Official Journal of the European Union

C 113

English edition

Information and Notices

Volume 57

15 April 2014

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EN

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EUROPEAN CENTRAL BANK

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)

(2014/C 113/01)

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 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 input data is translated into the benchmark, administrators must adopt a code of conduct and ensure that provision of

(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.

(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.

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].

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.

(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 24) 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.
(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(1)(13) of the proposed regulation.
(15) According to Article 3(1)(15) of the proposed regulation, these are credit agreements and credit agreements related to residential property as defined in the relevant Union directives.

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 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 not be opposed to extending the exemption to all public

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([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.

([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 that 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(1)(14)(e) and (f) of the proposed regulation).

([19]) See Article 2(2)(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.' The draft report has not yet been voted on by the Committee. Available on the Parliament's website at www.europarl.europa.eu 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 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 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]).

([22]) IOSCO final report on principles for financial benchmarks, see footnote 13.
([23]) See Article 3(1)(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.
([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.

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].

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 institutions.

[34] See Title III of the proposed regulation.
[35] See Article 3(1)(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(1)(21) of the proposed regulation.
[39] See Amendment 6.
[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.

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 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 (EU) 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 administrator 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 reliability of the data by the proper oversight, supervision, archiving and auditing thereof. In addition, in relation to transaction-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.

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(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).

(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.

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

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 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.

([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.
([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.

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 three 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 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.

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.

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.

Text proposed by the Commission	Amendments proposed by the ECB [1]

Amendment 3

Article 2(2) and (3)

Text proposed by the Commission	Amendments proposed by the ECB
'2. This Regulation shall not apply to:	'2. This Regulation shall not apply to~~:~~ **central banks**.
(a) Members of the European System of Central Banks (ESCB).	~~(a) Members of the European System of Central Banks (ESCB).~~
(b) Central banks of third countries whose legal framework is recognised by the Commission as providing for principles, standards and procedures equivalent to the requirements on the accuracy, integrity and independence of the provision of benchmarks provided for by this Regulation.	~~(b) Central banks of third countries whose legal framework is recognised by the Commission as providing for principles, standards and procedures equivalent to the requirements on the accuracy, integrity and independence of the provision of benchmarks provided for by this Regulation.~~
3. The Commission shall establish a list of central banks of third countries referred to in paragraph 2(b).	~~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).'	~~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(1)(19)

Text proposed by the Commission	Amendments proposed by the ECB
'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(1)(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 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.’	‘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 authority an assessment regarding the representativeness of each critical benchmark it administers.**

Text proposed by the Commission	Amendments proposed by the ECB [1]
	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, 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.

Text proposed by the Commission	Amendments proposed by the ECB [1]

Amendment 7

Article 16

'1. An administrator shall publish the input data used to determine the benchmark immediately after publication of the benchmark except where publication would have serious adverse consequences for the contributors or adversely affect the reliability or integrity of the benchmark. In such cases publication may be delayed for a period that significantly diminishes these consequences. Any personal data included in input data shall not be published.	~~'1. An administrator shall publish the input data used to determine the benchmark immediately after publication of the benchmark except where publication would have serious adverse consequences for the contributors or adversely affect the reliability or integrity of the benchmark. In such cases publication may be delayed for a period that significantly diminishes these consequences. Any personal data included in input data shall not be published.~~ '**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 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.'	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 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.

Text proposed by the Commission	Amendments proposed by the ECB [1]

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 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.'	'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 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~~.'

Text proposed by the Commission	Amendments proposed by the ECB [1]

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 a balance between the potentially conflicting interests of financial stability and equal treatment between Union and non-Union based benchmark administrators, the three-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(1)(22), which defines 'located' 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** **(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.

Text proposed by the Commission	Amendments proposed by the ECB [1]

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 three 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(2).

Text proposed by the Commission	Amendments proposed by the ECB [1]

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.'	'~~4~~**5.** 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.'

Explanation

This is a consequential amendment required by the insertion of new Article 20(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.	'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 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).'	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; (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.'	'**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; (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].**'

Text proposed by the Commission	Amendments proposed by the ECB [1]

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 **Article** 34 shall apply 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 input data before it is provided to the administrator; — record keeping policies; — suspicious input data reporting requirements; — conflict management requirements.'	'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]

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

Text proposed by the Commission	Amendments proposed by the ECB
'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~~.'

