This text is meant purely as a documentation tool and has no legal effect. The Union's institutions do not assume any liability for its contents. The authentic versions of the relevant acts, including their preambles, are those published in the Official Journal of the European Union and available in EUR-Lex. Those official texts are directly accessible through the links embedded in this document

►B REGULATION (EU) 2016/1011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 8 June 2016

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

(Text with EEA relevance)

(OJ L 171, 29.6.2016, p. 1)

Amended by:

		Official Journal		
		No	page	date
►M1	Regulation (EU) 2019/2089 of the European Parliament and of the Council of 27 November 2019	L 317	17	9.12.2019
►M2	Regulation (EU) 2019/2175 of the European Parliament and of the Council of 18 December 2019	L 334	1	27.12.2019
►M3	Regulation (EU) 2021/168 of the European Parliament and of the Council of 10 February 2021	L 49	6	12.2.2021

▼B

REGULATION (EU) 2016/1011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 8 June 2016

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

(Text with EEA relevance)

TITLE I

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, or to measure the performance of investment funds in the Union. This 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 applies to the provision of benchmarks, the contribution of input data to a benchmark and the use of a benchmark within the Union.

2. This Regulation shall not apply to:

(a) a central bank;

(b) a public authority, where it contributes data to, provides, or has control over the provision of, benchmarks for public policy purposes, including measures of employment, economic activity, and inflation;

(c) a central counterparty (CCP), where it provides reference prices or settlement prices used for CCP risk-management purposes and settlement;

(d) the provision of a single reference price for any financial instrument listed in Section C of Annex I to Directive 2014/65/EU;

(e) the press, other media and journalists where they merely publish or refer to a benchmark as part of their journalistic activities with no control over the provision of that benchmark;

▼B

(f) a natural or legal person that grants or promises to grant credit in the course of that person's trade, business or profession, only insofar as that person publishes or makes available to the public that person's own variable or fixed borrowing rates set by internal decisions and applicable only to financial contracts entered into by that person or by a company within the same group with their respective clients;

(g) a commodity benchmark based on submissions from contributors the majority of which are non-supervised entities and in respect of which both of the following conditions apply:

(i) the benchmark is referenced by financial instruments for which a request for admission to trading has been made on only one trading venue, as defined in point (24) of Article 4(1) of Directive 2014/65/EU, or which are traded on only one such trading venue;

(ii) the total notional value of financial instruments referencing the benchmark does not exceed EUR 100 million;

(h) an index provider in respect of an index provided by said provider where that index provider is unaware and could not reasonably have been aware that that index is used for the purposes referred to in point (3) of Article 3(1);

▼M3

(i) a spot foreign exchange benchmark which has been designated by the Commission in accordance with Article 18a(1).

▼B

Article 3

Definitions

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

(1) ‘index’ means any figure:

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

(b) that is regularly determined:

(i) entirely or partially by the application of a formula or any other method of calculation, or by an assessment; and

(ii) on the basis of the value of one or more underlying assets or prices, including estimated prices, actual or estimated interest rates, quotes and committed quotes, or other values or surveys;

(2) ‘index provider’ means a natural or legal person that has control over the provision of an index;

(3) ‘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 with the purpose of tracking the return of such index or of defining the asset allocation of a portfolio or of computing the performance fees;

▼B

(4) ‘family of benchmarks’ means a group of benchmarks provided by the same administrator and determined from input data of the same nature which provides specific measures of the same or similar market or economic reality;

(5) ‘provision of a benchmark’ means:

(a) administering the arrangements for determining a benchmark;

(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;

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

(7) ‘use of a benchmark’ means:

(a) issuance of a financial instrument which references an index or a combination of indices;

(b) determination of the amount payable under a financial instrument or a financial contract by referencing an index or a combination of indices;

(c) being a party to a financial contract which references an index or a combination of indices;

(d) providing a borrowing rate as defined in point (j) of Article 3 of Directive 2008/48/EC calculated as a spread or mark-up over an index or a combination of indices and that is solely used as a reference in a financial contract to which the creditor is a party;

(e) measuring the performance of an investment fund through an index or a combination of indices for the purpose of tracking the return of such index or combination of indices, of defining the asset allocation of a portfolio, or of computing the performance fees;

(8) ‘contribution of input data’ means providing any input data not readily available to an administrator, or to another person for the purposes of passing to an administrator, that is required in connection with the determination of a benchmark, and is provided for that purpose;

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

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

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

▼B

(12) ‘assessor’ means an employee of an administrator of a commodity benchmark, or any other natural person whose services are placed at the administrator's disposal or under the control of the administrator, and who is responsible for applying a methodology or judgement to input data and other information to reach a conclusive assessment about the price of a certain commodity;

(13) ‘expert judgement’ means the exercise of discretion by an administrator or a contributor with respect to the use of data in determining a benchmark, including extrapolating values from prior or related transactions, adjusting values for factors that might influence the quality of data such as market events or impairment of a buyer or seller's credit quality, and weighting firm bids or offers greater than a particular concluded transaction;

(14) ‘input data’ means 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;

(15) ‘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;

(16) ‘financial instrument’ means any of the instruments listed in Section C of Annex I to Directive 2014/65/EU for which a request for admission to trading on a trading venue, as defined in point (24) of Article 4(1) of Directive 2014/65/EU, has been made or which is traded on a trading venue as defined in point (24) of Article 4(1) of Directive 2014/65/EU or via a systematic internaliser as defined in point (20) of Article 4(1) of that Directive;

(17) ‘supervised entity’ means any of the following:

(a) a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council ([1]);

(b) an investment firm as defined in point (1) of Article 4(1) of Directive 2014/65/EU;

(c) an insurance undertaking as defined in point (1) of Article 13 of Directive 2009/138/EC of the European Parliament and of the Council ([2]);

(d) a reinsurance undertaking as defined in point (4) of Article 13 of Directive 2009/138/EC;

([1]) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

([2]) Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

▼B

(e) a UCITS as defined in Article 1(2) of Directive 2009/65/EC or, where applicable, a UCITS management company as defined in point (b) of Article 2(1) of that Directive;

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

(g) an institution for occupational retirement provision as defined in point (a) of Article 6 of Directive 2003/41/EC of the European Parliament and of the Council ([2]);

(h) a creditor as defined in point (b) of Article 3 of Directive 2008/48/EC for the purposes of credit agreements as defined in point (c) of Article 3 of that Directive;

(i) a non-credit institution as defined in point (10) of Article 4 of Directive 2014/17/EU for the purposes of credit agreements as defined in point (3) of Article 4 of that Directive;

(j) a market operator as defined in point (18) of Article 4(1) of Directive 2014/65/EU;

(k) a CCP as defined in point (1) of Article 2 of Regulation (EU) No 648/2012 of the European Parliament and of the Council ([3]);

(l) a trade repository as defined in point (2) of Article 2 of Regulation (EU) No 648/2012;

(m) an administrator;

(18) 'financial contract' means:

(a) any credit agreement as defined in point (c) of Article 3 of Directive 2008/48/EC;

(b) any credit agreement as defined in point (3) of Article 4 of Directive 2014/17/EU;

(19) 'investment fund' means an AIF as defined in point (a) of Article 4(1) of Directive 2011/61/EU, or a UCITS as defined in Article 1(2) of Directive 2009/65/EC;

(20) 'management body' means the body or bodies of an administrator or another supervised entity which are appointed in accordance with national law, which are empowered to set the strategy, objectives and overall direction of the administrator or other supervised entity, and which oversee and monitor management decision-making and include persons who effectively direct the business of the administrator or other supervised entity;

([1]) Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

([2]) Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision (OJ L 235, 23.9.2003, p. 10).

([3]) Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

▼B

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

(22) ‘interest rate benchmark’ means a benchmark which for the purposes of point (1)(b)(ii) of this paragraph is determined on the basis of the rate at which banks may lend to, or borrow from, other banks, or agents other than banks, in the money market;

▼M3

(22a) ‘spot foreign exchange benchmark’ means a benchmark which reflects the price, expressed in one currency, of another or a basket of other currencies, for delivery on the earliest possible value date;

▼B

(23) ‘commodity benchmark’ means a benchmark where the underlying asset for the purposes of point (1)(b)(ii) of this paragraph is a commodity within the meaning of point (1) of Article 2 of Commission Regulation (EC) No 1287/2006 ([1]), excluding emission allowances as referred to in point (11) of Section C of Annex I to Directive 2014/65/EU;

▼M1

(23a) ‘EU Climate Transition Benchmark’ means a benchmark which is labelled as an EU Climate Transition Benchmark and fulfils the following requirements:

(a) for the purposes of point 1(b)(ii) of this paragraph and of Article 19b, its underlying assets are selected, weighted or excluded in such a manner that the resulting benchmark portfolio is on a decarbonisation trajectory; and

(b) it is constructed in accordance with the minimum standards laid down in the delegated acts referred to in Article 19a(2);

(23b) ‘EU Paris-aligned Benchmark’ means a benchmark which is labelled as an EU Paris-aligned Benchmark and fulfils the following requirements:

(a) for the purposes of point 1(b)(ii) of this paragraph and of the delegated act referred to in Article 19c, its underlying assets are selected, weighted or excluded in such a manner that the resulting benchmark portfolio’s carbon emissions are aligned with the objectives of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change, approved by the Union on 5 October 2016 ([2]) (the ‘Paris Agreement’);

(b) it is constructed in accordance with the minimum standards laid down in the delegated acts referred to in Article 19a(2); and

([1]) Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive (OJ L 241, 2.9.2006, p. 1).

([2]) Council Decision (EU) 2016/1841 of 5 October 2016 on the conclusion, on behalf of the European Union, of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change (OJ L 282, 19.10.2016, p. 1).

▼M1

(c) the activities relating to its underlying assets do not significantly harm other environmental, social and governance (ESG) objectives;

(23c) ‘decarbonisation trajectory’ means a measurable, science-based and time-bound trajectory towards alignment with the objectives of the Paris Agreement by reducing Scope 1, 2 and 3 carbon emissions as referred to in point (1)(e) of Annex III;

▼B

(24) ‘regulated-data benchmark’ means a benchmark determined by the application of a formula from:

▼M2

(a) input data contributed entirely from:

▼M3

(i) a trading venue as defined in point (24) of Article 4(1) of Directive 2014/65/EU or a trading venue in a third country for which the Commission has adopted an implementing decision that the legal and supervisory framework of that country is considered to have equivalent effect within the meaning of Article 28(4) of Regulation (EU) No 600/2014 of the European Parliament and of the Council [1] or Article 25(4) of Directive 2014/65/EU of the European Parliament and of the Council, or a regulated market considered to be equivalent under Article 2a of Regulation (EU) No 648/2012, but in each case only with reference to transaction data concerning financial instruments;

▼B

(ii) an approved publication arrangement as defined in point (52) of Article 4(1) of Directive 2014/65/EU or a consolidated tape provider as defined in point (53) of Article 4(1) of Directive 2014/65/EU, in accordance with mandatory post-trade transparency requirements, but only with reference to transaction data concerning financial instruments that are traded on a trading venue;

(iii) an approved reporting mechanism as defined in point (54) of Article 4(1) of Directive 2014/65/EU, but only with reference to transaction data concerning financial instruments that are traded on a trading venue and that must be disclosed in accordance with mandatory post-trade transparency requirements;

(iv) an electricity exchange as referred to in point (j) of Article 37(1) of Directive 2009/72/EC of the European Parliament and of the Council [2];

[1] Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

[2] Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ L 211, 14.8.2009, p. 55).

▼B

(v) a natural gas exchange as referred to in point (j) of Article 41(1) of Directive 2009/73/EC of the European Parliament and of the Council ([1]);

(vi) an auction platform referred to in Article 26 or 30 of Commission Regulation (EU) No 1031/2010 ([2]);

▼M2

(vii) a service provider to which the benchmark administrator has outsourced the data collection in accordance with Article 10, with the exception of point (f) of Article 10(3), provided that the service provider receives the data entirely from an entity referred to in points (i) to (vi) of this point;

▼B

(b) net asset values of investment funds;

(25) 'critical benchmark' means a benchmark other than a regulated-data benchmark that fulfils any of the conditions laid down in Article 20(1) and which is on the list established by the Commission pursuant to that Article;

(26) 'significant benchmark' means a benchmark that fulfils the conditions laid down in Article 24(1);

(27) 'non-significant benchmark' means a benchmark that does not fulfil the conditions laid down in Articles 20(1) and 24(1);

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

(29) 'public authority' means:

(a) any government or other public administration, including the entities charged with or intervening in the management of the public debt;

(b) any entity or person either performing public administrative functions under national law or having public responsibilities or functions or providing public services, including measures of employment, economic activities and inflation, under the control of an entity within the meaning of point (a).

([1]) Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p. 94).

([2]) Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community (OJ L 302, 18.11.2010, p. 1).

▼B

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 49 in order to specify further technical elements of the definitions laid down in paragraph 1 of this Article, in particular specifying what constitutes making available to the public for the purposes of the definition of an index.

Where applicable, the Commission shall take into account the market or technological developments and the international convergence of supervisory practice in relation to benchmarks.

3. The Commission shall adopt implementing acts in order to establish and review a list of public authorities in the Union falling within the definition under point (29) of paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 50(2).

Where applicable, the Commission shall take into account the market or technological developments and the international convergence of supervisory practice in relation to benchmarks.

TITLE II

BENCHMARK INTEGRITY AND RELIABILITY

CHAPTER 1

Governance of and control by administrators

Article 4

Governance and conflict of interest requirements

1. An administrator shall have in place 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.

Administrators shall take adequate steps to identify and to prevent or manage conflicts of interest between themselves, including their managers, employees or any person directly or indirectly linked to them by control, and contributors or users, and to ensure that, where any judgement or discretion in the benchmark determination process is required, it is independently and honestly exercised.

2. The provision of a benchmark shall be operationally separated from any part of an administrator's business that may create an actual or potential conflict of interest.

3. Where a conflict of interest arises within an administrator due to the latter's ownership structure, controlling interests or other activities conducted by any entity owning or controlling the administrator or by an entity that is owned or controlled by the administrator or any of the administrator's affiliates, that cannot be adequately mitigated, the relevant competent authority may require the administrator to establish an independent oversight function which shall include a balanced representation of stakeholders, including users and contributors.

▼B

4. If such a conflict of interest cannot be adequately managed, the relevant competent authority may require the administrator to either cease the activities or relationships that create the conflict of interest or cease providing the benchmark.

5. An administrator shall 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, including conflicts of interest arising from the ownership or control of the administrator.

6. An administrator shall establish and operate adequate policies and procedures, as well as effective organisational arrangements, for the identification, disclosure, prevention, management and mitigation of conflicts of interest in order to protect the integrity and independence of benchmark determinations. Such policies and procedures shall be regularly reviewed and updated. The policies and procedures shall take into account and address conflicts of interest, the degree of discretion exercised in the benchmark determination process and the risks that the benchmark poses, and shall:

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

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

7. Administrators shall ensure that their employees and any other natural persons whose services are placed at their disposal or under their control and who are directly involved in the provision of a benchmark:

(a) have the necessary skills, knowledge and experience for the duties assigned to them 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 those persons do not create conflicts of interest or otherwise impinge upon the integrity of the benchmark determination process;

(c) do not have any interests or business connections that compromise the activities of the administrator concerned;

(d) are 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, except where such way of contribution is explicitly required as part of the benchmark methodology and is subject to specific rules therein; and

(e) are subject to effective procedures to control the exchange of information with other employees involved in activities that may create a risk of conflicts of interest or with third parties, where that information may affect the benchmark.

▼B

8. 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.

▼M2

9. ESMA shall develop draft regulatory technical standards to specify the requirements to ensure that the governance arrangements referred to in paragraph 1 are sufficiently robust.

ESMA shall submit those draft regulatory technical standards to the Commission by 1 October 2020.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first sub-paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

▼B

Article 5

Oversight function requirements

1. Administrators shall establish and maintain a permanent and effective oversight function to ensure oversight of all aspects of the provision of their benchmarks.

2. Administrators shall develop and maintain robust procedures regarding their oversight function, which shall be made available to the relevant competent authorities.

3. The oversight function shall operate with integrity and shall have the following responsibilities, which shall be adjusted by the administrator based on the complexity, use and vulnerability of the benchmark:

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

(b) overseeing any changes to the benchmark methodology and being able to request the administrator to consult on such changes;

(c) overseeing the administrator's control framework, the management and operation of the benchmark, and, where the benchmark is based on input data from contributors, the code of conduct referred to in Article 15;

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

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

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

(g) where the benchmark is based on input data from contributors, monitoring the input data and contributors and the actions of the administrator in challenging or validating contributions of input data;

▼B

(h) where the benchmark is based on input data from contributors, taking effective measures in respect of any breaches of the code of conduct referred to in Article 15; and

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

4. The oversight function shall be carried out by a separate committee or by means of another appropriate governance arrangement.

5. ESMA shall develop draft regulatory technical standards to specify the procedures regarding the oversight function and the characteristics of the oversight function including its composition as well as its positioning within the organisational structure of the administrator, so as to ensure the integrity of the function and the absence of conflicts of interest. In particular, ESMA shall develop a non-exhaustive list of appropriate governance arrangements as laid down in paragraph 4.

ESMA shall distinguish between the different types of benchmarks and sectors as set out in this Regulation and shall take into consideration the differences in the ownership and control structure of administrators, the nature, scale and complexity of the provision of the benchmark, and the risk and impact of the benchmark, also in light of international convergence of supervisory practice in relation to governance requirements of benchmarks. However, the ESMA draft regulatory technical standards shall not cover or apply to administrators of non-significant benchmarks.

ESMA shall submit those draft regulatory technical standards to the Commission by 1 April 2017.

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.

6. ESMA may issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010, addressed to administrators of non-significant benchmarks to specify the elements referred to in paragraph 5 of this Article.

Article 6

Control framework requirements

1. Administrators shall have in place a control framework that ensures that their benchmarks are provided and published or made available in accordance with this Regulation.

