EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 7 January 2014

on a proposal for a regulation on indices used as benchmarks in financial instruments and financial contracts

(CON/2014/2)

Introduction and legal basis

On 18 October 2013 and 28 October 2013, the European Central Bank (ECB) received requests from the Council and from the European Parliament, respectively, for an opinion on a proposal for a regulation of the European Parliament and of the Council on indices used as benchmarks in financial instruments and financial contracts[1] (hereinafter the 'proposed regulation').

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union since the proposed regulation contains provisions affecting the European System of Central Banks' contribution to the smooth conduct of policies relating to the stability of the financial system, as referred to in Article 127(5) of the Treaty. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

1. Purpose of the proposed regulation

1.1 The proposed regulation introduces a common Union regulatory framework for the regulation of published indices that serve as benchmarks to reference financial instruments and financial contracts, such as mortgage credit agreements, or to measure the performance of investment funds in order to ensure their integrity and accuracy and thereby to contribute to the functioning of the internal market while achieving a high level of consumer and investor protection[2].

1.2 The new framework regulates the entire process of setting benchmarks, from the contribution of quotes or other input data by market participants, the administration and control of the benchmark to the dissemination and publication thereof. More specifically, the proposed regulation aims to make benchmarks more reliable and robust so that they are less easily manipulated by market participants and to make the benchmark-setting process generally more transparent. It seeks to

1 COM(2013) 641 final.

2 See Article 1 of the proposed regulation. The scope of the proposed regulation is broad, covering a wide variety of benchmark indices, including all benchmarks that are used to reference financial instruments admitted to trading or traded on a regulated venue, such as energy, commodities and currency derivatives.

achieve this chiefly by strengthening the supervisory control of the quality of and the methodology for contributing input data to indices that may be used as benchmarks[3], and by enhancing governance and control over the entities administering the provision of the benchmark. Under the proposed scheme, administrators located in the Union are required to apply for authorisation from their home competent authority[4]. As the administrator function is central to benchmark setting and involves discretion in how output data is translated into the benchmark, administrators must adopt a code of conduct and ensure that provision of data is not affected by any conflict of interest[5]. The Commission has the power to decide which benchmarks located in the Union are 'critical benchmarks' and to adopt a list of such benchmarks at Union level[6].

1.3 As regards supervision and enforcement, under the proposed regulation, Member States must designate an authority or authorities responsible for these tasks[7] and notify those authorities to the European Securities and Markets Authority (ESMA). For critical benchmarks, as they are more likely to have cross-border effects, the competent authority of the administrator must establish a college of competent authorities comprising that authority, ESMA, the competent authorities of the contributors and other competent authorities where justified, and it must also establish written arrangements within the college, *inter alia*, on the assistance to be provided to the said competent authority to enforce certain measures relating to mandatory contribution to a critical benchmark[8]. In the absence of agreement within the college on whether to take certain specified measures[9], the administrator's competent authority may adopt a decision on the matter, provided any deviation from the opinions of other members of the college, and where appropriate ESMA, is fully reasoned. In addition, where, *inter alia*, either the competent authorities have failed to agree on the written arrangements or where there is disagreement with a measure that has been taken; ESMA may take a decision either upon referral from another member of the college or on its own initiative under the 'binding mediation' procedure[10]. The proposed regulation also provides for an equivalence regime to be administered by ESMA for third country administered benchmarks[11].

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3 See Articles 7 and 8 of the proposed regulation.

4 See Article 22 of the proposed regulation. Thus, as Article 19 specifies, supervised entities may only use a benchmark covered by the proposed regulation if it is provided by an administrator authorised in accordance with Article 23 or registered in accordance with Article 21.

5 e.g. if the membership of the administrator, or a panel run by it, includes market participants which contribute input data to the index.

6 See Article 13 of the proposed regulation. In relation to critical benchmarks, administrators must notify and obtain approval from the competent authority for the code of conduct.

7 See Article 29 of the proposed regulation. The supervisory and investigative powers of competent authorities are set out in Article 30 and their administrative sanctions in Article 31.

8 See Article 34(1) and (6) of the proposed regulation. The relevant measure relating to mandatory contribution is Article 14(1)(a) and (b).

9 These include measures concerning mandatory contribution (Article 14), authorisation of administrators (Articles 23 and 34) and administrative measures and sanctions (Article 31).

10 This is established in Article 19 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

11 See Title V of the proposed regulation. Administrators of third country benchmarks must notify and register the benchmark with ESMA and the Commission must approve the third country regulatory regime as equivalent to the Union regime before it can be used by Union supervised entities.

1.4 The proposal also complements the Commission's recent proposals to include the manipulation of benchmarks as a market abuse offence subject to strict administrative fines in the new market abuse regime[12]. From an international perspective, the proposed regulation is stated to be in line with the principles for financial benchmarks issued in July 2013 by the International Organization of Securities Commissions (IOSCO)[13].

2. General observations

The ECB supports the proposed regulation's objective of establishing a common set of rules at Union level for the benchmark-setting process for financial instruments[14] and financial contracts[15] in the interest of integrity and reliability of the financial benchmarks and the wider concern of protection of investors and consumers. The ECB considers that the regulatory response is justified and proportionate to the deficiencies that have been identified in the benchmark-setting process. The restoring of integrity and public confidence in financial benchmarks is all the more important in the wake of recent alleged manipulation of the key interbank interest rate benchmarks Libor and Euribor, which have led in a number of instances to significant fines and allegations of misuse of other indices. For the Eurosystem, it is critical to safeguarding the integrity and reliability of these key benchmarks that the quality of the contributions (input data) to these indices and the integrity of their administrator is maintained.

In the Eurosystem's response to the Commission's 2012 public consultation on the regulation of indices[16], the ECB stressed the systemic importance of the Euribor benchmark for financial stability and made specific recommendations on both short and medium to longer term measures for improving the integrity and reliability of Euribor and other such benchmarks. The ECB, together with the national central banks (NCBs) of the Eurosystem, has also provided Eurosystem responses to other similar consultations on the future of benchmark indices, both at Union and international levels[17].

The ECB would also like to make a few forward looking remarks on the reform of critical interest rate benchmarks. While progress has been made in strengthening the governance process and restoring credibility, further steps need to be taken. The ECB strongly supports market initiatives that aim at identifying transaction-based reference rates that could constitute viable complements or substitutes to Euribor and support facilitating market choices in a changing financial system so that users can choose

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12 See the amended proposal for a regulation of the European Parliament and of the Council on insider dealing and market manipulation (market abuse), COM(2012) 421 final, and the amended proposal for a directive of the European Parliament and of the Council on criminal sanctions for insider dealing and market manipulation, COM(2012) 420 final.