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

Text proposed by the Commission	Amendments proposed by the ECB
'**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.

[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.

II

(Information)

INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

EUROPEAN COMMISSION

Information concerning infringement proceedings 2013/4108

(2014/C 113/02)

1. The European Commission wishes to give the complainants concerned an update on infringement proceedings 2013/4108 concerning access to the profession of draftsman (*delineante*) in Spain.

2. Following the letter of formal notice sent by the Commission on 21 June 2013 in accordance with Article 258 of the Treaty on the Functioning of the European Union, Spain has achieved compliance with EU law by amending its legislation.

3. Spain adopted *Real Decreto* (Royal Decree) 103/2014 of 21 February 2014 (BOE of 10 March 2014) amending *Real Decreto* 1837/2008 of 8 November 2008, the latter transposing into Spanish law Directive 2005/36/EC on the recognition of professional qualifications. *Real Decreto* 103/2014 is available online at the following address: http://www.boe.es/boe/dias/2014/03/10/pdfs/BOE-A-2014-2523.pdf

4. Article 1(13) and (14) of *Real Decreto* 103/2014 amends in particular Annex VIII to *Real Decreto* 1837/2008, classifying the profession of 'draftsman' at the training level referred to in Article 19(2) of *Real Decreto* 1837/2008, which corresponds to the level of certificate specified in Article 11(b) of Directive 2005/36/EC.

5. As regards the profession of 'draftsman' specifically, the problem of potential discrimination against those with qualifications obtained in other Member States has thus been settled, and *Real Decreto* 1837/2008 as amended by *Real Decreto* 103/2014 appears to be in line with Directive 2005/36/EC.

6. Consequently, the complainants are informed that the service responsible for investigating infringement proceedings 2013/4108 intends to propose that the Commission close this case at one of its upcoming meetings. However, where the complainants are in possession of new information likely to show that an infringement of EU law has occurred, they are asked to submit it at their earliest convenience, but at the latest within four weeks from this publication in the *Official Journal of the European Union*, after which period the Commission might close the case.

Correspondence address:

European Commission
Directorate-General for the Internal Market and Services
Unit E4: Free movement of professionals
rue de Spa/Spastraat 2
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

E-mail: Markt-E4@ec.europa.eu

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COUNCIL

COUNCIL DECISION

of 9 April 2014

adopting the Council's position on draft amending budget No 1 of the European Union for the financial year 2014

(2014/C 113/03)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 314 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 106a thereof,

Having regard to Regulation (EC, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 [1] and in particular Article 41 thereof,

Whereas:

— the Union's budget for the financial year 2014 was definitively adopted on 20 November 2013 [2],

— on 11 February 2014, the Commission submitted a proposal containing draft amending budget No 1 to the general budget for the financial year 2014,

HAS DECIDED AS FOLLOWS:

Sole Article

The Council's position on draft amending budget No 1 of the European Union for the financial year 2014 was adopted on 9 April 2014.

Following the judgement of the European Court of Justice of 11 July 1985 in joined cases 87, 130/77, 22/83, 9 and 10/84 [3], the Council recalls that budgetary remarks are not binding and are without prejudice to existing provisions in legislative acts.

(1) OJ L 298, 26.10.2012, p. 1.
(2) OJ L 51, 20.2.2014, p. 1.
(3) ECJ [1985], pp. 11-2524, in particular paragraph 56.

The full text can be accessed for consultation or downloading on the Council's website: http://www.consilium.europa.eu/.

Done at Brussels, 9 April 2014.

For the Council

The President

D. KOURKOULAS

Notice for the attention of the persons and entities subject to the restrictive measures provided for in Council Decision 2013/183/CFSP concerning restrictive measures against the Democratic People's Republic of Korea

(2014/C 113/04)

The following information is brought to the attention of the persons and entities that appear in Annexes II and III to Council Decision 2013/183/CFSP [1] concerning restrictive measures against the Democratic People's Republic of Korea.

The Council of the European Union, after having reviewed the list of persons and entities designated in the above-mentioned Annexes, has determined that the restrictive measures provided for in Decision 2013/183/CFSP should continue to apply to those persons and entities.

The attention of the persons and entities concerned is drawn to the possibility of making an application to the competent authorities of the relevant Member State(s) as indicated in the web-sites in Annex II to Council Regulation (EC) No 329/2007 [2], in order to obtain an authorisation to use frozen funds for basic needs or specific payments (cf. Article 7 of the Regulation).

