

Indices used as benchmarks in financial instruments and financial contracts

2013/0314(COD) - 19/05/2015 - Text adopted by Parliament, partial vote at 1st reading/single reading

The European Parliament adopted amendments to the proposal for a regulation of the European Parliament and of the Council on indices used as benchmarks in financial instruments and financial contracts.

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

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

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

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

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

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

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

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

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

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

The administrator must also:

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

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

Input data: input data must be **verifiable** and the resulting benchmark must be representative of the market or economic reality that the benchmark is intended to measure. Members introduced detailed provisions regarding the **controls that the administrator must put in place** for input data. In order to determine the benchmark, the administrator must: (i) use a method that was solid and reliable, traceable and verifiable; (ii) transparently develop, operate and administer the benchmark data and methodology; (iii) have procedures in place to report internally infringements of the Regulation.

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

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

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

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

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

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

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