13 See the IOSCO final report on principles for financial benchmarks of 17 July 2013, available on IOSCO's website at www.iosco.org.

14 See Article 3(13) of the proposed regulation.

15 According to Article 3(15) of the proposed regulation, these are credit agreements and credit agreements related to residential property as defined in the relevant Union directives.

16 See *European Commission's public consultation on the regulation of indices – Eurosystem's response*, November 2012, pp. 2-3, available at www.ecb.europa.eu

17 See *Eurosystem's response to the EBA and ESMA's public consultation on the principles for benchmark-setting processes in the EU* and *Eurosystem's response to IOSCO's consultation report on financial benchmarks*, both published in February 2013.

reference rates which better match their needs. Furthermore, the design of new reference rates needs to consider the sound principles for reference rates put forward by ESMA, the European Banking Authority (EBA), and IOSCO. Therefore, the ECB strongly encourages market participants to be actively involved in the rate design process, in order to ensure that the resulting rate meets the market's needs. It is also very important in this transitional phase to new reference rates that any Union framework is workable for market participants. This is particularly crucial as the proposed regulation is very broad in scope. The ECB would also like to stress that its specific observations below are focused primarily on the impact of the regulation on the key interest rate benchmarks.

3. Specific observations

3.1 Scope, exclusion of indices and benchmarks provided by central banks and definition

3.1.1 The ECB supports the wide scope of application of the proposed regulation, which covers all benchmarks that are used to reference financial instruments admitted to trading or traded on a regulated venue, such as energy, commodities and currency derivatives, as well as financial contracts and the value of investment funds[18]. This is appropriate in view of the extensive and wide ranging use of benchmarks in domestic and international financial markets and, hence, their considerable potential for negatively impacting investors and consumers of less sophisticated financial products, such as mortgages.

3.1.2 The ECB welcomes the express exclusion from the scope of the proposed regulation of central banks that are members of the European System of Central Banks (ESCB) as they already have systems in place to ensure compliance with its objectives[19]. The ECB suggests however extending the exemption to all central banks as the benchmarks and indices provided by them are already subject to control by public authorities. Those controls are designed to comply with principles, standards and procedures which ensure the accuracy, integrity and independence of the benchmarks and indices[20]. It would also be duplicative for central banks – and indeed public authorities in general – to be subject to the proposed regulation, given that administrators will be subject to supervision by their national competent authority. Therefore, it is not necessary to include central banks and their benchmarks and indices in the proposed regulation[21], and indeed the ECB would

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18 Money market funds (MMFs) may also use indices to reference the price of financial instruments which they trade. See the proposal for a regulation of the European Parliament and of the Council on money market funds, COM(2013) 615 final, which requires MMFs to value their assets, should the mark to market method not be available, on a mark to model basis, which is a benchmark type methodology (see in particular recital 41 and Article 2(10) of the proposed regulation). MMFs will usually be structured either as alternative investment fund managers or as undertakings for collective investment in transferable securities, and as such are already included under the definition of supervised entities (see Article 3(14)(e) and (f) of the proposed regulation).

19 See Article 2(1)(a) and recital 16 of the proposed regulation.

20 See Amendments 1 to 3.

21 It is noted in this regard that the draft report of the European Parliament's Economic and Financial Affairs Committee (ECON) of 15 November 2013 [proposed to include NCBs within the scope of the proposed regulation– (see Amendment 20 of the draft report). It acknowledges however (recital 20) that 'outsourcing of calculation, where there is no discretion in the application of the formula, does not mean the calculator is an administrator for the purposes of this regulation.'

not be opposed to extending the exemption to all public authorities. This is consistent with the IOSCO principles on benchmark setting, a recent report on which stated that benchmark administration by a national authority used for public policy purposes is not within their scope[22].

Furthermore, as regards the definition of 'interbank interest rate benchmark'[23], the ECB notes that the special regime laid down in Annex II covers only such benchmarks which are based on interest rates at which banks may lend to or borrow from each other. In the ECB's view the regime should be less restrictive and also include benchmarks where the underlying asset is the rate at which a bank may lend to or borrow from the wholesale market[24]. The wholesale market may cover agents other than banks.

3.2 Benchmark integrity and reliability and the authorisation and supervision of administrators[25]

3.2.1 The ECB welcomes the fact that the input data to be submitted by contributors must be transaction data and that other data may only be used if the available transaction data are not sufficient to represent accurately and reliably the market or economic reality that the benchmark is intended to measure, provided they are verifiable[26].

3.2.2 However, the Union legislative bodies should take particular care to ensure that, in pursuing the justified goals of the proposal, the toughening of the regulatory requirements on administrators[27] does not inadvertently dissuade new entrants to such a critical function nor discourage too strongly current administrators from resigning from this function, especially during the current period of transition to possible new reference rates[28]. Such barriers to entry could lead to a sub-optimal list of benchmarks which may not meet users' needs.

3.2.3 Furthermore, for the purpose of determining where the threshold of '50% of [the] value of transactions in the market' lies, which is required in Article 7(1)(c) of the proposed regulation for the administrator to determine whether for non-transaction-based benchmarks an underlying market exists, clarification is needed on how the administrator is to arrive at a robust and challenge-resistant assessment of what constitutes a market for the purposes of making this determination, given that 'market' is an economic notion derived from competition law and not further defined in the proposed regulation.

3.2.4 The ECB also notes that under the proposed regulation administrators and contributors to benchmarks in the Union will be supervised by competent authorities designated by the Member

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The draft report has not yet been voted on by the Committee. Available on the Parliament's website at www.europarl.europa.eu.

22 IOSCO final report on principles for financial benchmarks, see footnote 13.

23 See Article 3(19) of and Annex II to the proposed regulation,

24 See Amendment 5. See also the chapter on interest reference rates in the ECB Monthly Bulletin of October 2013, p. 69, available on the ECB's website at www.ecb.europa.eu.

25 See Titles II and VI of the proposed regulation.

26 See Article 7(1)(a) of the proposed regulation.

27 See Chapter 1 of Title II of the proposed regulation.

28 See paragraph 3.3.2 where concerns over workability of the mandatory contribution thresholds are highlighted.

States, and that administrators of benchmarks will require authorisation by these authorities. The ECB has previously stated its view[29] that, given the systemic importance of Euribor for the Union financial markets and its role in monetary policy transmission, the European Supervisory Authorities (ESAs) should be involved in the supervision of the Euribor rate-setting process. The ECB believes that authorities such as ESMA and the EBA are well placed to assume such a role. The ECB welcomes, therefore, the proposal for the Commission to adopt delegated acts based on technical standards prepared by ESMA on specified matters in the benchmark-setting process and the proposed ESMA power to carry out 'binding mediation' in coordinating cooperation between competent authorities within the Union[30] and its role in registering and withdrawing the registration of administrators located in third countries[31]. Moreover, the terminology of location of legal or natural persons, as defined in the proposed regulation, should be used consistently throughout the text[32]. The ECB also welcomes the fact that competent authorities may delegate some of their tasks under the proposed regulation to ESMA, subject to the latter's agreement[33].