The persons and entities concerned may submit a request to the Council, together with supporting documentation, that the decision to include them on the above-mentioned lists should be reconsidered, before 15 January 2015, to the following address:

Council of the European Union
General Secretariat
DG C 1C
Rue de la Loi/Wetstraat 175
1048 Bruxelles/Brussel
BELGIQUE/BELGIË

e-mail: sanctions@consilium.europa.eu

Any observations received will be taken into account for the purpose of the Council's periodic review, in accordance with Article 22(2) of Decision 2013/183/CFSP.

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(1) OJ L 111, 23.4.2013, p. 52.
(2) OJ L 88, 29.3.2007, p. 1.

Notice for the attention of the persons subject to the restrictive measures provided for in Council Decision 2014/119/CFSP, as implemented by Council Implementing Decision 2014/216/CFSP, and in Council Regulation (EU) No 208/2014, as implemented by Council Implementing Regulation (EU) No 381/2014, concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine

(2014/C 113/05)

The following information is brought to the attention of the persons who appear in the Annex to Council Decision 2014/119/CFSP [1], as implemented by Council Implementing Decision 2014/216/CFSP [2], and in Annex I to Council Regulation (EU) No 208/2014 [3], as implemented by Council Implementing Regulation (EU) No 381/2014 [4], concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine.

The Council of the European Union has decided that the persons that appear in the abovementioned Annexes should be included in the list of persons and entities subject to restrictive measures provided for in Decision 2014/119/CFSP and in Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine. The grounds for designations of those persons appear in the relevant entries in those Annexes.

The attention of the persons concerned is drawn to the possibility of making an application to the competent authorities of the relevant Member State(s) as indicated in the websites in Annex II to Regulation (EU) No 208/2014, in order to obtain an authorisation to use frozen funds for basic needs or specific payments (cf. Article 4 of the Regulation).

The persons concerned may submit a request to the Council, together with supporting documentation, that the decision to include them on the abovementioned list should be reconsidered, to the following address:

Council of the European Union
General Secretariat
DG C 1C
Rue de la Loi/Wetstraat 175
1048 Bruxelles/Brussel
BELGIQUE/BELGIË

E-mail: sanctions@consilium.europa.eu

The attention of the persons concerned is also drawn to the possibility of challenging the Council's decision before the General Court of the European Union, in accordance with the conditions laid down in Article 275, second paragraph, and Article 263, fourth and sixth paragraphs, of the Treaty on the Functioning of the European Union.

(1) OJ L 66, 6.3.2014, p. 26.
(2) OJ L 111, 15.4.2014.
(3) OJ L 66, 6.3.2014, p. 1.
(4) OJ L 111, 15.4.2014, p. 33.

EUROPEAN COMMISSION

Euro exchange rates [1]

14 April 2014

(2014/C 113/06)

1 euro =

	Currency	Exchange rate		Currency	Exchange rate
USD	US dollar	1,3827	CAD	Canadian dollar	1,5163
JPY	Japanese yen	140,87	HKD	Hong Kong dollar	10,7206
DKK	Danish krone	7,4664	NZD	New Zealand dollar	1,5962
GBP	Pound sterling	0,82740	SGD	Singapore dollar	1,7314
SEK	Swedish krona	9,0688	KRW	South Korean won	1 439,66
CHF	Swiss franc	1,2154	ZAR	South African rand	14,5156
ISK	Iceland króna		CNY	Chinese yuan renminbi	8,5997
NOK	Norwegian krone	8,2400	HRK	Croatian kuna	7,6215
BGN	Bulgarian lev	1,9558	IDR	Indonesian rupiah	15 814,51
CZK	Czech koruna	27,466	MYR	Malaysian ringgit	4,4947
HUF	Hungarian forint	307,47	PHP	Philippine peso	61,543
LTL	Lithuanian litas	3,4528	RUB	Russian rouble	49,5378
PLN	Polish zloty	4,1824	THB	Thai baht	44,638
RON	Romanian leu	4,4678	BRL	Brazilian real	3,0648
TRY	Turkish lira	2,9410	MXN	Mexican peso	18,0491
AUD	Australian dollar	1,4692	INR	Indian rupee	83,2058

[1] *Source*: reference exchange rate published by the ECB.