2. The control framework shall be proportionate to the level of conflicts of interest identified, the extent of discretion in the provision of the benchmark and the nature of the benchmark input data.

3. The control framework shall include:

(a) management of operational risk;

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

▼B

(c) contingency procedures that are in place in the event of a disruption to the process of the provision of the benchmark.

4. An administrator shall establish measures to:

(a) ensure that contributors adhere to the code of conduct referred to in Article 15 and comply with the applicable standards for input data;

(b) monitor input data including, where feasible, monitoring input data before publication of the benchmark and validating input data after publication to identify errors and anomalies.

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

Article 7

Accountability framework requirements

1. An administrator shall have in place an accountability framework, covering record-keeping, auditing and review, and a complaints process, that provides evidence of compliance with the requirements of this Regulation.

2. An administrator shall designate an internal function with the necessary capability to review and report on the administrator's compliance with the benchmark methodology and this Regulation.

3. For critical benchmarks, an administrator shall appoint an independent external auditor to review and report on the administrator's compliance with the benchmark methodology and this Regulation, at least annually.

4. Upon the request of the relevant competent authority, an administrator shall provide to the relevant competent authority the details of the reviews and reports provided for in paragraph 2. Upon the request of the relevant competent authority or any user of a benchmark, an administrator shall publish the details of the audits provided for in paragraph 3.

Article 8

Record-keeping requirements

1. An administrator shall keep records of:

(a) all input data, including the use of such data;

(b) the methodology used for the determination of a benchmark;

(c) any exercise of judgement or discretion by the administrator and, where applicable, by assessors, in the determination of a benchmark, including the reasoning for said judgement or discretion;

(d) the disregard of any input data, in particular where it conformed to the requirements of the benchmark methodology, and the rationale for such disregard;

▼B

(e) other changes in or deviations from standard procedures and methodologies, including those made during periods of market stress or disruption;

(f) the identities of the submitters and of the natural persons employed by the administrator for the determination of a benchmark;

(g) all documents relating to any complaint, including those submitted by a complainant; and

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

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

Article 9

Complaints-handling mechanism

1. An administrator shall have in place and publish procedures for receiving, investigating and retaining records concerning complaints made, including about the administrator's benchmark determination process.

2. Such a complaints-handling mechanism shall ensure that:

(a) the administrator makes available the complaints-handling policy through which complaints may be submitted on whether a specific benchmark determination is representative of market value, on a proposed change to the benchmark determination process, on an application of the methodology in relation to a specific benchmark determination, and on other decisions in relation to the benchmark determination process;

(b) complaints are investigated in a timely and fair manner and the outcome of the investigation is communicated to the complainant within a reasonable period of time, unless such communication would be contrary to objectives of public policy or to Regulation (EU) No 596/2014; and

(c) the inquiry is conducted independently of any personnel who may be or may have been involved in the subject-matter of the complaint.

Article 10

Outsourcing

1. An administrator 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.

▼B

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

3. Where outsourcing takes place, the administrator shall ensure that the following conditions are fulfilled:

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

(b) the administrator makes available to the relevant competent authorities the identity and the tasks of the service provider that participates in the benchmark determination process;

(c) the administrator takes appropriate action if it appears that the service provider may not be carrying out the outsourced functions effectively and in compliance with applicable law and regulatory requirements;

(d) the administrator retains the necessary expertise to supervise the outsourced functions effectively and to manage the risks associated with the outsourcing;

(e) the service provider discloses 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 law and regulatory requirements;

(f) the service provider cooperates with the relevant competent authority regarding the outsourced activities, and the administrator and the relevant competent authority 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 is able to exercise those rights of access;

(g) the administrator is able to terminate the outsourcing arrangements where necessary;

(h) the administrator takes reasonable steps, including contingency plans, to avoid undue operational risk related to the participation of the service provider in the benchmark determination process.

CHAPTER 2

Input data, methodology and reporting of infringements

Article 11

Input data

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

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

The input data shall be transaction data, if available and appropriate. If transaction data is not sufficient or is not appropriate 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, including estimated prices, quotes and committed quotes, or other values;

▼B

(b) the input data referred to in point (a) shall be verifiable;

(c) the administrator shall draw up and publish clear guidelines regarding the types of input data, the priority of use of the different types of input data and the exercise of expert judgement, to ensure compliance with point (a) and the methodology;

(d) where a benchmark is based on input data from contributors, the administrator shall obtain, where appropriate, the input data from a reliable and representative panel or sample of contributors so as to ensure that the resulting benchmark is reliable and representative of the market or economic reality that the benchmark is intended to measure;

(e) the administrator shall not use input data from a contributor if the administrator has any indication that the contributor does not adhere to the code of conduct referred to in Article 15, and in such a case shall obtain representative publicly available data.

2. Administrators shall ensure that their controls in respect of input data include:

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

(b) a process for evaluating a 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; and

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

3. Where the input data of a benchmark is contributed from a front office function, meaning 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, the administrator shall:

(a) obtain data from other sources that corroborate that input data; and

(b) ensure that contributors have in place adequate internal oversight and verification procedures.

4. Where an administrator considers that the input data does not represent the market or economic reality that a benchmark is intended to measure, that administrator shall, within a reasonable time period, either change the input data, the contributors or the methodology in order to ensure that the input data does represent such market or economic reality, or else cease to provide that benchmark.

▼B

5. ESMA shall develop draft regulatory technical standards to specify further how to ensure that input data is appropriate and verifiable, as required under points (a) and (b) of paragraph 1, as well as the internal oversight and verification procedures of a contributor that the administrator has to ensure are in place, in compliance with point (b) of paragraph 3, in order to ensure the integrity and accuracy of input data. However, the ESMA draft regulatory technical standards shall not cover or apply to administrators of non-significant benchmarks.

ESMA shall take into account the different types of benchmarks and sectors as set out in this Regulation, the nature of input data, the characteristics of the underlying market or economic reality and the principle of proportionality, the vulnerability of the benchmarks to manipulation as well as the international convergence of supervisory practice in relation to benchmarks.

ESMA shall submit those draft regulatory technical standards to the Commission by 1 April 2017.

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.

6. ESMA may issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010, addressed to administrators of non-significant benchmarks to specify the elements referred to in paragraph 5 of this Article.

Article 12

Methodology

1. An administrator shall use a methodology for determining a benchmark that:

(a) is robust and reliable;

(b) has clear rules identifying how and when discretion may be exercised in the determination of that benchmark;

(c) is rigorous, continuous and capable of validation including, where appropriate, back-testing against available transaction data;

(d) is resilient and ensures that the benchmark can be calculated in the widest set of possible circumstances, without compromising its integrity;

(e) is traceable and verifiable.

2. When developing a benchmark methodology, a benchmark administrator shall:

(a) 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 market or economic reality that the benchmark is intended to measure;

▼B

(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 have in place clear published arrangements that identify the circumstances in which 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 is to be calculated in such circumstances.

▼M2

4. ESMA shall develop draft regulatory technical standards to specify the conditions to ensure that the methodology referred to in paragraph 1 complies with points (a) to (e) of that paragraph.

ESMA shall submit those draft regulatory technical standards to the Commission by 1 October 2020.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

▼B

Article 13

Transparency of methodology

1. An administrator shall develop, operate and administer the benchmark and methodology transparently. To that end, the administrator shall publish or make available the following information:

(a) the key elements of the methodology that the administrator uses for each benchmark provided and published or, when applicable, for each family of benchmarks provided and published;

(b) details of the internal review and the approval of a given methodology, as well as the frequency of such review;

(c) the procedures for consulting on any proposed material change in the administrator's methodology and the rationale for such changes, including a definition of what constitutes a material change and the circumstances in which the administrator is to notify users of any such changes;

▼M1

(d) an explanation of how the key elements of the methodology laid down in point (a) reflect ESG factors for each benchmark or family of benchmarks, with the exception of interest rate and foreign exchange benchmarks.

Benchmark administrators shall comply with the requirement laid down in point (d) of the first subparagraph by 30 April 2020.

▼B

2. The procedures required under point (c) of paragraph 1 shall provide for:

(a) advance notice, with a clear time frame, that gives the opportunity to analyse and comment upon the impact of such proposed material changes; and

▼B

(b) the comments referred to in point (a) of this paragraph, and the administrator's response to those comments, to be made accessible after any consultation, except where confidentiality has been requested by the originator of the comments.

▼M1

2a. The Commission is empowered to adopt delegated acts in accordance with Article 49 to supplement this Regulation by laying down the minimum content of the explanation referred to in point (d) of the first subparagraph of paragraph 1 of this Article, as well as the standard format to be used.

▼B

3. ESMA shall develop draft regulatory technical standards to specify further the information to be provided by an administrator in compliance with the requirements laid down in paragraphs 1 and 2, distinguishing for different types of benchmarks and sectors as set out in this Regulation. ESMA shall take into account the need to disclose those elements of the methodology that provide for sufficient detail to allow users to understand how a benchmark is provided and to assess its representativeness, its relevance to particular users and its appropriateness as a reference for financial instruments and contracts and the principle of proportionality. However, the ESMA draft regulatory technical standards shall not cover or apply to administrators of non-significant benchmarks.

ESMA shall submit those draft regulatory technical standards to the Commission by 1 April 2017.

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

4. ESMA may issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010, addressed to administrators of non-significant benchmarks to specify further the elements referred to in paragraph 3 of this Article.

Article 14

Reporting of infringements

1. An administrator shall establish adequate systems and effective controls to ensure the integrity of input data in order to be able to identify and report to the competent authority any conduct that may involve manipulation or attempted manipulation of a benchmark, under Regulation (EU) No 596/2014.

2. An administrator shall monitor input data and contributors in order to be able to notify the competent authority and provide all relevant information where the administrator suspects that, in relation to a benchmark, any conduct has taken place that may involve manipulation or attempted manipulation of the benchmark, under Regulation (EU) No 596/2014, including collusion to do so.

The competent authority of the administrator shall, where applicable, transmit such information to the relevant authority under Regulation (EU) No 596/2014.

▼B

3. Administrators shall have procedures in place for their managers, employees and any other natural persons whose services are placed at their disposal or under their control to report internally infringements of this Regulation.

▼M2

4. ESMA shall develop draft regulatory technical standards to specify the characteristics of the systems and controls referred to in paragraph 1.

ESMA shall submit those draft regulatory technical standards to the Commission by 1 October 2020.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first sub-paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

▼B

CHAPTER 3

Code of conduct and requirements for contributors

Article 15

Code of conduct

1. Where a benchmark is based on input data from contributors, its administrator shall develop a code of conduct for each benchmark clearly specifying contributors' responsibilities with respect to the contribution of input data and shall ensure that such code of conduct complies with this Regulation. The administrator shall be satisfied that contributors adhere to the code of conduct on a continuous basis and at least annually and in case of changes to it.

2. The code of conduct shall include at least the following elements:

(a) a clear description of the input data to be provided and the requirements necessary to ensure that input data is provided in accordance with Articles 11 and 14;

(b) identification of the persons that may contribute input data to the administrator and procedures to verify the identity of a contributor and any submitters, as well as authorisation of any submitters that contribute input data on behalf of a contributor;

(c) policies to ensure that a contributor provides all relevant input data;

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

(i) procedures for contributing input data, including requirements for the contributor to specify whether input data is transaction data and whether input data conforms to the administrator's requirements;

(ii) policies on the use of discretion in contributing input data;

(iii) any requirement for the validation of input data before it is provided to the administrator;

▼B

(iv) record-keeping policies;

(v) reporting requirements concerning suspicious input data;

(vi) requirements concerning the management of conflicts of interest.

3. Administrators may develop a single code of conduct for each family of benchmarks they provide.

4. In the event that a relevant competent authority, in the use of its powers referred to in Article 41, finds that there are elements of a code of conduct which do not comply with this Regulation, it shall notify the administrator concerned. The administrator shall adjust the code of conduct to ensure that it complies with this Regulation within 30 days of such a notification.

5. Within 15 working days from the date of application of the decision to include a critical benchmark in the list referred to in Article 20(1), 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 this Regulation. In the event that the relevant competent authority finds elements which do not comply with this Regulation, paragraph 4 of this Article shall apply.

6. ESMA shall develop draft regulatory technical standards to specify further the elements of the code of conduct referred to in paragraph 2 for different types of benchmarks, and in order to take account of developments in benchmarks and financial markets.

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

ESMA shall submit those draft regulatory technical standards to the Commission by 1 April 2017.

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 16

Governance and control requirements for supervised contributors

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 referred to in Article 15;

(b) the supervised contributor shall have in place a control framework that ensures the integrity, accuracy and reliability of input data and that input data is provided in accordance with this Regulation and the code of conduct referred to in Article 15.

▼B

2. A supervised contributor shall have in place 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 holding a position senior to that of the submitter;

(b) appropriate training for submitters, covering at least this Regulation and Regulation (EU) No 596/2014;

(c) measures for the management of conflicts of interest, including organisational separation of employees where appropriate and consideration of how to remove incentives, created by remuneration polices, to manipulate a benchmark;

(d) record-keeping, for an appropriate period of time, of communications in relation to provision of input data, of all information used to enable the contributor to make each submission, and of all existing or potential conflicts of interest including, but not limited to, the contributor's exposure to financial instruments which use a benchmark as a reference;

(e) record-keeping of internal and external audits.

3. Where input data relies on expert judgement, supervised contributors shall establish, in addition to the systems and controls referred to in paragraph 2, policies guiding any use of judgement or exercise of discretion and shall retain records of the rationale for any such judgement or discretion. Where proportionate, supervised contributors shall take into account the nature of the benchmark and its input data.

4. 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 paragraphs 2 and 3.

5. ESMA shall develop draft regulatory technical standards to specify further the requirements concerning governance, systems and controls, and policies set out in paragraphs 1, 2 and 3.

ESMA shall take into account the different characteristics of benchmarks and supervised contributors, in particular 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 supervised contributors, and the developments in benchmarks and financial markets in light of international convergence of supervisory practices in relation to benchmarks. However, the ESMA draft regulatory technical standards shall not cover or apply to supervised contributors of non-significant benchmarks.

ESMA shall submit those draft regulatory technical standards to the Commission by 1 April 2017.

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.

▼B

6. ESMA may issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010, addressed to supervised contributors to non-significant benchmarks to specify the elements referred to in paragraph 5 of this Article.

TITLE III

REQUIREMENTS FOR DIFFERENT TYPES OF BENCHMARKS

CHAPTER 1

Regulated-data benchmarks

Article 17

Regulated-data benchmarks

1. Article 11(1)(d) and (e), Article 11(2) and (3), Article 14(1) and (2), and Articles 15 and 16 shall not apply to the provision of and the contribution to regulated-data benchmarks. Article 8(1)(a) shall not apply to the provision of regulated-data benchmarks with reference to input data that are contributed entirely and directly as specified in point (24) of Article 3(1).

2. Articles 24 and 25 or Article 26 shall, as applicable, apply to the provision of, and the contribution to, regulated-data benchmarks that are used directly or indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance of investment funds, having a total value of up to EUR 500 billion, on the basis of all the range of maturities or tenors of the benchmark, where applicable.

CHAPTER 2

▼M3

Interest rate benchmarks and spot foreign exchange benchmarks

▼B

Article 18

Interest rate benchmarks

The specific requirements laid down in Annex I shall apply to the provision of, and contribution to, interest rate benchmarks in addition to, or as a substitute for, the requirements of Title II.

Articles 24, 25 and 26 shall not apply to the provision of, and contribution to, interest rate benchmarks.

▼M3

Article 18a

Spot foreign exchange benchmarks

1. The Commission may designate a spot foreign exchange benchmark that is administered by administrators located outside the Union where both of the following criteria are fulfilled:

▼M3

(a) the spot foreign exchange benchmark references a spot exchange rate of a third-country currency that is not freely convertible; and

(b) the spot foreign exchange benchmark is used on a frequent, systematic and regular basis to hedge against adverse foreign exchange rate movements.

2. By 31 December 2022, the Commission shall conduct a public consultation to identify spot foreign exchange benchmarks that fulfil the criteria laid down in paragraph 1.

3. By 15 June 2023, the Commission shall adopt a delegated act in accordance with Article 49 to create a list of spot foreign exchange benchmarks that fulfil the criteria laid down in paragraph 1 of this Article. The Commission shall update that list as appropriate.

▼B

CHAPTER 3

Commodity benchmarks

Article 19

Commodity benchmarks

1. The specific requirements laid down in Annex II shall apply instead of the requirements of Title II, with the exception of Article 10, to the provision of, and contribution to, commodity benchmarks, unless the benchmark in question is a regulated-data benchmark or is based on submissions by contributors the majority of which are supervised entities.

Articles 24, 25 and 26 shall not apply to the provision of, and contribution to, commodity benchmarks.

2. Where a commodity benchmark is a critical benchmark and the underlying asset is gold, silver or platinum, the requirements of Title II shall apply instead of Annex II.

▼M1

CHAPTER 3A

EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks

Article 19a

EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks

1. The requirements laid down in Annex III shall apply to the provision of, and contribution to, EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks, in addition to the requirements of Titles II, III and IV.

▼M1

2. The Commission is empowered to adopt delegated acts in accordance with Article 49 to supplement this Regulation by laying down the minimum standards for EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks to specify:

(a) the criteria for the choice of the underlying assets, including, where applicable, any criteria for excluding assets;

(b) the criteria and method for the weighting of the underlying assets in the benchmark;

(c) the determination of the decarbonisation trajectory for EU Climate Transition Benchmarks.

3. Benchmark administrators which provide an EU Climate Transition Benchmark or an EU Paris-aligned Benchmark shall comply with this Regulation by 30 April 2020.