3.3 Sectoral requirements, critical benchmarks and mandatory contribution[34]

3.3.1 The proposal contains regulatory requirements for different types of benchmarks and sectors and a special regime for 'critical benchmarks'[35]. The ECB supports the elements of such a stricter regime for critical benchmarks. The ECB also welcomes the fact that the proposed regulation makes provision for supervised entities to contribute input data on a mandatory basis to a critical benchmark[36]. This is an important back-stop in the event, which cannot be excluded, that there is a market failure and the contributions from transaction-based data dry up or are not available[37]. The ECB is concerned, however, that the current definition of a 'critical benchmark'[38], which requires that the majority of the contributors are supervised entities and that the 'reference financial instruments have a notional value of at least 500 billion euro' may not provide a secure enough basis for the emergence of new critical benchmarks, such as for interbank interest rates. In addition to constituting a potential barrier to entry, a further drawback of the proposed definition is the difficulty in evaluating whether the numerical threshold is met. For this reason, the ECB sees merit in retaining a more flexible definition based on financial stability considerations[39].

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29 See *European Commission's public consultation on the regulation of indices – Eurosystem's response*, November 2012, p. 3.

30 This is provided for in Article 34 of the proposed regulation with reference to Article 19 of Regulation (EU) No 1095/2010.

31 See Articles 20 and 21 of the proposed regulation.

32 See Amendment 9 in relation to Article 20(1) where the term 'administrator *established* in a third country' is used.

33 See Article 26(2) of the proposed regulation.

34 See Title III of the proposed regulation.

35 See Article 3(21) (definition) and Article 13 of the proposed regulation. In particular, the administrator of a critical benchmark is required to notify and have its code of conduct verified by the national competent authority as compliant with the regulation.

36 See Article 14 of the proposed regulation.

37 See *Eurosystem's response to the EBA and ESMA's public consultation*, see footnote 17.

38 See Article 3(21) of the proposed regulation.

39 See Amendment 6.

3.3.2 The ECB has serious concerns about the proposed wording of the threshold for triggering the power to require mandatory contribution. As presently drafted, Article 14 grants the administrator's competent authority certain powers which it may exercise to ensure that supervised entities continue to feed in contributions to the benchmark, and it may require them to take other steps[40] in a situation where 'contributors, comprising at least 20% of the contributors to a critical benchmark have ceased contributing, or there are sufficient indications that at least 20% of the contributors are likely to cease contributing, in any year'. However, there could be situations where over several years a number of panel member institutions cease to contribute input data but, all the same, in any given year (on a rolling or calendar basis) the number of cessations does not reach 20% of all contributors to the benchmark and, thus, does not trigger the competent authority's powers to intervene. As a result, this may lead to the slow death of a critical benchmark without the possibility of invoking any mandatory scheme. This may have serious implications with respect to the representativeness of the panel. Although the administrator has an obligation to ensure that input data is obtained from a panel or sample of contributors that is reliable and representative[41], without the trigger of mandatory contributions, deficiencies in the input data for a benchmark may have serious implications for financial stability and the orderly functioning of the markets. In view of the critical nature of these benchmarks and having regard to financial stability and smooth market functioning considerations, the ECB strongly recommends not to rely on a numerical test, which may be easily circumvented and whose trigger may never be reached, but to replace it with qualitative criteria related to financial stability considerations. Consequently, the ECB strongly recommends that the administrator be required to evaluate at regular intervals and whenever the panel size decreases whether the panel remains representative and, in particular, whether any decrease in size results in the input data being obtained from an insufficiently representative set of contributors[42]. The ECB notes in this regard that Article 7(1)(b) of the proposed regulation requires the administrator to 'obtain the input data from a reliable and representative panel or sample of contributors so as to ensure that the resultant benchmark is reliable and representative of the market or economic reality that the benchmark is intended to measure ("Representative contributors")'. In this connection, the ECB recommends that Article 14(2) specifies explicitly that the supervised entities selected to contribute on a mandatory basis to the critical benchmark may include supervised entities that are not panel instititions.

3.3.3 In the case of critical benchmarks, the proposed regulation also requires the competent authorities of contributors to 'assist' the competent authority of the administrator of the benchmark in the enforcement of measures specified pursuant to Article 14(1)(a) and (b)[43], including a requirement for supervised entities to contribute on a mandatory basis to the benchmark. The ECB understands

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40 See Article 14(1)(a) to (c) of the proposed regulation.

41 See Article 7(1)(b) in conjunction with Section C of Annex I to the proposed regulation.

42 See Amendment 6.

43 This provision grants the competent authority of the administrator with powers to (a) require supervised entities to contribute input data to the administrator in accordance with the methodology, code of conduct or other rules and (b) determine the form in which, and the time by which, any input data is to be contributed. The requirement to provide assistance is set out in Article 14(3).

that, where, either the competent authority of the administrator has taken a decision on any of these measures but there is disagreement in the college on the measure(s) taken, or there is no agreement on the written arrangements to be drawn up for the enforcement of the measures by the competent authority of the administrator, the matter may be referred to ESMA, which may then take a decision under the procedure specified in Article 19 of Regulation No 1095/2010.

3.4 Supervisory cooperation

In relation to each critical benchmark, the proposed regulation provides for the establishment of a college of competent authorities[44]. The ECB has concerns however about the workability of such a procedure in the case of critical financial benchmarks, particularly in the case of an emergency such as a market failure. Moreover, these arrangements should not affect the banking supervisory responsibilities of the ECB under the regulation conferring upon the ECB specific tasks in the area of prudential supervision of credit institutions[45]. This regulation confers on the ECB prudential supervisory tasks, but not tasks related to the supervision of the conduct of business, in respect of credit institutions[46]. Therefore, the ECB understands that national competent authorities remain responsible for the supervision of benchmarks. However, to remove any possible doubt that the responsibility for the supervision of the financial conduct of institutions which come under the single supervisory mechanism (SSM) remains with the national competent authorities, the regulation should specify that the competent authority to be designated by Member States must be a national competent authority.