V

(Announcements)

ADMINISTRATIVE PROCEDURES

EUROPEAN COMMISSION

Call for proposals — Joint Harmonised European Union Programme of Business and Consumer Surveys

(2014/C 113/07)

1. **Objectives and description**

The Commission is launching a call for proposals (reference ECFIN 2014 001/A4) for carrying out surveys, as part of the Joint Harmonised EU Programme of Business and Consumer Surveys, in the 28 EU Member States and in the candidate countries: Iceland, Montenegro, Former Yugoslav Republic of Macedonia, Republic of Serbia and Turkey.

The programme is designed to gather information on the state of the economies in the EU Member States and Candidate Countries, in order to be able to compare their business cycles for EMU (Economic and Monetary Union) management purposes. It has become an indispensable tool in the EMU economic surveillance process, as well as for general economic policy purposes.

The surveys target managers in the manufacturing sector (industry and investment surveys), construction, retail trade and services sectors as well as consumers. The Commission is looking to conclude agreements with bodies qualified to carry out actions consisting in one or more of the following surveys:

— Industry survey,

— Investment survey,

— Construction survey,

— Retail trade survey,

— Services survey,

— Consumer survey,

— Ad hoc surveys on topical economic issues. These ad hoc surveys are by definition more occasional and are carried out in addition to the monthly surveys, using the same established samples as the monthly surveys, to obtain information on specific economic policy issues.

For this purpose, framework partnership agreements will be concluded for a maximum period of six years. Under this framework partnership agreement six annual specific grant agreements may be concluded between the parties.

The Commission department responsible for the implementation and management of this action is the Directorate-General for Economic and Financial Affairs (ECFIN).

2. **Eligibility**

Only applications from legal entities established in the following countries are eligible in the context of the current call for proposals:

— EU Member States,

— Candidate countries, and

— EFTA and EEA countries.

3. Budget and project duration

The total annual budget available for all surveys is in the region of EUR 5 620 000 (five million six hundred and twenty thousand euro). The EU grant is limited to a maximum co-funding rate of 50 % of the eligible costs for each survey. The Commission reserves the right not to distribute all the funds available.

The beneficiaries are to be selected for a maximum period of 6 years. Six annual specific grant agreements may be concluded. The action for the first year will cover the period 1 May 2015 to 30 April 2016.

4. Deadline for applications

Applications must be sent no later than the deadline: **18 June 2014.**

By post: **Call for proposals** **Ref. ECFIN 2014 001/A4** European Commission Unit ECFIN/R3– Mr J.VERHAEVEN Office N105 01/034 1049 Bruxelles/Brussels BELGIQUE/BELGIË	By courier or by hand: **Call for proposals** **Ref. ECFIN 2014 001/A4** European Commission Unit ECFIN/R3– Mr J.VERHAEVEN Office N105 01/034 Avenue du Bourget/Bourgetlaan 1 1140 Bruxelles/Brussels (Evere) BELGIQUE/BELGIË

5. Further information

The detailed specifications of the call for proposals, the application form and its annexes are available on europa.eu website at the following address:

http://ec.europa.eu/dgs/economy_finance/procurement_grants/grants/proposals/index_en.htm

Applications must comply with the formal requirements set out in the detailed specifications of the call. Applications must be submitted in writing in one of the official languages of the European Union, using the application form and other standard forms where requested. However, applications in English are encouraged as they facilitate the evaluation procedure. Where applicable, additional information considered necessary by the applicant can be included on separate sheets.

The evaluation of proposals will be based on the principle of transparency and equal treatment. All applications will be evaluated by an evaluation committee against the eligibility, exclusion, selection and award criteria as defined in the aforementioned specifications.

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMMON COMMERCIAL POLICY

EUROPEAN COMMISSION

Notice to economic operators — New round of requests for the suspension of the autonomous Common Customs Tariff duties on certain industrial and agricultural products

(2014/C 113/08)

Economic operators are informed that the Commission has received requests in accordance with the administrative arrangements foreseen in the Commission Communication concerning autonomous tariff suspensions and quotas (2011/C 363/02) [1] for the January round of 2015.

The list of the products for which a duty suspension is requested is now available on the Commission's thematic (Europa) website on the customs union [2].

Economic operators are also informed that the deadline for objections against new requests to reach the Commission, via the national administrations, is 17 June 2014 which is the date of the second scheduled meeting of the Economic Tariff Questions Group.