Article 19b

Requirements for EU Climate Transition Benchmarks

Administrators of EU Climate Transition Benchmarks shall select, weight, or exclude underlying assets issued by companies that follow a decarbonisation trajectory by 31 December 2022, in accordance with the following requirements:

(i) the companies disclose measurable carbon emission reduction targets to be achieved within specific timeframes;

(ii) the companies disclose a reduction in carbon emissions which is disaggregated down to the level of relevant operating subsidiaries;

(iii) the companies disclose annual information on progress made towards those targets;

(iv) the activities relating to the underlying assets do not significantly harm other ESG objectives.

Article 19c

Exclusions for EU Paris-aligned Benchmarks

1. The Commission is empowered to adopt a delegated act in accordance with Article 49 in order to supplement this Regulation by identifying, in respect of EU Paris-aligned Benchmarks, the sectors to be excluded because they do not have measurable carbon emission reduction targets with specific deadlines that are aligned with the objectives of the Paris Agreement. The Commission shall adopt that delegated act by 1 January 2021 and update it every three years.

2. When drawing up the delegated act referred to in paragraph 1, the Commission shall take into account the work of the TEG.

▼M1

Article 19d

Endeavour to provide EU Climate Transition Benchmarks

By 1 January 2022, administrators which are located in the Union and which provide significant benchmarks determined on the basis of the value of one or more underlying assets or prices shall endeavour to provide one or more EU Climate Transition Benchmarks.

▼B

CHAPTER 4

Critical benchmarks

Article 20

Critical benchmarks

1. The Commission shall adopt implementing acts in accordance with the examination procedure referred to in Article 50(2) to establish and review at least every two years a list of benchmarks provided by administrators located within the Union which are critical benchmarks, provided that one of the following conditions is fulfilled:

(a) the benchmark is used directly or indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance of investment funds, having a total value of at least EUR 500 billion on the basis of all the range of maturities or tenors of the benchmark, where applicable;

(b) the benchmark is based on submissions by contributors the majority of which are located in one Member State and is recognised as being critical in that Member State in accordance with the procedure laid down in paragraphs 2, 3, 4 and 5 of this Article;

(c) the benchmark fulfils all of the following criteria:

(i) the benchmark is used directly or indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance of investment funds having a total value of at least EUR 400 billion on the basis of all the range of maturities or tenors of the benchmark, where applicable, but not exceeding the value provided for in point (a);

(ii) the benchmark has no, or very few, appropriate market-led substitutes;

(iii) in the event that the benchmark ceases to be provided, or is provided on the basis of input data no longer fully representative of the underlying market or economic reality or on the basis of unreliable input data, there would be significant and adverse impacts on market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in one or more Member States.

▼B

If a benchmark meets the criteria set out in point (c)(ii) and (iii) but does not meet the criterion set out in point (c)(i), the competent authorities of the Member States concerned together with the competent authority of the Member State where the administrator is established may agree that such benchmark should be recognised as critical under this subparagraph. In any case, the competent authority of the administrator shall consult the competent authorities of the Member States concerned. In the event of disagreement between the competent authorities, the competent authority of the administrator shall decide whether the benchmark should be recognised as critical under this subparagraph, taking into account the reasons for the disagreement. The competent authorities or, in the event of disagreement, the competent authority of the administrator, shall transmit the assessment to the Commission. After receiving the assessment, the Commission shall adopt an implementing act in accordance with this paragraph. In addition, in the event of disagreement, the competent authority of the administrator shall transmit its assessment to ESMA, which may publish an opinion.

▼M2

1a. Where ESMA considers that a benchmark fulfils all of the criteria set out in point (c) of paragraph 1, it shall submit a documented request to the Commission to recognise that benchmark as critical.

After receiving that documented request, the Commission shall adopt an implementing act in accordance with paragraph 1.

ESMA shall review its assessment of the criticality of the benchmark at least every two years and shall notify and transmit the assessment to the Commission.

▼B

2. Where the competent authority of a Member State referred to in point (b) of paragraph 1 considers that an administrator under its supervision provides a benchmark that should be recognised as critical, it shall notify ESMA and transmit to ESMA a documented assessment.

3. For the purposes of paragraph 2, the competent authority shall assess whether the cessation of the benchmark or its provision on the basis of input data or of a panel of contributors no longer representative of the underlying market or economic reality would have an adverse impact on market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in its Member State. The competent authority shall take into consideration in its assessment:

(a) the value of financial instruments and financial contracts that reference the benchmark and the value of investment funds referencing the benchmark for measuring their performance within the Member State and their relevance in terms of the total value of financial instruments and of financial contracts outstanding, and of the total value of investment funds, in the Member State;

(b) the value of financial instruments and financial contracts that reference the benchmark and the value of investment funds referencing the benchmark for measuring their performance within the Member State and their relevance in terms of the gross national product of the Member State;

▼B

(c) any other figure to assess on objective grounds the potential impact of the discontinuity or unreliability of the benchmark on market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in the Member State.

The competent authority shall review its assessment of the criticality of the benchmark at least every two years, and shall notify and transmit the new assessment to ESMA.

4. Within six weeks of receipt of the notification referred to in paragraph 2, ESMA shall issue an opinion on whether the assessment of the competent authority complies with the requirements of paragraph 3 and shall transmit such opinion to the Commission, together with the competent authority's assessment.

5. The Commission, after receiving the opinion referred to in paragraph 4, shall adopt implementing acts in accordance with paragraph 1.

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 49 in order to:

(a) specify how the nominal amount of financial instruments other than derivatives, the notional amount of derivatives and the net asset value of investment funds are to be assessed, including in the event of an indirect reference to a benchmark within a combination of benchmarks, in order to be compared with the thresholds referred to in paragraph 1 of this Article and in point (a) of Article 24(1);

(b) review the calculation method used to determine the thresholds referred to in paragraph 1 of this Article in the light of market, price and regulatory developments as well as the appropriateness of the classification of benchmarks with a total value of financial instruments, financial contracts, or investment funds referencing them that is close to the thresholds; such review shall take place at least every two years as from 1 January 2018;

(c) specify how the criteria referred to in point (c)(iii) of paragraph 1 of this Article are to be applied, taking into consideration any data which helps assess on objective grounds the potential impact of the discontinuity or unreliability of the benchmark on market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in one or more Member States.

Where applicable, the Commission shall take into account relevant market or technological developments.

Article 21

Mandatory administration of a critical benchmark

1. If an administrator of a critical benchmark intends to cease providing such benchmark, the administrator shall:

(a) immediately notify its competent authority; and

▼B

(b) within four weeks of such notification submit an assessment of how the benchmark:

(i) is to be transitioned to a new administrator; or

(ii) is to be ceased to be provided, taking into account the procedure established in Article 28(1).

During the period referred to in point (b) of the first subparagraph, the administrator shall not cease provision of the benchmark.

▼M2

2. Upon receipt of the assessment by the administrator referred to in paragraph 1, the competent authority shall:

(a) inform ESMA and the college established under Article 46;

(b) within four weeks following the receipt of that assessment, make its own assessment of how the benchmark is to be transitioned to a new administrator or be ceased to be provided, taking into account the procedure established in accordance with Article 28(1).

During the period referred to in point (b) of the first subparagraph, the administrator shall not cease the provision of the benchmark without the written consent of ESMA or the competent authority, where relevant.

▼B

3. Following completion of the assessment referred to in point (b) of paragraph 2, the competent authority shall have the power to compel the administrator to continue publishing the benchmark until such time as:

(a) the provision of the benchmark has been transitioned to a new administrator;

(b) the benchmark can be ceased to be provided in an orderly fashion; or

(c) the benchmark is no longer critical.

For the purposes of the first subparagraph, the period for which the competent authority may compel the administrator to continue to publish the benchmark shall not exceed 12 months.

▼M1

By the end of that period, the competent authority shall review its decision to compel the administrator to continue to publish the benchmark. The competent authority may, where necessary, extend that period by an appropriate period not exceeding 12 months. The maximum period of mandatory administration shall not exceed five years.

▼B

4. Without prejudice to paragraph 1, in the event that the administrator of a critical benchmark is to be wound down due to insolvency proceedings, the competent authority shall make an assessment of whether and how the critical benchmark can be transitioned to a new administrator or can cease to be provided in an orderly fashion, taking into account the procedure established in accordance with Article 28(1).

▼M2

5. ESMA shall develop draft regulatory technical standards to specify the criteria on which the assessment referred to in point (b) of paragraph 2 is to be based.

ESMA shall submit those draft regulatory technical standards to the Commission by 1 October 2020.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

▼B

Article 22

Mitigation of market power of critical benchmark administrators

Without prejudice to the application of Union competition law, when providing a critical benchmark, the administrator shall take adequate steps to ensure that licences of, and information relating to, the benchmark are provided to all users on a fair, reasonable, transparent and non-discriminatory basis.

Article 23

Mandatory contribution to a critical benchmark

1. This Article shall apply to critical benchmarks based on submissions by contributors the majority of which are supervised entities.

2. Administrators of one or more critical benchmarks shall, every two years, submit to their competent authority an assessment of the capability of each critical benchmark they provide to measure the underlying market or economic reality.

▼M2

3. A supervised contributor to a critical benchmark that intends to cease contributing input data shall promptly notify the administrator thereof in writing. The administrator shall thereupon inform without undue delay its competent authority.

The competent authority of the critical benchmark administrator shall inform the competent authority of that supervised contributor, and where applicable ESMA, thereof without undue delay. The administrator shall submit to its competent authority an assessment of the implications on the capability of the critical benchmark to measure the underlying market or economic reality, as soon as possible but no later than 14 days after the notification made by the supervised contributor.

4. Upon receipt of the assessment referred to in paragraphs 2 and 3 of this Article, the competent authority of the administrator shall, where applicable, promptly inform ESMA or the college established under Article 46 and shall on the basis of that assessment make its own assessment of the capability of the benchmark to measure the underlying market and economic reality, taking into account the administrator's procedure for cessation of the benchmark established in accordance with Article 28(1).

▼B

5. From the date on which the competent authority of the administrator is notified of the intention of a contributor to cease contributing input data and until such time as the assessment referred to in paragraph 4 is complete, it shall have the power to require the contributors which made the notification in accordance with paragraph 3 to continue contributing input data, in any event for a period of no more than four weeks, without imposing an obligation on supervised entities to either trade or commit to trade.

▼B

6. In the event that the competent authority, after the period specified in paragraph 5 and on the basis of its own assessment referred to in paragraph 4, considers that the representativeness of a critical benchmark is put at risk, it shall have the power to:

(a) require supervised entities selected in accordance with paragraph 7 of this Article, including entities that are not yet contributors to the relevant critical benchmark, to contribute input data to the administrator in accordance with the administrator's methodology, the code of conduct referred to in Article 15 and other rules. Such requirement shall be in place for an appropriate period of time not exceeding 12 months from the date on which the initial decision requiring mandatory contribution was taken pursuant to paragraph 5 or, for those entities that are not yet contributors, from the date on which the decision requiring mandatory contribution is taken under this point;

(b) extend the period of mandatory contribution by an appropriate period of time not exceeding 12 months, following a review under paragraph 9 of any measures adopted pursuant to point (a) of this paragraph;

(c) determine the form in which, and the time by which, any input data is to be contributed without imposing an obligation on supervised entities to either trade or commit to trade;

(d) require the administrator to change the methodology, the code of conduct referred to in Article 15 or other rules of the critical benchmark.

▼M1

The maximum period of mandatory contribution under points (a) and (b) of the first subparagraph shall not exceed five years.

▼B

7. For the purposes of paragraph 6, supervised entities that are to be required to contribute input data shall be selected by the competent authority of the administrator, with the close cooperation of the competent authorities of the supervised entities, on the basis of the size of the supervised entity's actual and potential participation in the market that the benchmark intends to measure.

8. The competent authority of a supervised contributor that has been required to contribute to a benchmark through measures taken in accordance with point (a), (b) or (c) of paragraph 6 shall cooperate with the competent authority of the administrator in the enforcement of such measures.

9. By the end of the period referred to in point (a) of the first subparagraph of paragraph 6, the competent authority of the administrator shall review the measures adopted under paragraph 6. It shall revoke any of them if it considers that:

(a) the contributors are likely to continue contributing input data for at least one year if the measure were revoked, which shall be evidenced by at least:

(i) 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 measure were revoked;

▼B

(ii) 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 contribution has been revoked;

(b) the provision of the benchmark is able to continue once the contributors mandated to contribute input data have ceased contributing;

(c) 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 transitioning to this benchmark; or

(d) no appropriate alternative contributors can be identified and the cessation of contributions from the relevant supervised entities would weaken the benchmark to such an extent to require the cessation of the benchmark.

▼M1

10. In the event that a critical benchmark is to be ceased to be provided, each supervised contributor to that benchmark shall contribute input data for a period of time determined by the competent authority, but not exceeding the maximum five year period laid down in the second subparagraph of paragraph 6.

▼B

11. The administrator shall notify the relevant competent authority in the event that any contributors breach the requirements set out in paragraph 6 as soon as reasonably possible.

12. In the event that a benchmark is recognised as critical in accordance with the procedure laid down in Article 20(2), (3), (4) and (5), the competent authority of the administrator shall have the power to require input data in accordance with paragraph 5, and points (a), (b) and (c) of paragraph 6, of this Article only from supervised contributors located in its Member State.

▼M3

CHAPTER 4A

Statutory replacement of a benchmark

Article 23a

Scope of the statutory replacement of a benchmark

This Chapter applies to:

(a) any contract, or any financial instrument as defined in Directive 2014/65/EU, that references a benchmark and is subject to the law of one of the Member States; and

(b) any contract, the parties to which are all established in the Union, that references a benchmark and that is subject to the law of a third country and where that law does not provide for the orderly wind-down of a benchmark.

▼M3

Article 23b

Replacement of a benchmark by Union law

1. This Article shall apply to:

(a) benchmarks designated as critical by an implementing act adopted pursuant to point (a) or (c) of Article 20(1);

(b) benchmarks based on the contribution of input data if their cessation or wind-down would significantly disrupt the functioning of financial markets in the Union; and

(c) third-country benchmarks if their cessation or wind-down would significantly disrupt the functioning of financial markets in the Union or pose a systemic risk to the financial system in the Union.

2. The Commission may designate one or more replacements for a benchmark provided that any of the following events has occurred:

(a) the competent authority for the administrator of that benchmark has issued a public statement, or has published information, in which it is announced that that benchmark no longer reflects the underlying market or economic reality; in the case of a benchmark designated as critical by an implementing act adopted pursuant to point (a) or (c) of Article 20(1), the competent authority shall make such an announcement only where, following the exercise of the powers set out in Article 23, the benchmark still does not reflect the underlying market or economic reality;

(b) the administrator of that benchmark, or a person acting on behalf of that administrator, has issued a public statement, or has published information, or such public statement has been made or such information has been published, in which it is announced that that administrator will commence the orderly wind-down of that benchmark or will cease to provide that benchmark or certain tenors or certain currencies for which that benchmark is calculated permanently or indefinitely, provided that, at the time of the issuance of the statement or the publication of the information, there is no successor administrator that will continue to provide that benchmark;

(c) the competent authority for the administrator of that benchmark or any entity with insolvency or resolution authority over such administrator has issued a public statement, or has published information, in which it is stated that the administrator will commence the orderly wind-down of that benchmark or will cease to provide that benchmark or certain tenors or certain currencies for which that benchmark is calculated permanently or indefinitely, provided that, at the time of the issuance of the statement or the publication of the information, there is no successor administrator that will continue to provide that benchmark; or

▼M3

(d) the competent authority for the administrator of that benchmark withdraws or suspends the authorisation in accordance with Article 35 or the recognition in accordance with Article 32(8) or requires the cessation of the endorsement in accordance with Article 33(6), provided that, at the time of the withdrawal or suspension or the cessation of endorsement, there is no successor administrator that will continue to provide that benchmark and its administrator will commence the orderly wind-down of that benchmark or will cease to provide that benchmark or certain tenors or certain currencies for which that benchmark is calculated permanently or indefinitely.

3. For the purposes of paragraph 2 of this Article, the replacement for a benchmark shall replace all references to that benchmark in contracts and financial instruments as referred to in Article 23a where those contracts and financial instruments contain:

(a) no fallback provision; or

(b) no suitable fallback provisions.

4. For the purpose of point (b) of paragraph 3, a fallback provision shall be deemed unsuitable if:

(a) it does not provide for a permanent replacement for the benchmark in cessation; or

(b) its application requires consent from third parties that has been denied; or

(c) it provides for a replacement for a benchmark which no longer reflects or significantly diverges from the underlying market or the economic reality that the benchmark in cessation is intended to measure, and its application could have an adverse impact on financial stability.

5. The replacement for a benchmark agreed as a contractual fallback rate no longer reflects or significantly diverges from the underlying market or the economic reality that the benchmark in cessation is intended to measure, and could have an adverse impact on financial stability, where:

(a) that has been established by the relevant national authority on the basis of a horizontal assessment of a specific type of contractual arrangement that has been performed following a motivated request of at least one interested party, and after having consulted the relevant stakeholders;

(b) following an assessment in accordance with point (a), one of the parties to the contract or financial instrument has objected to the contractually agreed fallback provision at the latest three months before the cessation of the benchmark; and

(c) following an objection pursuant to point (b), the parties to the contract or financial instrument have not agreed on an alternative replacement for the benchmark at the latest one working day before the cessation of that benchmark.

▼M3

6. For the purposes of point (c) of paragraph 4, the relevant national authority shall, without undue delay, inform the Commission and ESMA of its assessment referred to in point (a) of paragraph 5. Where entities in more than one Member State could be affected by the assessment, the relevant authorities of all those Member States shall conduct the assessment jointly.

7. Member States shall designate a relevant authority that is in the position to conduct the assessment referred to in point (a) of paragraph 5. Member States shall inform the Commission and ESMA of the designation of the relevant authorities by 14 August 2021.

8. The Commission shall adopt implementing acts to designate one or more replacements for a benchmark in accordance with the examination procedure referred to in Article 50(2) where any of the events referred to in paragraph 2 of this Article have occurred.