3.5 Transparency and consumer protection

3.5.1 The ECB notes that, under Article 16(1) of the proposed regulation, an administrator is required to publish the input data used to determine the benchmark immediately after publication of the benchmark, except where publication would have serious adverse consequences for the contributors or adversely affect the reliability or integrity of the benchmark, in which case publication may be temporarily delayed for a period that significantly diminishes the consequences. The ECB understands further that the provisions of the proposed regulation prohibiting the competent authority, its employees and any delegated agent thereof from disclosing 'information covered by professional secrecy' to any other person do not apply to the administrator of the benchmark and, thus, do not prevent the adminstrator from ultimately publishing the input data even where it contains information of the kind specified in Article 16 of the proposed regulation. However, it is doubtful whether this data provides additional value to users. The proposed regulation should ensure instead that users can be confident about the reliabilityof the data by the proper oversight, supervision, archiving and auditing thereof. In addition, in relation to transaction-

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44 See Article 34(1) and (2) of the proposed regulation.

45 Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63). See also Regulation (EU) No 1022/2013 of the European Parliament and of the Council of 22 October 2013 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority) as regards the conferral of specific tasks on the European Central Bank pursuant to Council Regulation (EU) No 1024/2013 (OJ L 287, 29.10.2013, p. 5).

46 See Article 4(1) of Regulation (EU) No 1024/2013.

based benchmarks, situations may arise where the input data to be published includes data which is commercially sensitive or subject to business confidentiality, for example, if volume data for transactions is included in the input data. Therefore the administrator should not be required to publish the data even with a delay, unless the relevant contributor has given its prior approval, but it would be sufficient for the administrator to be required to store the data for a certain period during which the competent authority would upon request have access thereto[47]. This would be less burdensome for contributors, while enabling the administrator's competent authority to have access to the data to oversee its accuracy and sufficiency.

3.5.2 The transparency provisions oblige the administrator of a benchmark to publish a procedure of actions to be taken in the event of material changes to or cessation of the benchmark. Likewise, supervised entities and users are also obliged to publish robust plans setting out the actions they would take in such an event[48]. However, neither these provisions, nor the provisions addressing transitional arrangements[49], establish a requirement for contingency plans in the event of an abrupt disruption to a benchmark. The ECB recommends, therefore, that the proposed regulation includes a requirement for the benchmark administrator to develop its own contingency procedures, with full transparency towards the end users of the indices. It is suggested that such provisions are included in the code of conduct of the benchmark administrator as an additional requirement under paragraph 1 of Section D of Annex I to the proposed regulation[50].

3.5.3 Supervised entities such as credit institutions are required to assess whether referencing a financial contract to be concluded with a customer to a benchmark is suitable for use by the customer. In ensuring its suitability, the entity is required to obtain the necessary information on that benchmark, including the administrator's public benchmark statement[51]. The ECB recommends that the Union legislative bodies clarify how this obligation will be reflected in the Commission proposal on credit agreements relating to residential property[52], as the proposed regulation includes mortgages in the definition of financial contracts.

3.6 Use of benchmarks provided by third country administrators[53]

3.6.1 The ECB notes that, under the proposed equivalence regime in Article 20, benchmarks provided by administrators established in third countries are required to fulfil certain specified conditions, including obtaining a decision from the Commission recognising that their legal framework and supervisory practices are equivalent to that of the proposed regulation, before such benchmarks may be used by supervised entities in the Union. The ECB also notes that such benchmarks do not

47 See Article 16 of the proposed regulation and Amendment 7.

48 See Articles 17 and 39 of the proposed regulation.

49 Article 39 of the proposed regulation.

50 See Amendments 8 and 18.

51 See Article 18(1) of the proposed regulation.

52 See proposal for a Directive of the European Parliament and of the Council on credit agreements relating to residential property, COM(2011) 142 final.

53 See Articles 20 and 21.

appear to benefit from the transitional provisions under Article 39, as these appear only to govern existing benchmarks whose administrator must apply for authorisation to the competent authority of the Member State where the administrator is located, i.e., administrators located in the Union.

3.6.2 The ECB is concerned about the workability of the proposed equivalence regime, particularly if it were to be introduced concurrently with the other provisions of the proposed regulation. Many important investment products in the Union, particularly in derivatives and investment funds, reference non-Union benchmarks. Although IOSCO has published principles on benchmark setting and encourages countries to implement them[54], this remains a matter for each country and, hence, it is uncertain whether all IOSCO members will implement them by means of legislation. As the Commission's positive equivalence decision under the proposed regulation must state that the third country's legal framework ensures that the requirements of the regulation, including the governance and control requirements on administrators, are legally binding and subject to effective supervision and enforcement[55], it may be difficult for many third country legal frameworks, including those of G20 countries, to satisfy the equivalence conditions, for example, where they do not subject their administrator and contributors to supervisory requirements[56]. In consequence, a wide range of products referencing such third country administered benchmarks would have to be withdrawn and the potential impact of such a move on financial stability could be significant.

3.6.3 Further, the ECB notes that the proposed equivalence regime does not provide clear guidance on the consequences for contracts that currently reference such benchmarks should those benchmarks not pass the equivalence test, since the transitional provisions in Article 39 appear to apply only to Union benchmarks.

3.6.4 For these reasons, rather than leaving the use of non-Union benchmarks in limbo, the ECB invites the Union legislative bodies to consider introducing as a minimum a longer implementation period for the equivalence regime under which selected widely-used benchmarks administered in third countries, in particular G20 countries, could continue to be used in the Union until the end of a longer transitional period of 3 years. For such benchmarks, the third country administrator would be required to demonstrate compliance with the IOSCO Principles in the context of its domestic legal framework. As a result, the benchmark would be temporarily exempted from the equivalence requirements provided for in Article 20 of the proposed regulation. It is important, however, to balance the concern for financial stability within the Union with the wider concern for a level playing field between all administrators of critical benchmarks that are widely used in the Union. To achieve such balance, the ECB envisages a role for ESMA to periodically review, on behalf of

54 See footnote 13, see also the latest IOSCO communiqué of November 2013.

55 See Article 20(2)(b) in conjunction with Article 5 of the proposed regulation.

56 e.g. because the administrator is an unregulated market association. The ECB's understanding based on feedback from market participants is that few jurisdictions outside the Union are intending to regulate anything other than major interest rate and certain forex and commodity benchmarks.

the Commission, whether deferring implementation of the equivalence regime for non-Union based administrators[57] is still warranted.

4. Other international aspects

In the Eurosystem response to the September 2012 Commission consultation on regulation of indices[58], the ECB stressed the importance in this area of ensuring proper coordination of legislative initiatives at national and Union levels with international initiatives. In this connection, the ECB observes that the Financial Stability Board's Official Sector Steering Group, of which the ECB is a member, is currently considering the future of financial benchmarks for the banking sector along with market participants.

Where the ECB recommends that the proposed regulation is amended, specific drafting proposals are set out in the Annex accompanied by explanatory text to this effect.

Done at Frankfurt am Main, 7 January 2014

[signed]

The President of the ECB

Mario DRAGHI

57 See Amendment 16.

58 See *European Commission's public consultation on the regulation of indices – Eurosystem's response*, November 2012, p. 8.

