% (€ 0.18 M). These costs have been estimated based on the average costs of producing similar reports at DG MARKT and applying a correction to reflect the impact of inflation.

The proposal does NOT have financial implications on revenue for ESMA.
**The detailed breakdown of estimated staff costs by various categories is presented in table 1 below.**

Other assumptions:

– based on the distribution of FTEs in 2012 draft budget, the 2 additional FTEs are assumed to be comprised of 2 temporary agents, with a total cost of €0.326 M yearly, which would be co-financed by the Commission (€ 0.130 M) and MS (€ 0.196 M) yearly.

– average annual salary costs for different categories of personnel are based on DG BUDG guidance of € 132,000 per year;

– salary weighting coefficient for Paris of 1.161;

– mission costs of €10,000, estimated based on 2012 draft budget for missions per headcount;

– recruiting-related costs (travel, hotel, medical examinations, installation and other allowances, removal costs, etc.) of €12,700, estimated based on 2012 draft budget for recruiting per new headcount.

| **ESMA STAFF COSTS** | | | **Euro (millions, 3 decimal places)** | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| **Cost Type** | **Number** | **Avg. cost** | **2015** | **2016** | **2017** | **2018** | **2019** | **2020** | **TOTAL** |
| Title 1: Staff Expenditure | | | | | | | | | |
| of which temporary agents | 2 | 0.153 | 0.306 | 0.306 | 0.306 | 0.306 | 0.306 | 0.306 | 1.836 |
| Expenditure related to recruitments | | | 0.025 | | | | | | 0.025 |
| Mission expenses | | | 0.020 | 0.020 | 0.020 | 0.020 | 0.020 | 0.020 | 0.120 |
| Total title 1 Staff expenditure | | | **0.351** | **0.326** | **0.326** | **0.326** | **0.326** | **0.326** | **1.981** |
| of which Community contribution (40%) | | | **0.140** | **0.130** | **0.130** | **0.130** | **0.130** | **0.130** | **0.790** |
| of which Member States contribution (60%) | | | **0.211** | **0.196** | **0.196** | **0.196** | **0.196** | **0.196** | **1.191** |