9. An implementing act as referred to in paragraph 8 shall include the following:

(a) the replacement or replacements for a benchmark;

(b) the spread adjustment, including the method for determining such spread adjustment, that is to be applied to the replacement for a benchmark in cessation on the date of the replacement for each particular term to account for the effects of the transition or change from the benchmark to be wound down to its replacement;

(c) the corresponding essential conforming changes that are associated with and reasonably necessary for the use or application of a replacement for a benchmark; and

(d) the date from which the replacement or replacements for a benchmark applies.

10. When adopting an implementing act as referred to in paragraph 8, the Commission shall take into account available recommendations on the replacement for a benchmark, the corresponding conforming changes and the spread adjustment made by the central bank responsible for the currency area in which the relevant benchmark is being wound down, or by the alternative reference rate working group operating under the auspices of the public authorities or the central bank. Before adopting the implementing act, the Commission shall conduct a public consultation and shall take into account the recommendations of other relevant stakeholders, including the competent authority of the benchmark administrator and ESMA.

11. Notwithstanding point (c) of paragraph (5) of this Article, a replacement for a benchmark designated by the Commission in accordance with paragraph 2 of this Article shall not apply where all parties or the required majority of parties to a contract or financial instrument referred to in Article 23a have agreed to apply a different replacement for a benchmark whether before or after the date of application of the implementing act referred to in paragraph 8 of this Article.

▼M3

Article 23c

Replacement of a benchmark by national law

1. The national competent authority of a Member State where the majority of contributors is located may designate one or more replacements for a benchmark as referred to in point (b) of Article 20(1), provided that any of the following events has occurred:

(a) the competent authority for the administrator of that benchmark has issued a public statement, or has published information, in which it is announced that that benchmark no longer reflects the underlying market or economic reality; the competent authority shall make such an announcement only where, following the exercise of the powers set out in Article 23, the benchmark still does not reflect the underlying market or economic reality;

(b) the administrator of that benchmark, or a person acting on behalf of that administrator, has issued a public statement, or has published information, or such public statement has been made or such information has been published, in which it is announced that that administrator will commence the orderly wind-down of that benchmark or will cease to provide that benchmark or certain tenors or certain currencies for which that benchmark is calculated permanently or indefinitely, provided that, at the time of the issuance of the statement or the publication of the information, there is no successor administrator that will continue to provide that benchmark;

(c) the competent authority for the administrator of that benchmark or any entity with insolvency or resolution authority over such administrator has issued a public statement, or has published information, in which it is stated that that administrator will commence the orderly wind-down of that benchmark or will cease to provide that benchmark or certain tenors or certain currencies for which that benchmark is calculated permanently or indefinitely, provided that, at the time of the issuance of the statement or the publication of the information, there is no successor administrator that will continue to provide that benchmark; or

(d) the competent authority for the administrator of that benchmark withdraws or suspends the authorisation in accordance with Article 35, provided that, at the time of the withdrawal or suspension, there is no successor administrator that will continue to provide that benchmark and its administrator will commence the orderly wind-down of that benchmark or will cease to provide that benchmark or certain tenors or certain currencies for which that benchmark is calculated permanently or indefinitely.

2. Where a Member State designates one or more replacements for a benchmark in accordance with paragraph 1, the competent authority of that Member State shall immediately notify the Commission and ESMA thereof.

▼M3

3. The replacement for a benchmark shall replace all references to that benchmark in contracts and financial instruments as referred to in Article 23a where both of the following conditions are fulfilled:

(a) those contracts or financial instruments reference the benchmark in cessation on the date on which the national law designating the replacement for a benchmark becomes applicable; and

(b) those contracts or financial instruments contain no fallback provision or contain a fallback provision that does not provide for a permanent replacement for the benchmark in cessation.

4. A replacement for a benchmark designated by a competent authority in accordance with paragraph 1 of this Article shall not apply where all parties or the required majority of the parties to a contract or financial instrument as referred to in Article 23a have agreed to apply a different replacement for a benchmark whether before or after the date of application of the relevant provision of national law.

▼B

CHAPTER 5

Significant benchmarks

Article 24

Significant benchmarks

1. A benchmark which does not fulfil any of the conditions laid down in Article 20(1) is significant when:

(a) it is used directly or indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance of investments funds having a total average value of at least EUR 50 billion on the basis of all the range of maturities or tenors of the benchmark, where applicable, over a period of six months; or

(b) it has no or very few appropriate market-led substitutes and, in the event that the benchmark ceases to be provided or is provided on the basis of input data no longer fully representative of the underlying market or economic reality or unreliable input data, there would be a significant and adverse impact on market integrity, financial stability, consumers, the real economy or the financing of households or businesses in one or more Member States.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 49 in order to review the calculation method used to determine the threshold referred to in point (a) of paragraph 1 of this Article in the light of market, price and regulatory developments as well as the appropriateness of the classification of benchmarks with a total value of financial instruments, financial contracts or investment funds referencing them that is close to that threshold. Such review shall take place at least every two years as from 1 January 2018.

3. An administrator shall immediately notify its competent authority when its significant benchmark falls below the threshold mentioned in point (a) of paragraph 1.

▼B

Article 25

Exemptions from specific requirements for significant benchmarks

1. An administrator may choose not to apply Article 4(2), points (c), (d) and (e) of Article 4(7), point (b) of Article 11(3) or Article 15(2) with respect to its significant benchmark where that administrator considers that the application of one or more of those provisions would be disproportionate taking into account the nature or impact of the benchmark or the size of the administrator.

2. In the event that an administrator chooses not to apply one or more of the provisions referred to in paragraph 1, it shall immediately notify the competent authority and provide it with all relevant information confirming the administrator's assessment that the application of one or more of those provisions would be disproportionate taking into account the nature or impact of the benchmarks or the size of the administrator.

3. A competent authority may decide that the administrator of a significant benchmark is nevertheless to apply one or more of the requirements laid down in Article 4(2), points (c), (d) and (e) of Article 4(7), point (b) of Article 11(3) and Article 15(2) if it considers that it would be appropriate taking into account the nature or the impact of the benchmarks or the size of the administrator. In its assessment, the competent authority shall, based on the information provided by the administrator, take into account the following criteria:

(a) the vulnerability of the benchmark to manipulation;

(b) the nature of the input data;

(c) the level of conflicts of interest;

(d) the degree of discretion of the administrator;

(e) the impact of the benchmark on markets;

(f) the nature, scale and complexity of the provision of the benchmark;

(g) the importance of the benchmark to financial stability;

(h) the value of financial instruments, financial contracts or investment funds that reference the benchmark;

(i) the administrator's size, organisational form or structure.

4. Within 30 days of receipt of a notification from an administrator under paragraph 2, the competent authority shall notify that administrator of its decision to apply an additional requirement pursuant to paragraph 3. In the event that the notification to the competent authority is made during the course of an authorisation or registration procedure, the deadlines set out in Article 34 shall apply.

▼B

5. When exercising its supervisory powers in accordance with Article 41, a competent authority shall regularly review whether its assessment pursuant to paragraph 3 of this Article is still valid.

6. If a competent authority finds, on reasonable grounds, that the information submitted to it pursuant to paragraph 2 of this Article is incomplete or that supplementary information is needed, the 30-day time limit referred to in paragraph 4 of this Article shall apply only from the date on which such complementary information is provided by the administrator, unless the deadlines of Article 34 apply pursuant to paragraph 4 of this Article.

7. Where an administrator of a significant benchmark does not comply with one or more of the requirements laid down in Article 4(2), points (c), (d) and (e) of Article 4(7), point (b) of Article 11(3) and Article 15(2), it shall publish and maintain a compliance statement that clearly states why it is appropriate for that administrator not to comply with those provisions.

8. ESMA shall develop draft implementing technical standards to develop a template for the compliance statement referred to in paragraph 7.

ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by 1 April 2017.

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 (EU) No 1095/2010.

9. ESMA shall develop draft regulatory technical standards to specify further the criteria referred to in paragraph 3.

ESMA shall submit those draft regulatory technical standards to the Commission by 1 April 2017.

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

CHAPTER 6

Non-significant benchmarks

Article 26

Non-significant benchmarks

1. An administrator may choose not to apply Articles 4(2), points (c), (d) and (e) of Article 4(7), Articles 4(8), 5(2), 5(3), 5(4), 6(1), 6(3), 6(5), 7(2), point (b) of Article 11(1), points (b) and (c) of Article 11(2), and Articles 11(3), 13(2), 14(2), 15(2), 16(2) and (3) with respect to its non-significant benchmarks.

▼B

2. An administrator shall immediately notify its competent authority when the administrator's non-significant benchmark exceeds the threshold mentioned in point (a) of Article 24(1). In that case, it shall comply with the requirements applicable to significant benchmarks within three months.

3. Where an administrator of a non-significant benchmark chooses not to apply one or more of the provisions referred to in paragraph 1, it shall publish and maintain a compliance statement which shall clearly state why it is appropriate for that administrator not to comply with those provisions. The administrator shall provide the compliance statement to its competent authority.

4. The relevant competent authority shall review the compliance statement referred to in paragraph 3 of this Article. The competent authority may also request additional information from the administrator in respect of its non-significant benchmarks in accordance with Article 41 and may require changes to ensure compliance with this Regulation.

5. ESMA shall develop draft implementing technical standards to develop a template for the compliance statement referred to in paragraph 3.

ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by 1 April 2017.

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 (EU) No 1095/2010.

▼M2

6. ESMA shall develop draft regulatory technical standards to specify the criteria under which competent authorities may require changes to the compliance statement as referred to in paragraph 4.

ESMA shall submit those draft regulatory technical standards to the Commission by 1 October 2020.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

▼B

TITLE IV

TRANSPARENCY AND CONSUMER PROTECTION

Article 27

Benchmark statement

1. Within two weeks of the inclusion of an administrator in the register referred to in Article 36, the administrator shall publish, by means that ensure fair and easy access, a benchmark statement for each benchmark or, where applicable, for each family of benchmarks, that may be used in the Union in accordance with Article 29.

Where that administrator begins providing a new benchmark or family of benchmarks that may be used in the Union in accordance with Article 29, the administrator shall publish, within two weeks and by means that ensure a fair and easy access, a benchmark statement for each new benchmark or, where applicable, family of benchmarks.

▼B

The administrator shall review and, where necessary, update the benchmark statement for each benchmark or family of benchmarks in the event of any changes to the information to be provided under this Article and at least every two years.

The benchmark statement shall:

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

(b) lay down technical specifications that clearly and unambiguously identify the elements of the calculation of the benchmark in relation to which discretion may be exercised, the criteria applicable to the exercise of such discretion and the position of the persons that can exercise discretion, and how such discretion may be subsequently evaluated;

(c) provide 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

(d) advise users that changes to, or the cessation of, the benchmark may have an impact upon the financial contracts and financial instruments that reference the benchmark or the measurement of the performance of investment funds.

2. A benchmark statement shall contain at least:

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

(b) the rationale for adopting the benchmark 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 minimum data needed to determine a benchmark, 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 judgement or discretion by the administrator or any contributors, to ensure consistency in the use of such judgement or discretion;

(e) the procedures which govern the determination of the benchmark 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;

(f) the procedures for dealing with errors in input data or in the determination of the benchmark, including when a re-determination of the benchmark is required; and

(g) the identification of potential limitations of the benchmark, including its operation in illiquid or fragmented markets and the possible concentration of inputs.

▼M1

2a. By 30 April 2020, for each of the requirements referred to in paragraph 2, the benchmark statement shall contain an explanation of how ESG factors are reflected in each benchmark or family of benchmarks provided and published. For those benchmarks or families of benchmarks that do not pursue ESG objectives, it shall be sufficient for benchmark administrators to clearly state in the benchmark statement that they do not pursue such objectives.

Where no EU Climate Transition Benchmark or EU Paris-aligned Benchmark is available in the portfolio of that individual benchmark administrator, or the individual benchmark administrator has no benchmarks that pursue ESG objectives or take into account ESG factors, this shall be stated in the benchmark statements of all benchmarks provided by that administrator. For significant equity and bond benchmarks, as well as for EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks, benchmark administrators shall disclose in their benchmark statements details on whether or not and to what extent a degree of overall alignment with the target of reducing carbon emissions or the attainment of the objectives of the Paris Agreement is ensured in accordance with the disclosure rules for financial products in Article 9(3) of Regulation (EU) 2019/2088 of the European Parliament and of the Council ([1]).

By 31 December 2021, benchmark administrators shall, for each benchmark or, where applicable, each family of benchmarks, with the exception of interest rate and foreign exchange benchmarks, include in their benchmark statement an explanation of how their methodology aligns with the target of carbon emission reductions or attains the objectives of the Paris Agreement.

2b. The Commission is empowered to adopt delegated acts in accordance with Article 49 to supplement this Regulation by further specifying the information to be provided in the benchmark statement pursuant to paragraph 2a of this Article, as well as the standard format to be used for references to ESG factors to enable market participants to make well-informed choices and to ensure the technical feasibility of compliance with that paragraph.

▼B

3. ESMA shall develop draft regulatory technical standards to specify further the contents of a benchmark statement and the cases in which an update of such statement is required.

ESMA shall distinguish between the different types of benchmarks and sectors as set out in this Regulation and shall take into account the principle of proportionality.

ESMA shall submit those draft regulatory technical standards to the Commission by 1 April 2017.

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.

([1]) Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).

▼B

Article 28

Changes to and cessation of a benchmark

1. An administrator shall publish, together with the benchmark statement referred to in Article 27, a procedure concerning the actions to be taken by the administrator in the event of changes to or the cessation of a benchmark which may be used in the Union in accordance with Article 29(1). The procedure may be drafted, where applicable, for families of benchmarks and shall be updated and published whenever a material change occurs.

▼M3

2. Supervised entities other than an administrator as referred to in paragraph 1 that use a benchmark shall produce and maintain robust written plans setting out the actions that they would take in the event that a benchmark materially changes or ceases to be provided. Where feasible and appropriate, such plans shall designate one or several alternative benchmarks that could be referenced to substitute the benchmarks that would no longer be provided, indicating the reasons for the suitability of such alternative benchmarks. The supervised entities shall, upon request and without undue delay, provide the relevant competent authority with those plans and any updates and shall reflect them in their contractual relationship with clients.

▼B

TITLE V

USE OF BENCHMARKS IN THE UNION

Article 29

Use of a benchmark

1. A supervised entity may use a benchmark or a combination of benchmarks in the Union if the benchmark is provided by an administrator located in the Union and included in the register referred to in Article 36 or is a benchmark which is included in the register referred to in Article 36.

▼M3

1a. A supervised entity may also use the replacement for a benchmark designated in accordance with Article 23b or Article 23c.

▼B

2. Where the object of a prospectus to be published under Directive 2003/71/EC or Directive 2009/65/EC is transferable securities or other investment products that reference a benchmark, the issuer, offeror, or person asking for admission to trade on a regulated market shall ensure that the prospectus also includes clear and prominent information stating whether the benchmark is provided by an administrator included in the register referred to in Article 36 of this Regulation.

Article 30

Equivalence

1. In order for a benchmark or a combination of benchmarks provided by an administrator located in a third country to be used in the Union in accordance with Article 29(1), the benchmark and the administrator shall be included in the register referred to in Article 36. The following conditions shall be complied with in order to be included in the register:

▼B

(a) an equivalence decision is adopted by the Commission in accordance with paragraph 2 or 3 of this Article;

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

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

(d) the cooperation arrangements referred to in paragraph 4 of this Article are operational.

2. The Commission may adopt an implementing 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 under this Regulation, in particular taking account of whether the legal framework and supervisory practice of a third country ensures compliance with the IOSCO principles for financial benchmarks or, where applicable, with the IOSCO principles for PRAs; and

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

▼M2

The Commission may subject the application of the implementing decision referred to in the first subparagraph to the effective fulfilment by that third country of any condition, aiming at ensuring equivalent supervisory and regulatory standards, set out in that implementing decision on an ongoing basis and to the ability of ESMA to effectively exercise the monitoring responsibilities referred to in Article 33 of Regulation (EU) No 1095/2010.

▼B

Such implementing decision shall be adopted in accordance with the examination procedure referred to in Article 50(2).

▼M2

2a. The Commission may adopt a delegated act in accordance with Article 49 to specify the conditions referred to in points (a) and (b) of the first subparagraph of paragraph 2 of this Article.

▼B

3. Alternatively, the Commission may adopt an implementing decision stating that:

(a) binding requirements in a third country with respect to specific administrators or specific benchmarks or families of benchmarks are equivalent to the requirements under this Regulation, in particular taking account of whether the legal framework and supervisory practice of a third country ensures compliance with the IOSCO principles for financial benchmarks or, where applicable, with the IOSCO principles for PRAs; and

▼B

(b) such specific administrators or specific benchmarks or families of benchmarks are subject to effective supervision and enforcement on an on-going basis in that third country.

▼M2

The Commission may subject the application of the implementing decision referred to in the first subparagraph to the effective fulfilment by that third country of any condition, aiming at ensuring equivalent supervisory and regulatory standards, set out in that implementing decision on an ongoing basis and to the ability of ESMA to effectively exercise the monitoring responsibilities referred to in Article 33 of Regulation (EU) No 1095/2010.

▼B

Such implementing decision shall be adopted in accordance with the examination procedure referred to in Article 50(2).

▼M2

3a. The Commission may adopt a delegated act in accordance with Article 49 to specify the conditions referred to in points (a) and (b) of the first subparagraph of paragraph 3 of this Article.