Annex

Drafting proposals

Text proposed by the Commission	Amendments proposed by the ECB[1]
Amendment 1 Recital 16	
‘(16) Benchmarks that are provided by central banks in the Union are subject to control by public authorities and meet principles, standards and procedures which ensure the accuracy, integrity and independence of their benchmarks as provided for by this Regulation. It is therefore not necessary that these benchmarks should be subject to this Regulation. However third country central banks may also provide benchmarks that are used in the Union. It is necessary to determine that only those central banks of third countries that produce benchmarks are exempted from the obligations under this Regulation that are subject to similar standards to those established by this Regulation.’	‘(16) Benchmarks that are provided by central banks ~~in the Union~~ are subject to control by public authorities and meet principles, standards and procedures which ensure the accuracy, integrity and independence of their benchmarks ~~as provided for by this Regulation~~. It is therefore not necessary that these benchmarks should be subject to this Regulation. ~~However third country central banks may also provide benchmarks that are used in the Union. It is necessary to determine that only those central banks of third countries that produce benchmarks are exempted from the obligations under this Regulation that are subject to similar standards to those established by this Regulation.~~’
Explanation *Benchmarks provided by central banks are subject to control by public authorities. Those controls are already designed to meet principles, standards and procedures which ensure the accuracy, integrity and independence of their benchmarks. Therefore, it is not necessary to include central banks and the benchmarks they provide in the proposed regulation.*	

1 Bold in the body of the text indicates where the ECB proposes inserting new text. Strikethrough in the body of the text indicates where the ECB proposes deleting text.

Text proposed by the Commission	**Amendments proposed by the ECB**[1]
Amendment 2 Recital 50	
'(50) In order to ensure uniform conditions for the implementation of this Regulation, in regard to certain of its aspects implementing powers should be granted to the Commission. Those aspects concern the ascertainment of the equivalence of the legal framework to which central banks and providers of benchmarks of third countries are subject, as well of the fact that a benchmark is critical in nature. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.'	'(50) In order to ensure uniform conditions for the implementation of this Regulation, in regard to certain of its aspects implementing powers should be granted to the Commission. Those aspects concern the ascertainment of the equivalence of the legal framework to which ~~central banks and~~ providers of benchmarks of third countries are subject, as well of the fact that a benchmark is critical in nature. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.'
Explanation *This deletion of central banks is due to the proposed exemption for those institutions.*	
Amendment 3 Article 2(2) and (3)	
'2. This Regulation shall not apply to: (a) Members of the European System of Central Banks (ESCB). (b) Central banks of third countries whose legal framework is recognised by the Commission as providing for principles, standards and procedures equivalent to the requirements on the	'2. This Regulation shall not apply to~~:~~ **central banks**. ~~(c) Members of the European System of Central Banks (ESCB).~~ ~~(d) Central banks of third countries whose legal framework is recognised by the Commission as providing for principles, standards and procedures~~

Text proposed by the Commission	Amendments proposed by the ECB[1]
accuracy, integrity and independence of the provision of benchmarks provided for by this Regulation. 3. The Commission shall establish a list of central banks of third countries referred to in paragraph 2(b). Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 38(2).'	~~equivalent to the requirements on the accuracy, integrity and independence of the provision of benchmarks provided for by this Regulation.~~ ~~3. The Commission shall establish a list of central banks of third countries referred to in paragraph 2(b).~~ ~~Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 38(2).~~'
Explanation *Please see the explanation to Amendment 1.*	
Amendment 4 Article 3(19)	
''19. "interbank interest rate benchmark" means a benchmark where the underlying asset for the purposes of point (1)(c) of this Article is the rate at which banks may lend to, or borrow from other banks;'	'19: "interbank interest rate benchmark" means a benchmark where the underlying asset for the purposes of point (1)(c) of this Article is the rate at which banks may lend to, or borrow from other banks, **or the rate available on the wholesale market**;'
Explanation *The term 'interbank interest rate benchmark' as used for the purpose of the special regime set out in Annex II does not appear appropriate for all current interest rate-based benchmarks or those that may be developed in the future. For example, the current definition does not seem to cover interest rates based on verifiable data from the wholesale market. The definition should therefore be extended to cover not only benchmarks based on interest rates at which banks may lend to or borrow from each other, but also those based on rates used in lending operations that banks conduct on the wholesale market.*	

Text proposed by the Commission	**Amendments proposed by the ECB**[1]
Amendment 5 Article 3(21)	
'21. "critical benchmark" means a benchmark, the majority of contributors to which are supervised entities and that reference financial instruments having a notional value of at least 500 billion euro;'	'21."critical benchmark" means a benchmark, ~~the majority of contributors to which are supervised entities and that reference financial instruments having a notional value of at least 500 billion euro~~ **which if it were to cease to be provided or were provided using an unrepresentative panel or set of contributors or unrepresentative input data would have significant adverse impact on financial stability, the orderly functioning of markets, consumers or the real economy**;'
Explanation *The ECB sees merit in a more flexible definition based on financial stability considerations in place of the proposed definition based on a numerical notional value threshold. Particularly in the case of a new critical benchmark in the new environment of transaction-based benchmarks, it is likely that initially the volume of financial instruments referenced will fluctuate. A definition anchored in financial stability considerations provides a more secure foundation for the emergence of new critical benchmarks, such as for interbank interest rates, should the market want to create these.*	
Amendment 6 Article 14(1), (2) (new), (3) (new) and (4) (new)	
'1. Where contributors, comprising at least 20% of the contributors to a critical benchmark have ceased contributing, or there are sufficient indications that at least 20% of the contributors are likely to cease contributing, in any year, the competent authority of the administrator of a critical benchmark shall have the power to: (a) require supervised entities, selected	'1. ~~Where contributors, comprising at least 20% of the contributors to a critical benchmark have ceased contributing, or there are sufficient indications that at least 20% of the contributors are likely to cease contributing, in any year, the competent authority of the administrator of a critical benchmark~~ **Every two years, the administrator of one or more critical benchmarks shall submit to its competent**

Text proposed by the Commission	Amendments proposed by the ECB[1]
in accordance with paragraphs 2, to contribute input data to the administrator in accordance with the methodology, code of conduct or other rules; (b) determine the form in which, and the time by which, any input data is to be contributed; (c) change the code of conduct, methodology or other rules of the critical benchmark.'	**authority an assessment regarding the representativeness of each critical benchmark it administers.** **2. A contributor to a critical benchmark which intends to leave a panel shall notify in writing the relevant administrator, which in turn shall promptly:** **(a) inform its competent authority; and** **(b) submit to its competent authority, at the latest 14 days after the date of the notification a structural assessment of the implications of the contributor leaving the panel as regards the size and representativeness of the panel.** **3. Upon receipt of an assessment mentioned in paragraph 1 or 2 and on the basis of such assessment, the competent authority shall promptly:** **(a) inform ESMA; and** **(b) make its own assessment of whether the critical benchmark is lacking in representativeness. [This may in particular result from a reduced number of contributors over time or from structural market developments.** **4. If the competent authority of the administrator considers that the benchmark lacks representativeness, it** shall have the power to: (a) require supervised entities, selected in accordance with paragraph~~s~~ **5** to contribute input data to the administrator in accordance with the methodology,

