

Indices used as benchmarks in financial instruments and financial contracts

2013/0314(COD) - 08/06/2016 - Final act

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

LEGISLATIVE ACT: Regulation (EU) 2016/1011 of the European Parliament and of the Council on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014

CONTENT: the Regulation introduces **a common framework to ensure the accuracy and integrity of indices used as benchmarks in financial instruments** and financial contracts, or to measure the performance of investment funds in the Union. Serious cases of manipulation of interest rate benchmarks such as LIBOR and EURIBOR, as well as allegations that energy, oil and foreign exchange benchmarks have been manipulated, demonstrate that benchmarks can be subject to conflicts of interest.

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

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

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

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

The administrator must also:

- have in place a **control framework** covering, particularly, management of operational risk and contingency procedures that are in place in the event of a disruption to the process of the provision of the benchmark;

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

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

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

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

Input data: this is the data in respect of the value of one or more underlying assets, or prices, including estimated prices, quotes, committed quotes or other values, used by an administrator to determine a benchmark. Such data shall be sufficient to **represent accurately and reliably** the market or economic reality that the benchmark is intended to measure. It must be **verifiable**.

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

Administrators' controls in respect of input data must include a process for evaluating a contributor's input data and for stopping the contributor from providing further input data, or applying other penalties for non-compliance against the contributor, where appropriate.

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

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

The Regulation puts in place **three separate regimes**:

- a regime applicable to **critical benchmarks** (used as a reference for financial instruments or financial contracts or for the determination of the performance of investment funds having a total value of at least EUR 500 billion);

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

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

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

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

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

ENTRY INTO FORCE: 30.6.2016.

APPLICATION: from 1.1.2018.

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