4. ESMA shall establish cooperation arrangements with the competent authorities of third countries whose legal framework and supervisory practices have been recognised as equivalent in accordance with paragraph 2 or 3 of this Article. When establishing those arrangements, ESMA shall take into account whether a third country in question is, in accordance with a delegated act adopted pursuant to Article 9 of Directive (EU) 2015/849 of the European Parliament and of the Council ([1]), on the list of jurisdictions which have strategic deficiencies in their national anti-money laundering and countering the financing of terrorism regimes that pose significant threats to the financial system of the Union. Such arrangements shall specify at least:

▼B

(a) the mechanism for the exchange of information between ESMA and the competent authorities of third countries concerned, including access to all relevant 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 in the third country;

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

5. ESMA shall develop draft regulatory technical standards to determine the minimum content of the cooperation arrangements referred to in paragraph 4 so as to ensure that the competent authorities and ESMA are able to exercise all their supervisory powers under this Regulation.

([1]) Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

▼B

ESMA shall submit those draft regulatory technical standards to the Commission by 1 April 2017.

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 31

Withdrawal of registration of an administrator located in a third country

1. ESMA shall withdraw the registration of an administrator located in a third country by removing that administrator from the register referred to in Article 36 where it has well-founded reasons, based on documented evidence, that the administrator:

(a) is acting in a manner which is clearly prejudicial to the interests of the users of its benchmarks or the orderly functioning of markets; or

(b) has seriously infringed the national legislation in the third country or other provisions applicable to it in the third country and on the basis of which the Commission has adopted the implementing decision in accordance with Article 30(2) or (3).

2. ESMA shall take a decision under paragraph 1 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 orderly 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.

3. ESMA shall inform the other competent authorities of any measure adopted in accordance with paragraph 1 without delay and shall publish its decision on its website.

Article 32

Recognition of an administrator located in a third country

▼M2

1. Until such time as an equivalence decision is adopted in accordance with Article 30(2) and (3), a benchmark provided by an administrator located in a third country may be used by supervised entities in the Union, provided that that administrator acquires prior recognition by ESMA in accordance with this Article.

▼B

2. An administrator located in a third country intending to obtain prior recognition as referred to in paragraph 1 of this Article shall comply with the requirements established in this Regulation, excluding Article 11(4) and Articles 16, 20, 21 and 23. The administrator may fulfil that condition by applying the IOSCO principles for financial benchmarks or the IOSCO principles for PRAs, as applicable, provided that such application is equivalent to compliance with the requirements established in this Regulation, excluding Article 11(4), and Articles 16, 20, 21 and 23.

▼M2

To determine whether the condition referred to in the first subparagraph is fulfilled and to assess compliance with the IOSCO principles for financial benchmarks or the IOSCO principles for PRAs, as applicable, ESMA may take into account an assessment by an independent external auditor or, a certification provided by the competent authority of the administrator in the third country where the administrator is located.

▼B

If, and to the extent that, an administrator is able to demonstrate that a benchmark it provides is a regulated-data benchmark or a commodity benchmark that is not based on submissions by contributors the majority of which are supervised entities, there shall be no obligation on the administrator to comply with requirements not applicable to the provision of regulated-data benchmarks and of commodity benchmarks as provided for in Article 17 and Article 19(1) respectively.

3. ►M2 An administrator located in a third country intending to obtain prior recognition as referred to in paragraph 1 shall have a legal representative. The legal representative shall be a natural or legal person located in the Union and expressly appointed by that administrator to act on behalf of that administrator with regard to the administrator's obligations under this Regulation. The legal representative shall, together with the administrator, perform the oversight function relating to the provision of benchmarks performed by the administrator under this Regulation and, in that respect, be accountable to ESMA. ◄

▼M2

_____

5. An administrator located in a third country intending to obtain prior recognition as referred to in paragraph 1 shall apply for recognition with ESMA. The applicant administrator shall provide all information necessary to satisfy ESMA that it has established, at the time of recognition, all the necessary arrangements to meet the requirements referred to in paragraph 2 and shall provide the list of its actual or prospective benchmarks which are intended for use in the Union and shall, where applicable, indicate the competent authority in the third country responsible for its supervision.

Within 90 working days of receipt of the application referred to in the first subparagraph of this paragraph, ESMA shall verify that the conditions laid down in paragraphs 2 and 3 are fulfilled.

Where ESMA considers that the conditions laid down in paragraphs 2 and 3 are not fulfilled, it shall refuse the recognition request and set out the reasons for that refusal. In addition, no recognition shall be granted unless the following additional conditions are fulfilled:

▼M2

(a) where an administrator located in a third country is subject to supervision, an appropriate cooperation arrangement is in place between ESMA and the competent authority of the third country where the administrator is located, in compliance with the regulatory technical standards adopted pursuant to Article 30(5), to ensure an efficient exchange of information that enables the competent authority of that third country to carry out its duties in accordance with this Regulation;

(b) the effective exercise by ESMA of its supervisory functions under this Regulation is neither prevented by the laws, regulations or administrative provisions of the third country where the administrator is located, nor, where applicable, by limitations in the supervisory and investigatory powers of that third country's competent authority.

———————

8. ESMA shall suspend or, where appropriate, withdraw the recognition granted in accordance with paragraph 5 where it has well-founded reasons, based on documented evidence, to consider that the administrator:

(a) is acting in a manner which is clearly prejudicial to the interests of users of its benchmarks or to the orderly functioning of markets;

(b) has seriously infringed the relevant requirements set out in this Regulation;

(c) made false statements or used any other irregular means to obtain the recognition.

▼B

9. ESMA may develop draft regulatory technical standards to determine the form and content of the application referred to in paragraph 5 and, in particular, the presentation of the information required in paragraph 6.

In the event that such draft regulatory technical standards are developed, ESMA shall submit them to the Commission.

Power is conferred on 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 33

Endorsement of benchmarks provided in a third country

1. An administrator located in the Union and authorised or registered in accordance with Article 34, or any other supervised entity located in the Union with a clear and well-defined role within the control or accountability framework of a third country administrator, which is able to monitor effectively the provision of a benchmark, may apply to the relevant competent authority to endorse a benchmark or a family of benchmarks provided in a third country for their use in the Union, provided that all of the following conditions are fulfilled:

▼B

(a) the endorsing administrator or other supervised entity has verified and is able to demonstrate on an on-going basis to its competent authority that the provision of the benchmark or family of benchmarks to be endorsed fulfils, on a mandatory or on a voluntary basis, requirements which are at least as stringent as the requirements of this Regulation;

(b) the endorsing administrator or other supervised entity has the necessary expertise to monitor effectively the activity of the provision of a benchmark in a third country and to manage the associated risks;

(c) there is an objective reason to provide the benchmark or family of benchmarks in a third country and for said benchmark or family of benchmarks to be endorsed for their use in the Union.

For the purpose of point (a), when assessing whether the provision of the benchmark or family of benchmarks to be endorsed fulfils requirements which are at least as stringent as the requirements of this Regulation, the competent authority may take into account whether the compliance of the provision of the benchmark or family of benchmarks with the IOSCO principles for financial benchmarks or the IOSCO principles for PRAs, as applicable, would be equivalent to compliance with the requirements of this Regulation.

2. An administrator or other supervised entity that makes an application for endorsement as referred to in paragraph 1 shall provide all information necessary to satisfy the competent authority that, at the time of application, all the conditions referred to in that paragraph are fulfilled.

3. Within 90 working days of receipt of the application for endorsement referred to in paragraph 1, the relevant competent authority shall examine the application and adopt a decision either to authorise the endorsement or to refuse it. An endorsed benchmark or an endorsed family of benchmarks shall be notified by the competent authority to ESMA.

4. An endorsed benchmark or an endorsed family of benchmarks shall be considered to be a benchmark or family of benchmarks provided by the endorsing administrator or other supervised entity. The endorsing administrator or other supervised entity shall not use the endorsement with the intention of avoiding the requirements of this Regulation.

5. An administrator or other supervised entity that has endorsed a benchmark or a family of benchmarks provided in a third country shall remain fully responsible for such a benchmark or family of benchmarks and for compliance with the obligations under this Regulation.

6. Where the competent authority of the endorsing administrator or other supervised entity has well-founded reasons to consider that the conditions laid down under paragraph 1 of this Article are no longer fulfilled, it shall have the power to require the endorsing administrator or other supervised entity to cease the endorsement and shall inform ESMA thereof. Article 28 shall apply in case of cessation of the endorsement.

▼B

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 49 concerning measures to determine the conditions under which the relevant competent authorities may assess whether there is an objective reason for the provision of a benchmark or family of benchmarks in a third country and their endorsement for their use in the Union. The Commission shall take into account elements such as the specificities of the underlying market or economic reality the benchmark intends to measure, the need for proximity of the provision of the benchmark to such market or economic reality, the need for proximity of the provision of the benchmark to contributors, the material availability of input data due to different time zones, and specific skills required in the provision of the benchmark.

TITLE VI

AUTHORISATION, REGISTRATION AND SUPERVISION OF ADMINISTRATORS

CHAPTER 1

Authorisation and registration

Article 34

Authorisation and registration of an administrator

1. A natural or legal person located in the Union that intends to act as an administrator shall apply to the competent authority designated under Article 40 of the Member State in which that person is located in order to receive:

(a) authorisation if it provides or intends to provide indices which are used or intended to be used as benchmarks within the meaning of this Regulation;

(b) registration if it is a supervised entity, other than an administrator, that provides or intends to provide indices which are used or intended to be used as benchmarks within the meaning of this Regulation, on condition that the activity of provision of a benchmark is not prevented by the sectoral discipline applying to the supervised entity and that none of the indices provided would qualify as a critical benchmark; or

(c) registration if it provides or intends to provide only indices which would qualify as non-significant benchmarks.

▼M2

1a. Where one or more of the indices provided by the person referred to in paragraph 1 would qualify as critical benchmarks as referred to in points (a) and (c) of Article 20(1), the application shall be addressed to ESMA.

▼B

2. An authorised or registered administrator shall comply at all times with the conditions laid down in this Regulation and shall notify the competent authority of any material changes thereof.

▼B

3. The application referred to in paragraph 1 shall be made within 30 working days of any agreement entered into by a supervised entity to use an index provided by the applicant as a reference to a financial instrument or financial contract or to measure the performance of an investment fund.

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

5. 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, the applicant shall submit the additional information required by the relevant competent authority. The time limit referred to in this paragraph shall apply from the date on which such additional information is provided by the applicant.

6. The relevant competent authority shall:

(a) examine the application for authorisation and adopt a decision to authorise or refuse to authorise the applicant within four months of receipt of a complete application;

(b) examine the application for registration and adopt a decision to register or refuse to register the applicant within 45 working days of receipt of a complete application.

Within five working days of the adoption of a decision referred to in the first subparagraph, the competent authority shall notify it to the applicant. Where the competent authority refuses to authorise or to register the applicant, it shall give reasons for its decision.

7. The competent authority shall notify ESMA of any decision to authorise or to register an applicant within five working days of the date of adoption of said decision.

8. ESMA shall develop draft regulatory technical standards to specify further the information to be provided in the application for authorisation and in the application for registration, taking into account that authorisation and registration are distinct processes where authorisation requires a more extensive assessment of the administrator's application, the principle of proportionality, the nature of the supervised entities applying for registration under point (b) of paragraph 1 and the costs to the applicants and competent authorities.

ESMA shall submit those draft regulatory technical standards to the Commission by 1 April 2017.

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 35

Withdrawal or suspension of authorisation or registration

1. A competent authority may withdraw or suspend the authorisation or registration of an administrator where the administrator:

▼B

(a) expressly renounces the authorisation or registration or has provided no benchmarks for the preceding 12 months;

(b) has obtained the authorisation or registration, or has endorsed a benchmark, by making false statements or by any other irregular means;

(c) no longer meets the conditions under which it was authorised or registered; 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 of the adoption of said decision.

ESMA shall promptly update the register provided for in Article 36.

3. Following the adoption of a decision to suspend the authorisation or registration of an administrator, and where cessation of the benchmark would result in a force majeure event, or frustrate or otherwise breach the terms of any financial contract or financial instrument, or the rules of any investment fund, which references that benchmark, as specified in the delegated act adopted pursuant to Article 51(6), the provision of the benchmark in question may be permitted by the relevant competent authority of the Member State where the administrator is located until the decision of suspension has been withdrawn. During that period of time, the use of such benchmark by supervised entities shall be permitted only for financial contracts, financial instruments and investment funds that already reference the benchmark.

4. Following the adoption of a decision to withdraw the authorisation or registration of an administrator, Article 28(2) shall apply.

Article 36

Register of administrators and benchmarks

1. ESMA shall establish and maintain a public register that contains the following information:

(a) the identities of the administrators authorised or registered pursuant to Article 34 and the competent authorities responsible for the supervision thereof;

(b) the identities of administrators that comply with the conditions laid down in Article 30(1), the list of benchmarks referred to in point (c) of Article 30(1) and the third country competent authorities responsible for the supervision thereof;

(c) the identities of the administrators that acquired recognition in accordance with Article 32, the list of benchmarks referred to in Article 32(7) and, where applicable, the third country competent authorities responsible for the supervision thereof;

▼B

(d) the benchmarks that are endorsed in accordance with the procedure laid down in Article 33, the identities of their administrators, and the identities of the endorsing administrators or endorsing supervised entities.

2. The register referred to in paragraph 1 shall be publicly accessible on the website of ESMA and shall be updated promptly, as necessary.

CHAPTER 2

Supervisory cooperation

Article 37

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 with its prior consent.

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.

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 38

Disclosure of information from another Member State

A 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) such disclosure is necessary for legal proceedings.

Article 39

Cooperation on on-site inspections and investigations

1. A competent authority may request the assistance of another competent authority with regard to on-site inspections or investigations. The competent authority receiving the request shall cooperate to the extent possible and appropriate.

2. A competent authority making a 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.

▼B

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 the on-site inspection or investigation;

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

CHAPTER 3

Role of competent authorities

▼M2

Article 40

Competent authorities

1. For the purposes of this Regulation, ESMA shall be the competent authority for:

(a) administrators of critical benchmarks as referred to in points (a) and (c) of Article 20(1);

(b) administrators of the benchmarks referred to in Article 32.

2. Each Member State shall designate the relevant competent authority responsible for carrying out the duties under this Regulation and shall inform the Commission and ESMA thereof.

3. A Member State that designates more than one competent authority in accordance with paragraph 2 shall clearly determine the respective roles of those competent authorities and shall designate a single authority to be responsible for coordinating the cooperation and the exchange of information with the Commission, ESMA and other Member States' competent authorities.

4. ESMA shall publish on its website a list of the competent authorities designated in accordance with paragraphs 2 and 3.

▼B

Article 41

Powers of competent authorities

▼M2

1. In order to fulfil their duties under this Regulation, competent authorities referred to in Article 40(2) shall have, in conformity with national law, at least the following supervisory and investigatory powers:

▼B

(a) 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 involved in the provision of, and contribution to, a benchmark, including any service provider to which functions, services or activities in the provision of a benchmark have been outsourced as provided for in Article 10, as well as their principals, and if necessary, summon and question any such person with a view to obtaining information;

▼B

(c) request, in relation to commodity benchmarks, information from contributors on related spot markets according, where applicable, to standardised formats and reports on transactions, and 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 legal persons, without prejudice to Regulation (EU) No 596/2014, 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) require temporary cessation of any practice that the competent authority considers contrary to this Regulation;

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

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

▼M2

2. The competent authorities referred to in Article 40(2) shall exercise their functions and powers referred to in paragraph 1 of this Article and the powers to impose sanctions referred to in Article 42 in accordance with their national legal frameworks, in any of the following ways:

▼B

(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.

▼B

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. An administrator or any other supervised entity making information available to a competent authority in accordance with paragraph 1 shall not be considered to be in breach of any restriction on disclosure of information posed by any contractual, legislative, regulatory or administrative provision.

Article 42

Administrative sanctions and other administrative measures

▼M1

1. Without prejudice to the supervisory powers of competent authorities in accordance with Article 41, and the right of Member States to provide for and impose criminal sanctions, Member States shall, in conformity with national law, provide for competent authorities to have the power to impose appropriate administrative sanctions and other administrative measures in relation to at least the following infringements:

(a) any infringement of Article 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19a, 19b, 19c, 21, 23, 24, 25, 26, 27, 28, 29 or 34 where they apply; and

(b) any failure to cooperate or comply in an investigation or with an inspection or request covered by Article 41.

▼B

Those administrative sanctions and other administrative measures shall be effective, proportionate and dissuasive.

2. In the event of an infringement referred to in paragraph 1, Member States shall, in conformity with national law, confer on competent authorities the power to impose at least the following administrative sanctions and other administrative measures:

(a) an order requiring the administrator or supervised entity responsible for the infringement to cease the conduct and to desist from repeating that conduct;

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

(c) a public warning which indicates the administrator or supervised entity responsible and the nature of the infringement;

(d) withdrawal or suspension of the authorisation or the registration of an administrator;

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

▼B

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

(i) for infringements of Articles 4, 5, 6, 7, 8, 9, 10, points (a), (b), (c) and (e) of Article 11(1), Article 11(2) and (3), and Articles 12, 13,14, 15, 16, 21, 23, 24, 25, 26, 27, 28, 29 and 34, EUR 500 000 or in the Member States whose official currency is not the euro, the corresponding value in the national currency on 30 June 2016; or

(ii) for infringements of point (d) of Article 11(1) or of Article 11(4), EUR 100 000 or in the Member States whose official currency is not the euro, the corresponding value in the national currency on 30 June 2016;

(h) in respect of a legal person, maximum administrative pecuniary sanctions of at least:

(i) for infringements of Articles 4, 5, 6, 7, 8, 9, 10, points (a), (b), (c) and (e) of Article 11(1), Article 11(2) and (3), and Articles 12, 13,14, 15, 16, 21, 23, 24, 25, 26, 27, 28, 29 and 34, either EUR 1 000 000 or, in the Member States whose official currency is not the euro, the corresponding value in the national currency on 30 June 2016, or 10 % of its total annual turnover according to the last available accounts approved by the management body, whichever is the higher; or

(ii) for infringements of point (d) of Article 11(1) or of Article 11(4), either EUR 250 000 or, in the Member States whose official currency is not the euro, the corresponding value in the national currency on 30 June 2016, or 2 % of its total annual turnover according to the last available accounts approved by the management body, whichever is the higher.