Text proposed by the Commission	Amendments proposed by the ECB[1]
	code of conduct or other rules; (b) determine the form in which, and the time by which, any input data is to be contributed; (c) change the code of conduct, methodology or other rules of the critical benchmark; **(d) require a contributor that has notified its intention to leave a panel under paragraph 2 to remain in the panel until the competent authority has finished its assessment. This period shall not exceed [4] weeks from the date of the contributor's notification of its intention to leave the panel.'**
Explanation *A situation could arise where in any given year a number of panel institutions amounting to fewer than 20% of the total number of contributors cease contributing input data and where that number subsequently increases significantly but nevertheless, in any given year, the number of cessations does not reach 20% of total contributors. In that situation, the powers of the competent authority of the administrator to intervene under Article 14 (mandatory contribution) would not be triggered. The numerical threshold for triggering such powers that is 20% of contributors ceasing to contribute should therefore be replaced by several qualitative tests based on an evaluation by the competent supervisor of the effect of any decrease in panel size with regard to the representativeness of the panel and input data. This requires that a contributor that intends to leave the panel has to notify the administrator forthwith. An additional power is also required for financial stability reasons to ensure that any contributor that intends to withdraw remains in the panel until such evaluation is concluded.*	
Amendment 7 Article 16	
'1. An administrator shall publish the input data	~~'1. An administrator shall publish the input data used~~

Text proposed by the Commission	Amendments proposed by the ECB[1]
used to determine the benchmark immediately after publication of the benchmark except where publication would have serious adverse consequences for the contributors or adversely affect the reliability or integrity of the benchmark. In such cases publication may be delayed for a period that significantly diminishes these consequences. Any personal data included in input data shall not be published. 3. The Commission shall be empowered to adopt delegated acts in accordance with Article 37 concerning measures to further specify the information to be disclosed in accordance with paragraph 1, the means of publication as well as the circumstances when publication may be delayed and the means by which it shall be transmitted.'	~~to determine the benchmark immediately after publication of the benchmark except where publication would have serious adverse consequences for the contributors or adversely affect the reliability or integrity of the benchmark~~. '**1. An administrator shall store and keep at the disposal of its competent authority the input data used to determine the benchmark for a period of [5] years from the date of publication of the benchmark**. **While storing the input data , the administrator shall be under an obligation to protect any part of that data that is commercially sensitive, subject to business confidentiality, or that is personal data.** **The administrator may publish the input data from a contributor that is used to detemine the benchmark only with the prior written consent of the contributor.** 2. The Commission shall be empowered to adopt delegated acts in accordance with Article 37 concerning measures to further specify the information to be ~~disclosed~~ **stored** in accordance with paragraph 1, **and** the means ~~of publication as well as the circumstances when publication may be delayed and the means by which it shall be transmitted~~ **by which, upon request,** it shall be transmitted **or otherwise made accessible to the competent authority**.'

Explanation

An administrator should not be required to publish input data, even with a delay. Firstly, this data will not have additional value for users. Rather, the proposed regulation should ensure that the user can be confident about the accuracy and reliability of the data through appropriate control mechanisms. Secondly, the input data may include data which is commercially sensitive or subject to business confidentiality, for example if

Text proposed by the Commission	Amendments proposed by the ECB[1]
volume data for transactions is included in input data. It is however necessary that the administrator keeps the input data available for the competent supervisory authority for a reasonable period in order to allow the authority to check that the data being contributed is reliable and accurate. The relevant contributor may nonetheless give its prior approval to the publication of the data.	
Amendment 8 Article 17(1)	
'(1) An administrator shall publish a procedure concerning the actions to be taken by the administrator in the event of changes to or the cessation of a benchmark.'	'(1) An administrator shall publish a procedure concerning the actions to be taken by the administrator in the event of changes to or the cessation of a benchmark. **The administrator shall also set out in the code of conduct provided for in Article 9 the contingency procedures that are in place in the event of an abrupt disruption to the benchmark.**'
Explanation *Including contingency procedures amongst the obligations of the administrator of the benchmark under the code of conduct would support the robustness of the benchmark, promote transparency towards market participants, and facilitate transition towards a substitute benchmark in case of emergency; in other words, in case of a serious and abrupt disruption to the administrator's ability to provide the benchmark. See also Amendment 17.*	
Amendment 9 Article 20(1)	
'1. Benchmarks provided by an administrator established in a third country may be used by supervised entities in the Union provided that the following conditions are complied with: (a) the Commission has adopted an equivalence decision in accordance with paragraph 2, recognising the legal framework and	'1. Benchmarks provided by an administrator ~~established~~ **located** in a third country may be used by supervised entities in the Union **for a period of 3 years from the date of entry into force of this Regulation** provided that the following conditions are complied with: (a) the Commission has adopted ~~an equivalence~~

Text proposed by the Commission	Amendments proposed by the ECB[1]
supervisory practice of that third country as equivalent to the requirements of this Regulation; (b) the administrator is authorised or registered in, and is subject to supervision in, that third country; (c) the administrator has notified ESMA of its consent that its actual or prospective benchmarks may be used by supervised entities in the Union, the list of the benchmarks which may be used in the Union and the competent authority responsible for its supervision in the third country; (d) the administrator is duly registered under Article 21; and (e) the cooperation arrangements referred to in paragraph 3 of this Article are operational.'	~~decision in accordance with paragraph 2, recognising the legal framework and supervisory practice of that third country as equivalent to the requirements of this Regulation~~ **a decision stating the administrator of the benchmark complies with the legal framework and supervisory practice of the third country in which the administrator is located and in particular with the IOSCO principles on financial benchmarks**; (b) the administrator is authorised or registered in~~, and is subject to supervision in,~~ that third country; (c) the administrator has notified ESMA of its consent that its actual or prospective benchmarks may be used by supervised entities in the Union~~,~~ **and** the list of the benchmarks which may be used in the Union ~~and the competent authority responsible for its supervision in the third country~~; **and** (d) the administrator is duly registered under Article 21~~; and~~ ~~(e) the cooperation arrangements referred to in paragraph 3 of this Article are operational~~.'