Interested operators are advised to consult the list regularly in order to be informed on the status as the requests.

More information on the autonomous tariff suspension procedure can be found on the Europa website:

http://ec.europa.eu/taxation_customs/customs/customs_duties/tariff_aspects/suspensions/index_en.htm

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[1] OJ C 363, 13.12.2011, p. 6.

[2] http://ec.europa.eu/taxation_customs/dds2/susp/susp_home.jsp?Lang=en

PROCEDURES RELATING TO THE IMPLEMENTATION OF COMPETITION POLICY

EUROPEAN COMMISSION

STATE AID

SA.14093 (C76/2002) — Belgium — Charleroi airport

SA.18857 (2012/C) — Sweden — Västerås airport

SA.19880 and SA.32576 (2012/C) — Germany — Niederrhein Weeze airport

SA.21121 (C29/2008) and SA.32833 (2011/C) — Germany — Frankfurt-Hahn airport

SA.21877 (C24/2007), SA.27585 and SA.31149 (2012/C) — Germany — Lübeck airport

SA.22030 (C26/2007) and SA.29404 (2012/C) — Germany — Dortmund airport NEO and NERES

SA.22614 (C53/2007) — France — Pau airport

SA.23098 (C37/2007) — Italy — Alghero airport

SA.24221 (2012/C) — Austria — Klagenfurt airport

SA.26190 (2012/C) — Germany — Saarbrücken airport

SA.26494 (2012/C) — France — La Rochelle airport

SA.26500 (2012/C) — Germany — Altenburg Nobitz airport

SA.26818 (2010/C) — Italy — Stretto airport

SA.27339 (2012/C) — Germany — Zweibrücken airport

SA.30743 (2011/C) — Germany — Financing of infrastructure measures at Leipzig-Halle airport

SA.30931 (2011/C) — Romania — Romanian airports

SA.31662 (2011/C) — Romania — Timisoara airport

SA.33909 (2013/C) — Spain — Girona and Reus airports

SA.33960 (2012/C) — France — Aéroport de Beauvais

SA.33963 (2012/C) — France — Aéroport d'Angoulême

SA.33962 (2012/C) — France — Carcassonne airport

SA.33961 (2012/C) — France — Nîmes airport

SA.33983 (2013/C) — Italy — SGEI at Sardinian airports

Invitation to submit comments pursuant to Article 108(2) of the TFEU

(Text with EEA relevance)

(2014/C 113/09)

On 31 March 2014, the Commission adopted the EU Guidelines on State aid to Airport and Airlines [1]. These guidelines enter into force on 4 April 2014. In particular, according to Section 8.6 of these guidelines the Commission will assess the compatibility of any possible operating State aid measure in the above mentioned pending formal investigations pursuant to the compatibility criteria set out in Section 5 of the same guidelines.

(1) OJ C 99, 4.4.2014, p. 3.

In the light of the entry into force of the EU Guidelines on State aid to Airport and Airlines, Member States and interested parties may submit their comments on the measures in respect of which the Commission has initiated the above mentioned pending formal investigations within 20 working days from the date of publication of this notice to:

European Commission
Directorate-General for Competition
State aid Greffe
Office: Madou 12/59
1049 Bruxelles/Brussel
BELGIQUE/BELGIË
Fax +32 22961242

Interested parties comments will be communicated to the Member State concerned in each of the above mentioned pending formal investigation. Confidential treatment of the identity of the interested party submitting the comments may be requested in writing when submitting the comments, stating the reasons for the request.

CORRIGENDA

Corrigendum to the List of central authorities nominated by the Member States to deal with the return of cultural objects unlawfully removed from a Member State and applying Article 3 of Directive 93/7/EEC

(Official Journal of the European Union C 55 of 26 February 2014)

(2014/C 113/10)

On page 10, the contact details of the following central authority of the Slovak Republic shall be added to the contacts details already mentioned in the list:

'**Slovak Republic**	Ministerstvo kultúry SR sekcia kultúrneho dedičstva Nám. SNP 33 813 33 Bratislava 1 SLOVENSKO/SLOVAKIA Contact: Pavol Šimunič Tel. +421 220482414 Fax +421 220482476 E-mail: skd@culture.gov.sk'

ISSN 1977-091X (electronic edition)
ISSN 1725-2423 (paper edition)

Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

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