For the purposes of point (h)(i) and (ii), where the legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts in accordance with Directive 2013/34/EU of the European Parliament and of the Council ([1]), the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with Council Directive 86/635/EEC ([2]) for banks and Council Directive 91/674/EEC ([3]) 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 1 January 2018, Member States shall notify the rules regarding paragraphs 1 and 2 to the Commission and ESMA.

([1]) Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

([2]) Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (OJ L 372, 31.12.1986, p. 1).

([3]) Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings (OJ L 374, 31.12.1991, p. 7).

▼B

Member States may decide not to lay down rules for administrative sanctions as provided for in paragraph 1 where the infringements referred to in that paragraph are subject to criminal sanctions under their national law. In that case, Member States shall communicate to the Commission and ESMA the relevant criminal law provisions along with the notification referred to in the first subparagraph of this paragraph.

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 powers to impose sanctions in addition to those referred to in paragraph 1 and may provide for higher levels of sanctions than those established in paragraph 2.

Article 43

Exercise of supervisory powers and imposition of sanctions

▼M2

1. Member States shall ensure that, when determining the type and level of administrative sanctions and other administrative measures, competent authorities that they have designated in accordance with Article 40(2) take into account all relevant circumstances, including where appropriate:

▼B

(a) the gravity and duration of the infringement;

(b) the criticality of the benchmark to financial stability and the real economy;

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

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

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

(f) 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;

(g) previous infringements by the person concerned;

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

2. In the exercise of their powers to impose administrative sanctions and other administrative measures under Article 42, competent authorities shall cooperate closely to ensure that the supervisory and investigative powers and administrative sanctions and other administrative measures 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, including pecuniary sanctions, and other administrative measures to cross-border cases.

▼M2

Article 44

Obligation to cooperate

1. Member States that have chosen to lay down criminal sanctions for infringements of the provisions referred to in Article 42 shall ensure that appropriate measures are in place so that the competent authorities designated in accordance with Article 40(2) and (3) have all the necessary powers to liaise with judicial authorities within their jurisdiction to receive specific information relating to criminal investigations or proceedings commenced for possible infringements of this Regulation. Those competent authorities shall provide that information to other competent authorities and to ESMA.

2. Competent authorities designated in accordance with Article 40(2) and (3) shall assist other competent authorities and ESMA. In particular, they shall exchange information and cooperate in any investigation or supervisory activities. Competent authorities may also cooperate with other competent authorities to facilitate the recovery of pecuniary sanctions.

▼B

Article 45

Publication of decisions

1. Subject to paragraph 2, a competent authority shall publish any decision imposing an administrative sanction or other administrative measure in relation to infringements of this Regulation on its official website immediately after the person subject to that decision has been informed of that decision. Such publication shall include at least information on the type and nature of the infringement and the identity of the persons subject to the decision.

The first subparagraph does not apply to decisions imposing measures that are of an investigatory nature.

2. Where a competent authority considers that the publication of the identity of the legal person or of the personal data of a natural person, would be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data, or where such publication would jeopardise the stability of financial markets or an on-going investigation, it shall do any of the following:

(a) defer publication of the decision until such time as the reasons for that deferral cease to exist;

(b) publish the decision on an anonymous basis in accordance with national law where such anonymous publication ensures an effective protection of the personal data concerned;

(c) not publish the decision at all in the event that the competent authority is of the opinion that publication in accordance with point (a) or (b) will be insufficient to ensure:

(i) that the stability of financial markets is not jeopardised; or

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

▼B

Where a competent authority decides to publish a decision on an anonymous basis as referred to in point (b) of the first subparagraph, it may postpone the publication of the relevant data for a reasonable period of time where it is foreseeable that the reasons for anonymous publication shall cease to exist during that period.

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

4. The competent authority shall ensure that any decision that is published in accordance with this Article shall remain accessible on its 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.

▼M2

5. Member States shall provide ESMA with aggregated information regarding all administrative sanctions and other administrative measures imposed pursuant to Article 42 on an annual basis. That obligation shall not apply to measures of an investigatory nature. ESMA shall publish that information in an annual report, together with aggregated information on all administrative sanctions and other administrative measures it has imposed pursuant to Article 48f.

▼B

Where Member States have chosen, in accordance with Article 42, to lay down criminal sanctions for infringements of the provisions referred to in that Article, their competent authorities shall annually provide ESMA with anonymised and aggregated data regarding all criminal investigations undertaken and criminal sanctions imposed. ESMA shall publish data on criminal sanctions imposed in an annual report.

Article 46

Colleges

▼M2

1. Within 30 working days from the inclusion of a benchmark referred to in points (a) and (c) of Article 20(1) in the list of critical benchmarks, with the exception of benchmarks where the majority of contributors are non-supervised entities, the competent authority of the administrator shall establish a college and lead the college.

2. The college shall comprise representatives of the competent authority of the administrator, ESMA, unless it is the competent authority of the administrator, and the competent authorities of supervised contributors.

▼B

3. Competent authorities of other Member States shall have the right to be members of the college where, if the critical benchmark in question were to cease to be provided, it would have a significant adverse impact on the market integrity, financial stability, consumers, real economy, or financing of households and businesses of those Member States.

▼B

Where a competent authority intends to become a member of a college, it shall submit a request to the competent authority of the administrator containing evidence that the requirements of the first subparagraph of this paragraph 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 9.

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

Where ESMA acts in accordance with Article 17(6) of Regulation (EU) No 1095/2010 regarding a critical benchmark, it shall ensure appropriate exchange of information and cooperation with the other members of the college.

5. The competent authority of an 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.

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

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

(a) the information to be exchanged between competent authorities;

(b) the decision-making process between the competent authorities and the time frame within which each decision has to be taken;

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

(d) the cooperation to be provided under Article 23(7) and (8).

7. The competent authority of an administrator shall give due consideration to any advice provided by ESMA concerning the written arrangements under paragraph 6 before agreeing their final text. The written 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 arrangements to the members of the college and to ESMA.

8. Before taking any measures referred to in Article 23(6), (7) and (9), and Articles 34, 35 and 42, the competent authority of an administrator shall consult the members of the college. The members of the college shall do everything reasonable within their power to reach an agreement within the time frame specified in the written arrangements referred to in paragraph 6 of this Article.

▼B

Any decision of the competent authority of the administrator to take such measures shall take into account the impact on the other Member States concerned, in particular the potential impact on the stability of their financial systems.

With regard to the decision to withdraw the authorisation or registration of an administrator in accordance with Article 35, whenever the cessation of a benchmark would result in a force majeure event, frustrate or otherwise breach the terms of any financial contract or financial instrument, or the rules of any investment fund, which references that benchmark in the Union, within the meaning specified by the Commission in any delegated act adopted pursuant to Article 51(6), the competent authorities within the college shall consider whether to adopt measures to mitigate the effects referred to in this paragraph, including:

(a) a change to the code of conduct referred to in Article 15, the methodology or other rules of the benchmark;

(b) a transitional period, during which the procedures envisaged under Article 28(2) shall apply.

9. In the absence of agreement between the members of a college, competent authorities 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 reach an agreement on the matters set out in paragraph 6;

(d) where there is a disagreement concerning the measures to be taken in accordance with Articles 34, 35 and 42;

(e) where there is a disagreement concerning the measures to be taken in accordance with Article 23(6);

(f) where there is a disagreement concerning the measures to be taken in accordance with the third subparagraph of paragraph 8 of this Article.

10. In the situations referred to in points (a), (b), (c), (d) and (f) of paragraph 9, if the issue is not settled within 30 days after referral to ESMA, the competent authority of an administrator shall take the final decision and provide a detailed explanation of its decision in writing to the competent authorities referred to in that paragraph and to ESMA.

The period of time referred to in point (a) of Article 34(6) shall be suspended from the date of referral to ESMA until such time as a decision is taken in accordance with the first subparagraph of this paragraph.

Where ESMA considers that the competent authority of the administrator has taken any measures referred to in paragraph 8 of this Article which may not be in conformity with Union law it shall act in accordance with Article 17 of Regulation (EU) No 1095/2010.

▼B

11. In the situation referred to in point (e) of paragraph 9 of this Article, and 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.

The power of the competent authority of an administrator under Article 23(6) may be exercised until such time as ESMA publishes its decision.

Article 47

Cooperation with ESMA

▼M2

1. The competent authorities referred to in Article 40(2) shall cooperate with ESMA for the purposes of this Regulation, in accordance with Regulation (EU) No 1095/2010.

2. The competent authorities referred to in Article 40(2) shall, without undue delay, provide ESMA with all information necessary to carry out its duties, in accordance with Article 35 of Regulation (EU) No 1095/2010.

▼B

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 1 April 2017.

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 (EU) No 1095/2010.

Article 48

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 by virtue of provisions laid down by Union or national law.

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

▼M2

CHAPTER 4

ESMA powers and competences

Section 1

Competences and procedures

Article 48a

Exercise of the powers by ESMA

The powers conferred on ESMA, on any official of ESMA or on any other person authorised by ESMA by Articles 48b to 48d shall not be used to require the disclosure of information or documents that are subject to legal privilege.

Article 48b

Request for information

1. ESMA may by simple request or by decision require the following persons to provide all necessary information to enable ESMA to carry out its duties under this Regulation:

(a) persons involved in the provision of benchmarks, as referred to in Article 40(1);

(b) third parties to whom the persons referred to in point (a) have outsourced functions or activities in accordance with Article 10;

(c) persons otherwise closely and substantially related or connected to the persons referred to in point (a).

In accordance with Article 35 of Regulation (EU) No 1095/2010 and at the request of ESMA, competent authorities shall submit that request for information to contributors to critical benchmarks referred to in points (a) and (c) of Article 20(1) of this Regulation and shall share the information received without undue delay with ESMA.

2. Any simple request for information as referred to paragraph 1 shall:

(a) refer to this Article as the legal basis of that request;

(b) state the purpose of that request;

(c) specify what information is required;

(d) include a time limit within which the information is to be provided;

(e) include a statement that there is no obligation on the person from whom the information is requested to provide that information but that in the event of a voluntary reply to the request, the information provided must not be incorrect or misleading;

▼M2

(f) indicate the amount of the fine to be imposed in accordance with Article 48f where information provided is incorrect or misleading.

3. When requiring to supply information under paragraph 1 by decision, ESMA shall:

(a) refer to this Article as the legal basis of that request;

(b) state the purpose of that request;

(c) specify what information is required;

(d) set a time limit within which the information is to be provided;

(e) indicate the periodic penalty payments provided for in Article 48g where the required information is incomplete;

(f) indicate the fine provided for in Article 48f, where the answers to the questions asked are incorrect or misleading;

(g) indicate the right to appeal the decision before ESMA's Board of Appeal and to have the decision reviewed by the Court of Justice of the European Union (Court of Justice) in accordance with Article 48k of this Regulation and Articles 60 and 61 of Regulation (EU) No 1095/2010.

4. The persons referred to in paragraph 1 or their representatives and, in the case of legal persons or associations having no legal personality, the persons authorised to represent them by law or by their constitution, shall supply the information requested. Lawyers duly authorised to act may supply the information on behalf of their clients. The latter shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.

5. ESMA shall, without undue delay, send a copy of the simple request or of its decision to the competent authority of the Member State of the persons referred to in paragraph 1.

Article 48c

General investigations

1. In order to carry out its duties under this Regulation, ESMA may conduct necessary investigations of the persons referred to in Article 48b(1). To that end, the officials and other persons authorised by ESMA shall be empowered to:

(a) examine any records, data, procedures and any other material relevant to the execution of its tasks, irrespective of the medium on which they are stored;

(b) take or obtain certified copies of or extracts from such records, data, procedures and other material;

(c) summon and ask any of those persons or their representatives, or staff, for oral or written explanations on facts or documents relating to the subject matter and purpose of the inspection, and to record the answers;

▼M2

(d) interview any other natural or legal person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation;

(e) request records of telephone and data traffic.

2. The officials and other persons authorised by ESMA for the purposes of the investigations referred to in paragraph 1 shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the investigation. That authorisation shall indicate the periodic penalty payments provided for in Article 48g where the production of the required records, data, procedures or any other material, or the answers to questions asked to the persons referred to in Article 48b(1) are not provided or are incomplete, and the fines provided for in Article 48f, where the answers to questions asked to those persons are incorrect or misleading.

3. The persons referred to in Article 48b(1) are required to submit to investigations launched on the basis of a decision of ESMA. The decision shall specify the subject matter and purpose of the investigation, the periodic penalty payments provided for in Article 48g, the legal remedies available under Regulation (EU) No 1095/2010 and the right to have the decision reviewed by the Court of Justice.

4. In good time before an investigation referred to in paragraph 1, ESMA shall inform the competent authority of the Member State where the investigation is to be carried out of the investigation and of the identity of the authorised persons. Officials of the competent authority concerned shall, at the request of ESMA, assist those authorised persons in carrying out their duties. Officials of the competent authority concerned may attend the investigations upon request.

5. If a request for records of telephone or data traffic referred to in point (e) of paragraph 1 requires authorisation from a national judicial authority according to applicable national law, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

6. Where a national judicial authority receives an application for the authorisation of a request for records of telephone or data traffic referred to in point (e) of paragraph 1 that authority shall verify the following:

(a) the decision referred to in paragraph 3 is authentic;

(b) any measures to be taken are proportionate and not arbitrary or excessive.

For the purposes of point (b), the national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the investigation or demand that it be provided with the information on ESMA's file. The lawfulness of ESMA's decision shall be subject to review only by the Court of Justice following the procedure set out in Article 61 of Regulation (EU) No 1095/2010.

▼M2

Article 48d

On-site inspections

1. In order to carry out its duties under this Regulation, ESMA may conduct all necessary on-site inspections at any business premises of the persons referred to in Article 48b(1).

2. The officials and other persons authorised by ESMA to conduct an on-site inspection may enter any business premises of the persons subject to an investigation decision adopted by ESMA and shall have all the powers stipulated in Article 48c(1). They shall have the power to seal any business premises and books or records for the period of, and to the extent necessary for, the inspection.

3. In sufficient time before the inspection, ESMA shall give notice of the inspection to the competent authority of the Member State where the inspection is to be conducted. Where the proper conduct and efficiency of the inspection so require, ESMA, after informing the relevant competent authority, may carry out the on-site inspection without prior notice. Inspections in accordance with this Article shall be conducted provided that the relevant authority has confirmed that it does not object to those inspections.

4. The officials and other persons authorised by ESMA to conduct an on-site inspection shall exercise their powers upon production of a written authorisation, specifying the subject matter and purpose of the inspection and the periodic penalty payments provided for in Article 48g where the persons concerned do not submit to the inspection.

5. The persons referred to in Article 48b(1) shall submit to on-site inspections ordered by a decision of ESMA. That decision shall specify the subject matter and purpose of the inspection, the date on which it is to begin and indicate the periodic penalty payments provided for in Article 48g, the legal remedies available under Regulation (EU) No 1095/2010 as well as the right to have the decision reviewed by the Court of Justice.

6. Officials of, as well as those authorised or appointed by, the competent authority of the Member State where the inspection is to be conducted, shall, at the request of ESMA, actively assist the officials and other persons authorised by ESMA. Officials of that competent authority may also attend the on-site inspections upon request.

7. ESMA may also require competent authorities to carry out specific investigatory tasks and on-site inspections as provided for in this Article and in Article 48c(1) on its behalf. To that end, competent authorities shall enjoy the same powers as ESMA as set out in this Article and in Article 48c(1).

8. Where the officials and other accompanying persons authorised by ESMA find that a person opposes an inspection ordered pursuant to this Article, the competent authority of the Member State concerned shall afford them the necessary assistance, requesting, where appropriate, the assistance of the police or of an equivalent enforcement authority, to enable them to conduct their on-site inspection.

▼M2

9. If the on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7 requires authorisation by a national judicial authority according to the applicable national law, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

10. Where a national judicial authority receives an application for the authorisation of an on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7, that authority shall verify the following:

(a) the decision adopted by ESMA referred to in paragraph 5 is authentic;

(b) any measures to be taken are proportionate and not arbitrary or excessive.

For the purposes of point (b), the national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity of the investigation or demand that it be provided with the information on ESMA's file. The lawfulness of ESMA's decision shall be subject to review only by the Court of Justice following the procedure set out in Article 61 Regulation (EU) No 1095/2010.

Section 2

Administrative sanctions and other administrative measures

Article 48e

Supervisory measures by ESMA

1. Where, in accordance with Article 48i(5), ESMA finds that a person has committed one of the infringements listed in point (a) of Article 42(1), it shall take one or more of the following actions:

(a) adopt a decision requiring the person to bring the infringement to an end;

(b) adopt a decision imposing fines pursuant to Article 48f;

(c) issue public notices.

2. When taking the actions referred to in paragraph 1, ESMA shall take into account the nature and seriousness of the infringement, having regard to the following criteria:

(a) the duration and frequency of the infringement;

(b) whether financial crime has been occasioned, facilitated or otherwise attributable to the infringement;

(c) whether the infringement has been committed intentionally or negligently;

▼M2

(d) the degree of responsibility of the person responsible for the infringement;

(e) the financial strength of the person responsible for the infringement, as indicated by the total turnover of the responsible legal person or the annual income and net assets of the responsible natural person;

(f) the impact of the infringement on retail investors' interests;

(g) the importance of the profits gained, losses avoided by the person responsible for the infringement or the losses for third parties derived from the infringement, insofar as they can be determined;

(h) the level of cooperation of the person responsible for the infringement with ESMA, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;

(i) previous infringements by the person responsible for the infringement;

(j) measures taken after the infringement by the person responsible for the infringement to prevent its repetition.

3. Without undue delay, ESMA shall notify any action taken pursuant to paragraph 1 to the person responsible for the infringement, and shall communicate it to the competent authorities of the Member States and to the Commission. It shall publicly disclose any such action on its website within 10 working days from the date when it was adopted.