Explanation

In view of the international diversity of regulatory approaches to financial benchmarks, the introduction of an equivalence regime should be carefully weighed also from the perspective of financial stability considerations. The introduction of a 3-year exemption from the equivalence regime for third country administrators of selected critical benchmarks that are widely used in the Union should therefore be considered. Third country administrators should however be required to demonstrate compliance with their domestic legal framework, supervisory practice and IOSCO principles. In these circumstances, the benchmark would be temporarily exempted from the equivalence requirements under Article 20(2) and (3). Administrators benefiting from such regime would be separately registered by ESMA (see below). To achieve

Text proposed by the Commission	Amendments proposed by the ECB[1]
a balance between the potentially conflicting interests of financial stability and equal treatment between Union and non-Union based benchmark administrators, the 3-year deferral should be annually reviewed. This role could be performed by ESMA acting upon a mandate from the Commission (see Amendment 15). *Also, in view of the definition in Article 3(22), which defines 'location' as the country where a legal person's registered office or other official address is situated, the terminology of 'location' should be used consistently throughout the text of the proposed regulation.*	
Amendment 10 Article 20(2) (new)	
	'2. From the third anniversary of the entry into force of this regulation benchmarks provided by an administrator established in a third country may be used by supervised entities in the Union provided that the following conditions are complied with: **(a) the Commission has adopted an equivalence decision in accordance with paragraph 3, recognising the legal framework and supervisory practice of that third country as equivalent to the requirements of this Regulation;** **(b) the administrator is authorised or registered in, and is subject to supervision in, that third country;** **(c) the administrator has notified ESMA of its consent that its actual or prospective benchmarks may be used by supervised entities in the Union, the list of the benchmarks which may be used in the Union and the competent authority responsible for its supervision in the third country;** **(d) the administrator is duly registered under Article 21; and**

Text proposed by the Commission	Amendments proposed by the ECB[1]
	(e) the cooperation arrangements referred to in paragraph 4 of this Article are operational.'
Explanation *The full equivalence regime under new Article 20(2) would only come into force upon the third anniversary of the entry into force of the proposed regulation.*	
Amendment 11 Article 20(2)	
'2. The Commission may adopt a decision stating that the legal framework and supervisory practice of a third country ensures that: (a) administrators authorised or registered in that third country comply with binding requirements which are equivalent to the requirements resulting from this Regulation, in particular taking into account if the legal framework and supervisory practice of a third country ensures compliance with the IOSCO principles on financial benchmarks published on 17 July 2013; and (b) the binding requirements are subject to effective supervision and enforcement on an on-going basis in that third country. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 38(2).'	'**3**~~2~~. **For the purposes of paragraph 2**, the Commission may adopt a decision stating that the legal framework and supervisory practice of a third country ensures that: (a) administrators authorised or registered in that third country comply with binding requirements which are equivalent to the requirements resulting from this Regulation, in particular taking into account if the legal framework and supervisory practice of a third country ensures compliance with the IOSCO principles on financial benchmarks published on 17 July 2013; and (b) binding requirements are subject to effective supervision and enforcement on an on-going basis in that third country. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 38(2).'
Explanation *Due to the proposed introduction of the temporary lighter regime under new Article 20(1) for a period of 3*	

Text proposed by the Commission	Amendments proposed by the ECB[1]
years, the Commission decision on equivalence under the new Article 20(2) would only be required after the third anniversary of the entry into force of the proposed regulation.	
Amendment 12 Article 20(3)	
'3. ESMA shall establish cooperation arrangements with the competent authorities of third countries whose legal framework and supervisory practice have been recognised as equivalent in accordance with paragraph 2. Such arrangements shall specify at least: ...'	'~~3~~**4**. ESMA shall establish cooperation arrangements with the competent authorities of third countries whose legal framework and supervisory practice have been recognised as equivalent in accordance with paragraph ~~2~~**3**. Such arrangements shall specify at least: ...'
Explanation *This is a consequential amendment required by the insertion of new Article 20(1) and (2).*	
Amendment 13 Article 20(4)	
'4. ESMA shall develop draft regulatory technical standards to determine the minimum content of the cooperation arrangements referred to in paragraph 3 so as to ensure that the competent authorities and ESMA are able to exercise all their supervisory powers under this Regulation: ESMA shall submit those draft regulatory technical standards to the Commission by [XXX]. Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.'	'**45.** ESMA shall develop draft regulatory technical standards to determine the minimum content of the cooperation arrangements referred to in paragraph ~~3~~**4** so as to ensure that the competent authorities and ESMA are able to exercise all their supervisory powers under this Regulation: ESMA shall submit those draft regulatory technical standards to the Commission by [XXX]. Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.'

Text proposed by the Commission	**Amendments proposed by the ECB**[1]
Explanation *This is a consequential amendment required by the insertion of new Article 20(1) and (2).*	
Amendment 14 Article 21(1) and (2)	
‘1. ESMA shall register the administrators that have notified it of their consent referred to in Article 20(1)(c). The register shall be publicly accessible on the website of ESMA and shall contain information on the benchmarks which the relevant administrators are permitted to provide and the competent authority responsible for their supervision in the third country. 2. ESMA shall withdraw the registration of an administrator referred to in paragraph 1 from the register referred to in paragraph 1 when: (a) ESMA has well-founded reasons, based on documented evidence, to consider that the administrator is acting in a manner which is clearly prejudicial to the interests of users of its benchmarks or the orderly functioning of markets; or (b) ESMA has well-founded reasons, based on documented evidence, to consider that the administrator has seriously infringed the national legislation or other provisions applicable to it in the third country and on the basis of which the Commission has adopted the decision in accordance with Article 20(2).’	‘1. ESMA shall register the administrators that have notified it of their consent referred to in Article 20(1)(c) **and Article 20(2)(c).** The register**s** shall be publicly accessible on the website of ESMA and shall contain information on the benchmarks which the relevant administrators are permitted to provide and the competent authority responsible for their supervision in the third country. 2. ESMA shall withdraw the registration of an administrator referred to in paragraph 1 from the **relevant** register referred to in paragraph 1 when: (a) ESMA has well-founded reasons, based on documented evidence, to consider that the administrator is acting in a manner which is clearly prejudicial to the interests of users of its benchmarks or the orderly functioning of markets; or (b) ESMA has well-founded reasons based on documented evidence, to consider that the administrator has seriously infringed the national legislation or other provisions applicable to it in the third country and on the basis of which the Commission has adopted the decision in accordance with Article 20~~(2)~~**(1)(a) or Article 20(3).**’