The disclosure to the public referred to in the first subparagraph shall include the following:

(a) a statement affirming the right of the person responsible for the infringement to appeal the decision;

(b) where relevant, a statement affirming that an appeal has been lodged and specifying that such an appeal does not have suspensive effect;

(c) a statement asserting that it is possible for ESMA's Board of Appeal to suspend the application of the contested decision in accordance with Article 60(3) of Regulation (EU) No 1095/2010.

Article 48f

Fines

1. Where, in accordance with Article 48i(5), ESMA finds that any person has, intentionally or negligently, committed one or more of the infringements listed in point (a) of Article 42(1), it shall adopt a decision imposing a fine in accordance with paragraph 2 of this Article.

▼M2

An infringement shall be considered to have been committed intentionally if ESMA finds objective factors which demonstrate that a person acted deliberately to commit the infringement.

2. The maximum amount of the fine referred to in paragraph 1 shall be:

(a) in the case of a legal person, EUR 1 000 000, or, in the Member States whose currency is not the euro, the corresponding value in the national currency on 30 June 2016, or 10 % of the total annual turnover of that legal person according to the last available financial statements approved by the management body, whichever is the higher;

(b) in the case of a natural person, EUR 500 000, or, in the Member States whose currency is not the euro, the corresponding value in the national currency on 30 June 2016.

Notwithstanding the first subparagraph, the maximum amount of the fine for infringements of point (d) of Article 11(1) or of Article 11(4) shall be EUR 250 000 or, in the Member States whose official currency is not the euro, the corresponding value in the national currency on 30 June 2016 or 2 % of the total annual turnover of that legal person according to the last available financial statements approved by the management body, whichever is the higher for legal persons, and EUR 100 000 or, in the Member States whose official currency is not the euro, the corresponding value in the national currency on 30 June 2016 for natural persons.

For the purposes of point (a), where the legal person is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial accounts in accordance with Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant Union law in the area of accounting according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

3. When determining the level of a fine pursuant to paragraph 1, ESMA shall take into account the criteria set out in Article 48e(2).

4. Notwithstanding paragraph 3, where the legal person has directly or indirectly benefited financially from the infringement, the amount of the fine shall be at least equal to that benefit.

5. Where an act or omission of a person constitutes more than one infringement listed in point (a) of Article 42(1), only the higher fine calculated in accordance with paragraph 2 of this Article and relating to one of those infringements shall apply.

Article 48g

Periodic penalty payments

1. ESMA shall, by decision, impose periodic penalty payments to compel:

▼M2

(a) a person to put an end to an infringement in accordance with a decision taken pursuant to point (a) of Article 48e(1);

(b) persons referred to in Article 48b(1):

(i) to supply complete information which has been requested by a decision pursuant to Article 48b;

(ii) to submit to an investigation and in particular to produce complete records, data, procedures or any other material required and to complete and correct other information provided in an investigation launched by a decision pursuant to Article 48c;

(iii) to submit to an on-site inspection ordered by a decision taken pursuant to Article 48d.

2. A periodic penalty payment shall be effective and proportionate. The periodic penalty payment shall be imposed for each day of delay.

3. Notwithstanding paragraph 2, the amount of the periodic penalty payments shall be 3 % of the average daily turnover in the preceding business year, or, in the case of natural persons, 2 % of the average daily income in the preceding calendar year. It shall be calculated from the date stipulated in the decision imposing the periodic penalty payment.

4. A periodic penalty payment shall be imposed for a maximum period of six months following the notification of ESMA's decision. Following the end of the period, ESMA shall review the measure.

Article 48h

Disclosure, nature, enforcement and allocation of fines and periodic penalty payments

1. ESMA shall disclose to the public every fine and every periodic penalty payment that has been imposed pursuant to Articles 48f and 48g, unless such disclosure to the public would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved. Such disclosure shall not contain personal data within the meaning of Regulation (EU) 2018/1725 of the European Parliament and of the Council ([1]).

2. Fines and periodic penalty payments imposed pursuant to Articles 48f and 48g shall be of an administrative nature.

3. Where ESMA decides not to impose any fines or penalty payments, it shall inform the European Parliament, the Council, the Commission and the competent authorities of the Member State concerned thereof and shall set out the reasons for its decision.

([1]) Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

▼M2

4. Fines and periodic penalty payments imposed pursuant to Articles 48f and 48g shall be enforceable.

Enforcement shall be governed by the rules of procedure in force in the Member State or third country in which it is carried out.

5. The amounts of the fines and the periodic penalty payments shall be allocated to the general budget of the European Union.

Section 3

Procedures and review

Article 48i

Procedural rules for taking supervisory measures and imposing fines

1. Where, in carrying out its duties under this Regulation, ESMA finds that there are serious indications of the possible existence of facts liable to constitute one or more of the infringements listed in point (a) of Article 42(1), ESMA shall appoint an independent investigation officer within ESMA to investigate the matter. The appointed officer shall not be involved or have been directly or indirectly involved in the supervision of the benchmarks to which the infringement relates and shall perform his or her functions independently from ESMA's Board of Supervisors.

2. The investigation officer referred to in paragraph 1 shall investigate the alleged infringements, take into account any comments submitted by the persons who are subject to the investigation, and shall submit a complete file with his or her findings to ESMA's Board of Supervisors.

3. In order to carry out his or her tasks, the investigation officer shall have the power to request information in accordance with Article 48b and to conduct investigations and on-site inspections in accordance with Articles 48c and 48d.

4. Where carrying out those tasks, the investigation officer shall have access to all documents and information that have been gathered by ESMA in its supervisory activities.

5. Upon completion of his or her investigation and before submitting the file with his or her findings to ESMA's Board of Supervisors, the investigation officer shall give the persons subject to the investigation the opportunity to be heard on the matters being investigated. The investigation officer shall base his or her findings only on facts on which the persons concerned have had the opportunity to comment.

6. The rights of the defence of the persons subject to the investigation shall be fully respected during investigations under this Article.

7. Upon submission of the file with his or her findings to ESMA's Board of Supervisors, the investigation officer shall notify the persons who are subject to the investigation. The persons subject to the investigation shall be entitled to have access to the file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information affecting third parties.

▼M2

8. On the basis of the file containing the investigation officer's findings and, when requested by the persons concerned, after having heard those persons in accordance with Article 48j, ESMA shall decide if one or more of the infringements listed in point (a) of Article 42(1) has been committed by the persons subject to the investigation and, in such case, shall take a supervisory measure in accordance with Article 48e and impose a fine in accordance with Article 48f.

9. The investigation officer shall not participate in the deliberations of ESMA's Board of Supervisors or in any other way intervene in the decision-making process of ESMA's Board of Supervisors.

10. By 1 October 2021, the Commission shall adopt delegated acts in accordance with Article 49 to specify the rules of procedure for the exercise of the power to impose fines or periodic penalty payments, including provisions on rights of defence, temporal provisions, and the collection of fines or periodic penalty payments, and the limitation periods for the imposition and enforcement of fines and periodic penalty payments.

11. ESMA shall refer matters for criminal prosecution to the relevant national authorities where, in carrying out its tasks under this Regulation, it finds that there are serious indications of the possible existence of facts liable to constitute criminal offences. In addition, ESMA shall refrain from imposing fines or periodic penalty payments where a prior acquittal or conviction arising from an identical fact or facts which are substantially the same has already acquired the force of *res judicata* as the result of criminal proceedings under national law.

Article 48j

Hearing of the persons subject to investigations

1. Before taking any decision pursuant to Articles 48f, 48g and 48e, ESMA shall give the persons subject to the proceedings the opportunity to be heard on its findings. ESMA shall base its decisions only on findings on which the persons subject to the proceedings have had an opportunity to comment.

The first subparagraph shall not apply if urgent action pursuant to Article 48e is needed in order to prevent significant and imminent damage to the financial system. In such a case ESMA may adopt an interim decision and shall give the persons concerned the opportunity to be heard as soon as possible after taking its decision.

2. The rights of the defence of the persons subject to the proceedings shall be fully respected in the investigations. They shall be entitled to have access to ESMA's file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information or ESMA's internal preparatory documents.

▼M2

Article 48k

Review by the Court of Justice

The Court of Justice shall have unlimited jurisdiction to review decisions whereby ESMA has imposed a fine or a periodic penalty payment. It may annul, reduce or increase the fine or periodic penalty payment imposed.

Section 4

Fees and delegation

Article 48l

Supervisory fees

1. ESMA shall charge fees to the administrators referred to in Article 40(1), in accordance with the delegated acts adopted pursuant to paragraph 3 of this Article. Those fees shall fully cover ESMA's necessary expenditure relating to the supervision of administrators and the reimbursement of any costs that the competent authorities may incur carrying out work pursuant to this Regulation in particular as a result of any delegation of tasks in accordance with Article 48m.

2. The amount of an individual fee charged to an administrator shall cover all administrative costs incurred by ESMA for its activities in relation to the supervision and it shall be proportionate to the turnover of the administrator.

3. By 1 October 2021, the Commission shall adopt delegated acts in accordance with Article 49 in order to supplement this Regulation by specifying the type of fees, the matters for which fees are due, the amount of the fees and the manner in which they are to be paid.

Article 48m

Delegation of tasks by ESMA to competent authorities

1. Where necessary for the proper performance of a supervisory task, ESMA may delegate specific supervisory tasks to the competent authority of a Member State in accordance with the guidelines issued by ESMA pursuant to Article 16 of Regulation (EU) No 1095/2010. Such specific supervisory tasks may, in particular, include the power to carry out requests for information in accordance with Article 48b and to conduct investigations and on-site inspections in accordance with Article 48c and Article 48d.

By way of derogation from the first subparagraph, the authorisation of critical benchmarks shall not be delegated.

2. Prior to the delegation of a task in accordance with paragraph 1, ESMA shall consult the relevant competent authority about:

(a) the scope of the task to be delegated;

▼M2

(b) the timetable for the performance of the task; and

(c) the transmission of necessary information by and to ESMA.

3. In accordance with the delegated act adopted pursuant to Article 48l(3), ESMA shall reimburse a competent authority for costs incurred as a result of carrying out delegated tasks.

4. ESMA shall review any delegation made in accordance with paragraph 1 at appropriate intervals. A delegation may be revoked at any time.

5. A delegation of tasks shall not affect the responsibility of ESMA nor limit ESMA's ability to conduct and oversee the delegated activity.

Article 48n

Transition measures related to ESMA

1. All competences and duties related to the supervisory and enforcement activity regarding administrators as referred to in Article 40(1) that are conferred on competent authorities as referred to in Article 40(2) shall be terminated on 1 January 2022. Those competences and duties shall be taken-up by ESMA on the same date.

2. Any files and working documents related to the supervisory and enforcement activity regarding administrators as referred to in Article 40(1), including any ongoing examinations and enforcement actions, or certified copies thereof, shall be taken over by ESMA on the date referred to in paragraph 1 of this Article.

However, applications for authorisation by administrators of a critical benchmark referred to in points (a) and (c) of Article 20(1) and applications for recognition in accordance with Article 32 that have been received by competent authorities before 1 October 2021 shall not be transferred to ESMA, and the decision to authorise or recognise shall be taken by the relevant competent authority.

3. Competent authorities shall ensure that any existing records and working papers, or certified copies thereof, shall be transferred to ESMA as soon as possible and in any event by 1 January 2022. Those competent authorities shall also render all necessary assistance and advice to ESMA to facilitate effective and efficient transfer and taking-up of supervisory and enforcement activity regarding administrators as referred to in Article 40(1).

4. ESMA shall act as the legal successor to the competent authorities referred to in paragraph 1 in any administrative or judicial proceedings that result from supervisory and enforcement activity pursued by those competent authorities in relation to matters that fall within the scope this Regulation.

5. Any authorisation of administrators of a critical benchmark as referred to in points (a) and (c) of Article 20(1) and recognition in accordance with Article 32 granted by a competent authority referred to in paragraph 1 of this Article shall remain valid after the transfer of competences to ESMA.

▼B

TITLE VII

DELEGATED AND IMPLEMENTING ACTS

▼M1

Article 49

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), 13(2a), 19a(2), 19c(1), 20(6), 24(2), 27(2b), 33(7), 51(6) and 54(3) shall be conferred on the Commission for a period of five years from 10 December 2019. The Commission shall draw up a report in respect of the delegation of power no later than 11 March 2024. The delegation of power shall be tacitly extended for further periods of identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

▼M2

2a. The power to adopt delegated acts referred to in Articles 30(2a), 30(3a), 48i(10) and 48l(3) shall be conferred on the Commission for an indeterminate period of time from 30 December 2019.

▼M3

2b. The power to adopt delegated acts referred to in Articles 18a(3) and 54(7) shall be conferred on the Commission for an indeterminate period of time from 13 February 2021.

▼M2

3. The delegation of power referred to in Articles 3(2), 13(2a), 19a(2), 19c(1), 20(6), 24(2), 27(2b), 30(2a), 30(3a), 33(7), 48i(10), 48l(3), 51(6) and 54(3) 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.

▼M3

3a. The delegation of power referred to in Articles 18a(3) and 54(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.

▼M1

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

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

▼M2

6. A delegated act adopted pursuant to Article 3(2), 13(2a), 19a(2), 19c(1), 20(6), 24(2), 27(2b), 30(2a), 30(3a), 33(7), 48i(10), 48l(3), 51(6) or 54(3) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of three months of notification of that act to the European Parliament and to 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 three months at the initiative of the European Parliament or of the Council.

▼M3

6a. A delegated act adopted pursuant to Article 18a(3) or 54(7) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of three months of notification of that act to the European Parliament and to 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 three months at the initiative of the European Parliament or of the Council.

▼B

Article 50

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 51

Transitional provisions

1. An index provider providing a benchmark on 30 June 2016 shall apply for authorisation or registration in accordance with Article 34 by 1 January 2020.

2. By 1 January 2020, the competent authority of the Member State where an index provider applying for authorisation in accordance with Article 34 is located shall have the power to decide to register that index provider as an administrator even if it is not a supervised entity, under the following conditions:

(a) the index provider does not provide a critical benchmark;

(b) the competent authority is aware, on a reasonable basis, that the index or indices provided by the index provider are not widely used, within the meaning of this Regulation, in the Member State where the index provider is located as well as in other Member States.

▼B

The competent authority shall notify ESMA of its decision adopted in accordance with the first subparagraph.

The competent authority shall keep evidence of the reasons for its decision adopted in accordance with the first subparagraph, in such a form that it is possible to fully understand the evaluations of the competent authority that the index or indices provided by the index provider are not widely used, including any market data, judgement or other information, as well as information received from the index provider.

3. An index provider may continue to provide an existing benchmark which may be used by supervised entities until 1 January 2020 or, where the index provider submits an application for authorisation or registration in accordance with paragraph 1, unless and until such authorisation or registration is refused.

4. Where an existing benchmark does not meet the requirements of this Regulation, but ceasing or changing that benchmark to fulfil 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 or the rules of any investment fund, which references that benchmark, the use of the benchmark shall be permitted by the competent authority of the Member State where the index provider is located. No financial instruments, financial contracts, or measurements of the performance of an investment fund shall add a reference to such an existing benchmark after 1 January 2020.

▼M1

4a. An index provider may continue to provide an existing benchmark that has been recognised as a critical benchmark by an implementing act adopted by the Commission in accordance with Article 20 until 31 December 2021 or, where the index provider submits an application for authorisation in accordance with paragraph 1, unless and until such authorisation is refused.

4b. An existing benchmark that has been recognised as a critical benchmark by an implementing act adopted by the Commission in accordance with Article 20 may be used for existing and new financial instruments, financial contracts, or for measuring the performance of an investment fund until 31 December 2021 or, where the index provider submits an application for authorisation in accordance with paragraph 1, unless and until such authorisation is refused.

▼M3

5. Unless the Commission has adopted an equivalence decision as referred to in paragraph (2) or (3) of Article 30, an administrator has been recognised pursuant to Article 32 or a benchmark has been endorsed pursuant to Article 33, the use in the Union by supervised entities of a third-country benchmark shall be permitted only for financial instruments, financial contracts and measurements of the performance of an investment fund that already reference that benchmark or which add a reference to such benchmark before 31 December 2023.

The first subparagraph shall not apply to benchmarks provided by administrators who relocate from the Union to a third country during the transitional period. The competent authority shall notify ESMA in accordance with Article 35. ESMA shall draw up a list of third-country benchmarks to which the first subparagraph does not apply.

▼B

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 49 concerning measures to determine the conditions on which the relevant competent authority may assess whether the cessation or the changing of an existing benchmark to conform with the requirements of this Regulation could reasonably result in a force majeure event, frustrate or otherwise breach the terms of any financial contract or financial instrument or the rules of any investment fund which references such benchmark.

Article 52

Deadline for updating the prospectuses and key information documents

Article 29(2) is without prejudice to outstanding prospectuses approved under Directive 2003/71/EC prior to 1 January 2018. For prospectuses approved prior to 1 January 2018 under Directive 2009/65/EC, the underlying documents shall be updated at the first occasion or at the latest within 12 months after that date.

▼M2

Article 53

ESMA reviews

1. ESMA shall seek to build a common European supervisory culture and consistent supervisory practices and ensure consistent approaches among competent authorities in relation to the application of Article 33. To that end, the endorsements authorised in accordance with Article 33 shall be reviewed by ESMA every two years.

ESMA shall issue an opinion to each competent authority that has endorsed a third-country benchmark assessing how that competent authority applies the relevant requirements of Article 33 and the requirements of any relevant delegated act and regulatory or implementing technical standards based on this Regulation.

2. ESMA shall have the power to require the documented evidence from a competent authority for any of the decisions adopted in accordance with the first subparagraph of Article 51(2) and Article 25(2), as well as for actions taken with regard to the enforcement of Article 24(1).

▼B

Article 54

Review

1. By 1 January 2020, the Commission shall review and submit a report to the European Parliament and to the Council on this Regulation and in particular on:

(a) the functioning and effectiveness of the critical benchmark, mandatory administration and mandatory contribution regime under Articles 20, 21 and 23 and the definition of a critical benchmark in point (25) of Article 3(1);

▼B

(b) the effectiveness of the authorisation, registration and supervision regime of administrators under Title VI and the colleges under Article 46 and the appropriateness of supervision of certain benchmarks by a Union body;

(c) the functioning and effectiveness of Article 19(2), in particular the scope of its application.

2. The Commission shall review the evolution of international principles applicable to benchmarks and of legal frameworks and supervisory practices in third countries concerning the provision of benchmarks and report to the European Parliament and to the Council every five years after 1 January 2018. That report shall assess in particular whether there is a need to amend this Regulation and shall be accompanied by a legislative proposal, if appropriate.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 49 in order to extend the 42-month period referred to in Article 51(2) by 24 months, if the report referred to in point (b) of paragraph 1 of this Article provides evidence that the transitional registration regime under Article 51(2) is not detrimental to a common European supervisory culture and consistent supervisory practices and approaches among competent authorities.

▼M1

4. By 31 December 2022, the Commission shall review the minimum standards for EU Climate Transition Benchmarks and for EU Paris-aligned Benchmarks in order to ensure that the selection of the underlying assets is coherent with environmentally sustainable investments as defined in a Union-wide framework.

5. Before 31 December 2022, the Commission shall present a report to the European Parliament and to the Council on the impact of this Regulation and the feasibility of an ‘ESG benchmark’, taking into account the evolving nature of sustainability indicators and the methods used to measure them. That report shall be accompanied, where appropriate by a legislative proposal.

▼M3

6. By 15 June 2023, the Commission shall submit a report to the European Parliament and to the Council on the scope of this Regulation, in particular with respect to the continued use by supervised entities of third-country benchmarks and on potential shortcomings of the current framework. That report shall assess in particular whether there is a need to amend this Regulation in order to reduce its scope to the provision of certain types of benchmarks or to the provision of benchmarks that are widely used in the Union and shall be accompanied, where appropriate, by a legislative proposal.

7. The Commission is empowered to adopt a delegated act in accordance with Article 49 by 15 June 2023 in order to extend the transitional period referred to in Article 51(5) until 31 December 2025 at the latest if the report referred to in paragraph 6 of this Article demonstrates that, otherwise, the continued use in the Union of certain third-country benchmarks by supervised entities would be significantly impaired or would pose a threat to financial stability.

▼B

Article 55

Notification of benchmarks referenced and their administrators

When a benchmark is referenced in a financial instrument covered by Article 4(1) of Regulation (EU) No 596/2014, the notifications under Article 4(1) of that Regulation shall include the name of the benchmark referenced and its administrator.

Article 56

Amendments to Regulation (EU) No 596/2014

Regulation (EU) No 596/2014 is amended as follows:

(1) Article 19 is amended as follows:

(a) the following paragraph is inserted:

‘1a. The notification obligation referred to in paragraph 1 shall not apply to transactions in financial instruments linked to shares or to debt instruments of the issuer referred to in that paragraph where at the time of the transaction any of the following conditions is met:

(a) the financial instrument is a unit or share in a collective investment undertaking in which the exposure to the issuer's shares or debt instruments does not exceed 20 % of the assets held by the collective investment undertaking;

(b) the financial instrument provides exposure to a portfolio of assets in which the exposure to the issuer's shares or debt instruments does not exceed 20 % of the portfolio's assets;

(c) the financial instrument is a unit or share in a collective investment undertaking or provides exposure to a portfolio of assets and the person discharging managerial responsibilities or person closely associated with such a person does not know, and could not know, the investment composition or exposure of such collective investment undertaking or portfolio of assets in relation to the issuer's shares or debt instruments, and furthermore there is no reason for that person to believe that the issuer's shares or debt instruments exceed the thresholds in point (a) or (b).

If information regarding the investment composition of the collective investment undertaking or exposure to the portfolio of assets is available, then the person discharging managerial responsibility or person closely associated with such a person shall make all reasonable efforts to avail themselves of that information.’;

▼B

(b) in paragraph 7, the following subparagraph is inserted after the second subparagraph:

‘For the purposes of point (b), transactions executed in shares or debt instruments of an issuer or derivatives or other financial instruments linked thereto by managers of a collective investment undertaking in which the person discharging managerial responsibilities or a person closely associated with them has invested do not need to be notified where the manager of the collective investment undertaking operates with full discretion, which excludes the manager receiving any instructions or suggestions on portfolio composition directly or indirectly from investors in that collective investment undertaking.’.

(2) Article 35 is amended as follows:

(a) in paragraphs (2) and (3), the phrase ‘and Article 19(13) and (14)’ is replaced by ‘, Article 19(13) and (14) and Article 38’;

(b) paragraph (5) is replaced by the following:

‘5. A delegated act adopted pursuant to Article 6(5) or (6), Article 12(5), the third subparagraph of Article 17(2), Article 17(3), Article 19(13) or (14) or Article 38, shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three 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 three months at the initiative of the European Parliament or the Council.’.

(3) In Article 38, the following paragraphs are added:

‘By 3 July 2019, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on the level of the thresholds set out in Article 19(1a)(a) and (b) in relation to managers' transactions where the issuer's shares or debt instruments form part of a collective investment undertaking or provide exposure to a portfolio of assets, with a view to assessing whether that level is appropriate or should be adjusted.

▼B

The Commission shall be empowered to adopt delegated acts in accordance with Article 35 adjusting the thresholds in Article 19(1a)(a) and (b), if it determines in that report that those thresholds should be adjusted.'.

Article 57

Amendments to Directive 2008/48/EC

Directive 2008/48/EC is amended as follows:

(1) In Article 5(1), the following subparagraph is inserted after the second subparagraph:

'Where the credit agreement references a benchmark as defined in point 3 of Article 3(1) of Regulation (EU) 2016/1011 of the European Parliament and of the Council (*), the name of the benchmark and of its administrator and the potential implications on the consumer shall be provided by the creditor, or where applicable, by the credit intermediary, to the consumer in a separate document, which may be annexed to the Standard European Consumer Credit Information form.

(*) Regulation (EU) 2016/1011, of the European Parliament and of the Council of 8 June 2016 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 (OJ L 171, 29.6.2016, p. 1).'.

(2) In Article 27(1), the following subparagraph is inserted after the second subparagraph:

'By 1 July 2018 Member States shall adopt and publish the provisions necessary to comply with the third subparagraph of Article 5(1) and shall communicate them to the Commission. They shall apply those provisions from 1 July 2018.'.

Article 58

Amendments to Directive 2014/17/EU

Directive 2014/17/EU is amended as follows:

(1) In the second subparagraph of Article 13(1), the following point is inserted:

'(ea) where contracts that reference a benchmark as defined in point (3) of Article 3(1) of Regulation (EU) 2016/1011 of the European Parliament and of the Council (*) are available, the names of the benchmarks and of their administrators and the potential implications on the consumer;

(*) Regulation (EU) 2016/1011, of the European Parliament and of the Council of 8 June 2016 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 (OJ L 171, 29.6.2016, p. 1).';

▼B

(2) In Article 42(2), the following subparagraph is inserted after the first subparagraph:

‘By 1 July 2018, Member States shall adopt and publish the provisions necessary to comply with point (ea) of the second subparagraph of Article 13(1) and shall communicate them to the Commission. They shall apply those provisions from 1 July 2018.’;

(3) In Article 43(1), the following subparagraph is added:

‘Point (ea) of the second subparagraph of Article 13(1) shall not apply to credit agreements existing before 1 July 2018.’.

Article 59

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 1 January 2018.

Notwithstanding the second paragraph of this Article, Articles 3(2), 5(5), 11(5), 13(3), 15(6), 16(5), Article 20 (excluding point (b) of paragraph (6)), Articles 21 and 23, Articles 25(8), 25(9), 26(5), 27(3), 30(5), 32(9), 33(7), 34(8), Article 46, and Articles 47(3) and 51(6) shall apply from 30 June 2016.

Notwithstanding the second paragraph of this Article, Article 56 shall apply from 3 July 2016.

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

▼B

ANNEX I

INTEREST RATE BENCHMARKS

Accurate and sufficient data

1. For the purposes of points (a) and (c) of Article 11(1), in general the priority of use of input data shall be as follows:

   (a) a contributor's transactions in the underlying market that a benchmark intends to measure or, if not sufficient, its transactions in related markets, such as:

   — the unsecured inter-bank deposit market,

   — other unsecured deposit markets, including certificates of deposit and commercial paper, and

   — other markets such as overnight index swaps, repurchase agreements, foreign exchange forwards, interest rate futures and options, provided that those transactions comply with the input data requirements in the code of conduct;

   (b) a contributor's observations of third party transactions in the markets described in point (a);

   (c) committed quotes;

   (d) indicative quotes or expert judgements.

2. For the purposes of point (a) of Article 11(1) and Article 11(4), input data may be adjusted.

   In particular, input data 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;

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

Oversight function

3. The following requirements shall apply in substitution for the requirements of Article 5(4) and (5):

   (a) the administrator of an interest rate benchmark shall have in place an independent oversight committee. Details of the membership of that committee shall be made public, along with any declarations of any conflict of interest and the processes for election or nomination of its members;

   (b) the oversight committee shall hold no less than one meeting every four months and shall keep minutes of each such meeting;

   (c) the oversight committee shall operate with integrity and shall have all of the responsibilities provided for in Article 5(3).

Auditing

4. The administrator of an interest rate benchmark shall appoint an independent external auditor to review and report on the administrator's compliance with the benchmark methodology and this Regulation. The external audit of the administrator shall be carried out for the first time six months after the introduction of the code of conduct and subsequently every two years.

▼B

The oversight committee may require an external audit of a contributor to an interest rate benchmark if dissatisfied with any aspects of its conduct.

Contributor systems and controls

5. The following requirements shall apply to contributors to interest rate benchmarks, in addition to the requirements set out in Article 16. Article 16(5) shall not apply.

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

7. 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 interest 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.

8. A contributor to an interest rate benchmark 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;

▼B

(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 those queries;

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

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

10. The compliance function of the contributor to an interest rate benchmark shall report any findings, including reverse transactions, to management on a regular basis.

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

12. An external audit of the input data of a contributor to an interest rate benchmark, compliance with the code of conduct and the provisions of this Regulation shall be carried out for the first time six months after the introduction of the code of conduct, and subsequently every two years.

▼B

ANNEX II

COMMODITY BENCHMARKS

Methodology

1. The administrator of a commodity benchmark shall formalise, document, and make public any methodology that the administrator uses for a benchmark calculation. At a minimum, such methodology shall contain and describe the following:

   (a) all criteria and procedures that are used to develop the benchmark, including how the administrator uses input data including the specific volume, concluded and reported transactions, bids, offers and any other market information in its assessment 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 judgement by assessors and any other information, such as assumptions, models or extrapolation from collected data that are considered in making an assessment;

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

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

   (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. Those criteria shall explain the procedures to be used where no transaction data exist;

   (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 input data that constitute a significant proportion of the total input data for that benchmark. The administrator shall also define in those criteria and procedures 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 of a commodity benchmark shall publish or make available the key elements of the methodology that the administrator uses for each commodity benchmark provided and published or, when applicable, for each family of benchmarks provided and published.

3. Along with the methodology referred to in paragraph 2, the administrator of a commodity benchmark shall also describe and publish all of the following:

   (a) the 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

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

(c) the 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

4. The administrator of a commodity benchmark 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 time frame 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.

5. The administrator of a commodity benchmark 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

6. The administrator of a commodity benchmark 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 its methodologies:

(i) concluded and reported transactions;

(ii) bids and offers;

(iii) other information.

If concluded and reported transactions are not given priority, the reasons should be explained, as required in point 7(b).

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

▼B

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

7. The administrator of a commodity benchmark shall describe and publish for each calculation, to the extent reasonable 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 input 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; and

(b) a concise explanation of the extent to which, and the basis upon which, any judgement 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

8. The administrator of a commodity benchmark shall:

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

(b) have in place quality control procedures to evaluate the identity of a contributor and any submitter who reports input data and the authorisation of such submitter 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, to the extent possible, provision for escalation of the inquiry by the administrator within the contributor's company. Controls shall include cross-checking market indicators to validate submitted information.

Assessors

9. In relation to the role of an assessor, the administrator of a commodity benchmark shall:

(a) adopt and have in place 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) have in place arrangements to ensure that calculations can be made on a consistent and regular basis;

(c) 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; and

▼B

(d) establish internal control procedures to ensure the integrity and reliability of calculations. At a minimum, such internal controls and procedures shall require the ongoing supervision of assessors to ensure that the methodology was properly applied and procedures for internal sign-off by a supervisor prior to releasing prices for dissemination to the market.

Audit trails

10. The administrator of a commodity benchmark shall have rules and procedures in place to document contemporaneously relevant information, including:

(a) all input data;

(b) the judgements 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).

11. The administrator of a commodity benchmark 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

12. The administrator of a commodity benchmark shall establish adequate policies and procedures for the identification, disclosure, management or mitigation and avoidance of any conflict of interest and the protection of integrity and independence of calculations. Those policies and procedures shall be reviewed and updated regularly and 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 personal interests and business connections of the administrator's personnel are not permitted to compromise the administrator's functions, including outside employment, travel, and acceptance of entertainment, gifts and hospitality provided by the 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 managers, assessors and other employees of the administrator 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; and

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

▼B

13. The administrator of a commodity benchmark shall ensure that its other business operations have in place appropriate procedures and mechanisms designed to minimise the likelihood that a conflict of interest will affect the integrity of benchmark calculations.

14. The administrator of a commodity benchmark shall ensure that it has in place 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 this Regulation; and

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

15. The administrator of a commodity benchmark shall disclose to its users as soon as it becomes aware of a conflict of interest arising from the ownership of the administrator.

Complaints

16. The administrator of a commodity benchmark shall have in place and publish a complaints handling policy setting out procedures for receiving, investigating and retaining records concerning complaints made about an administrator's calculation process. Such complaint mechanisms shall ensure that:

(a) subscribers of the benchmark 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) there is in place a target timetable for the handling of complaints;

(c) formal complaints made against the 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) the administrator aims to complete its investigation promptly;

(f) the 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.

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

▼B

External auditing

18. The administrator of a commodity benchmark shall appoint an independent external auditor with appropriate experience and capability to review and report on the administrator's adherence to its stated methodology criteria and with the requirements of this Regulation. Audits shall take place annually and be published three months after each audit is completed with further interim audits carried out as appropriate.

▼M1

ANNEX III

EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks

Methodology for EU Climate Transition Benchmarks

(1) The administrator of an EU Climate Transition Benchmark shall formalise, document and make public any methodology used for the calculation of the benchmark, giving the following information, while ensuring confidentiality and the protection of undisclosed know-how and business information (trade secrets) as defined in Directive (EU) 2016/943 of the European Parliament and of the Council ([1])

(a) the list of the main constituents of the benchmark;

(b) all criteria and methods, including selection and weighting factors, metrics and proxies used in the benchmark methodology;

(c) the criteria applied to exclude assets or companies that are associated with a level of carbon footprint or a level of fossil fuel reserves that are incompatible with inclusion in the benchmark;

(d) the criteria for the determination of the decarbonisation trajectory;

(e) the type and source of data used to determine the decarbonisation trajectory for:

(i) Scope 1 carbon emissions, namely emissions generated from sources that are controlled by the company that issues the underlying assets;

(ii) Scope 2 carbon emissions, namely emissions from the consumption of purchased electricity, steam, or other sources of energy generated upstream from the company that issues the underlying assets;

(iii) Scope 3 carbon emissions, namely all indirect emissions that are not covered by points (i) and (ii) that occur in the value chain of the reporting company, including both upstream and downstream emissions, in particular for sectors with a high impact on climate change and its mitigation;

(iv) whether the data uses the Product and Organisation Environmental Footprint methods as defined in points (a) and (b) of point 2 of Commission Recommendation 2013/179/EU or global standards such as those of the Financial Stability Board's Taskforce on Climate-related Financial Disclosures;

(f) the total carbon emissions of the index portfolio.

Where a parent index is used for the construction of an EU Climate Transition Benchmark, the tracking error between the EU Climate Transition Benchmark and the parent index shall be disclosed.

Where a parent index is used for the construction of an EU Climate Transition Benchmark, the ratio between the market value of the securities that are in the EU Climate Transition Benchmark and the market value of the securities in the parent index shall be disclosed.

([1]) Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ L 157, 15.6.2016, p. 1).

▼**M1**

Methodology for EU Paris-aligned Benchmarks

(2) In addition to points (1)(a), (1)(b), and (1)(c), the administrator of an EU Paris-aligned Benchmarks shall specify the formula or calculation that is used to determine whether the emissions are in line with the objectives of the Paris Agreement, while ensuring confidentiality and the protection of undisclosed know-how and business information (trade secrets) as defined by Directive (EU) 2016/943.

Changes to the methodology

(3) Administrators of EU Climate Transition and EU Paris-aligned Benchmarks shall adopt procedures for introducing changes to their methodology. They shall make those procedures public, and shall make public any proposed changes to their methodology and the rationale for those changes. Those procedures shall be consistent with the overriding objective that benchmark calculations be consistent with points (23a) and (23b) of Article 3(1). Those procedures shall provide:

(a) advance notice within a clear timeframe that gives users of benchmarks sufficient opportunity to analyse and comment on the impact of such proposed changes, having regard to the administrators' calculation of the overall circumstances;

(b) for the possibility for users of benchmarks to comment on those changes and for the administrators to respond to those comments, and shall make those comments accessible after any given consultation period, except where the commenter has requested confidentiality.

(4) Administrators of EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks shall regularly examine their methodologies on at least an annual basis to ensure that their benchmarks reliably reflect the stated objectives, and shall have a process in place for taking the views of all relevant users into account.