Text proposed by the Commission	**Amendments proposed by the ECB**[1]
Explanation *The role of registrar of third country administrators of critical benchmarks that are widely used in the Union and subject to the lighter temporary regime under Article 20(1) should also be performed by ESMA on behalf of the Commission.*	
Amendment 15 Article 29(1)	
'1. For administrators and supervised contributors, each Member State shall designate the relevant competent authority responsible for carrying out the duties resulting from this Regulation and shall inform the Commission and ESMA thereof.'	'1. For administrators and supervised contributors, each Member State shall designate the relevant **national** competent authority responsible for carrying out the duties resulting from this Regulation and shall inform the Commission and ESMA thereof.'
Explanation *To remove any possible doubt that the responsibility for the supervision of financial conduct of institutions which come under the SSM remains with the national competent authorities, it should be specified that the designated competent authority must be a national competent authority.* *Although the ESCB members are excluded from the scope of the proposed regulation by Article 2(2) (a), the ECB understands that the competence of Member States to designate their central bank as the national competent authority remains unaffected by such exclusion, since the exclusion relates to the activities specified under Article 2(1) and further defined in the proposed regulation.*	
Amendment 16 Article 40	
'By 1 July 2018, the Commission shall review and report to the European Parliament and the Council on this Regulation and in particular: (a) the functioning and effectiveness of the critical benchmark and mandatory participation regime under Articles 13 and 14 and the definition of a critical benchmark in Article 3;	'**1**. By 1 July 2018, the Commission shall review and report to the European Parliament and the Council on this Regulation and in particular: (a) the functioning and effectiveness of the critical benchmark and mandatory participation regime under Articles 13 and 14 and the definition of a critical benchmark in Article 3;

Text proposed by the Commission	Amendments proposed by the ECB[1]
(b) the effectiveness of the supervisory regime in Title VI and the colleges under Article 34 and the appropriateness of supervision of certain benchmarks by a Union body; and (c) the value of the suitability requirement under Article 18.'	(b) the effectiveness of the supervisory regime in Title VI and the colleges under Article 34 and the appropriateness of supervision of certain benchmarks by a Union body; and (c) the value of the suitability requirement under Article 18. **2. In addition, the Commission shall annually review and report to the European Parliament and the Council on the functioning and effectiveness of the temporary equivalence regime under Article 20(1). For this purpose the Commission may mandate ESMA to carry out such report. The first report shall be due on [first anniversary of entry into force of the regulation - dd/mm/2015].**'
Explanation *In view of the proposed 'lighter' equivalence regime for third country administrators of benchmarks that are widely used in the Union for a temporary period of three years (see new Article 20(1)), the Commission should periodically review and report on the functioning of this regime and on the developing legal and supervisory frameworks in the third countries where the administrators of such benchmarks are located. The Commission should mandate ESMA to carry out such review on its behalf.*	
Amendment 17 Article 41	
'This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*. It shall apply from [12 months after entry into force]. However, Article 13(1) and 34 shall apply from [6 months after entry into force].'	'This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*. It shall apply from [12 months after entry into force], **with the exception of the following provisions:** ~~However,~~ Article 13(1) and 34 shall apply

Text proposed by the Commission	Amendments proposed by the ECB[1]
	from [6 months after entry into force]. **Article 20(3) and (4) shall apply from [36 months after entry into force].**'
Explanation *It is proposed to postpone the application of the full equivalence regime to third country administrators of benchmarks widely used in the Union by three years for financial stability reasons, giving non-Union countries time to introduce a supervisory framework equivalent to that of the proposed regulation.*	
Amendment 18 Paragraph 1 of Section D of Annex I	
'1. The code of conduct produced pursuant to Article 9 shall include at least the following elements: (a) the requirements necessary to ensure that the input data is provided in accordance with Articles 7 and 8; who may contribute input data to the administrator and procedures to evaluate the identity of a contributor and any submitters and the authorisation of any submitters; (b) policies to ensure contributors to provide all relevant input data; and (c) the systems and controls that the contributor is required to establish, including: – procedures for submitting input data, including requirements for the contributor to specify whether the input data is transactions data and whether the input data conforms with the administrator's requirements; – policies on the use of discretion in providing input data; – any requirement for the validation of	'1. The code of conduct produced pursuant to Article 9 shall include at least the following elements: [....] **and** **(d) the contingency procedures that the administrator of the benchmark shall follow in the event of an abrupt disruption to the benchmark, in order to promote the robustness of the benchmark and improve transparency towards end users.**'

Text proposed by the Commission	Amendments proposed by the ECB[1]
input data before it is provided to the administrator; – record keeping policies; – suspicious input data reporting requirements; – conflict management requirements.’	
Explanation *Defining contingency procedures at the level of the administrator of the benchmark would support the robustness of the benchmark, promote transparency towards market participants, and facilitate transition towards a substitute benchmark in case of emergency*	
Amendment 19 Paragraph 4(a) third indent of Annex II	
4. Transactions data for the purposes of Article 7(1)(a) shall be: (a) a contributor’s transactions which correspond with the input data requirements in the code of conduct in: – the unsecured inter-bank deposit market; – other unsecured deposit markets, including certificates of deposit and commercial paper; and – other related markets overnight index swaps, repurchase agreements, foreign exchange forwards, interest rate futures and options and central bank operations.’	4. Transactions data for the purposes of Article 7(1)(a) shall be: (a) a contributor’s transactions which correspond with the input data requirements in the code of conduct in: – the unsecured inter-bank deposit market; – other unsecured deposit markets, including certificates of deposit and commercial paper; and – other related markets **such as** overnight index swaps, repurchase agreements, foreign exchange forwards, **and** interest rate futures and options ~~and central bank operations~~.’

Text proposed by the Commission	**Amendments proposed by the ECB**[1]
Explanation *The term 'central bank operations' is not defined so its scope is not clear. However, data on transactions between central banks and panel members within the framework of monetary policy should not be used by contributors for the purpose of contributing to the determination of a benchmark, as the disclosure of such data may compromise the ability of central banks to effectively communicate monetary policy'. Furthermore, using data relating to such operations may provide inadequate incentives for counterparties to participate in monetary policy operations and thereby hinder the proper implementation of monetary policy. As regards own funds investment operations of central banks, their volume is small by comparison and these operations are thus a less significant source of data on the wholesale funding market.*	
Amendment 20 Paragraph 6 of Annex II	
'**Transparency of Input Data** 6. If the input data is estimates, the administrator shall publish the input data three months after its provision, otherwise input data shall be published in accordance with Article 16.'	~~**Transparency of Input Data**~~ ~~6. If the input data is estimates, the administrator shall publish the input data three months after its provision, otherwise input data shall be published in accordance with Article 16.~~
Explanation *Due to the proposed deletion of the duty on administrators to publish input data – see Amendment 7 – this paragraph is redundant. Moreover, there is no clear reason for treating input data that are estimates differently from input data that are transaction data as regards the delay in the publication date.*	