

# Benchmarks: European Commission proposal Key concerns

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1. **Scope (Art. 2)**
2. **Critical benchmark (Art. 3.1.21)**
3. **Mandatory contribution (Art. 14)**
4. **Third-country issues (Art. 20)**
5. **Transitional framework (Art. 39)**
6. **Commodities**
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# 1- Scope (Art. 2): Problem (1/2)

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**Broad and disproportionate SCOPE,  
which is applied to:**

**Benchmark in the broader  
sense**

**Key public  
benchmarks**

**Proprietary indices**

**Bespoke  
indices  
for very few  
customers**

**-EURIBOR  
-LIBOR  
-EONIA  
-Others**

# 1- Scope (Art. 2): Proposal (2/2)

**ESMA  
STANDARDS**



**National  
Competent  
Authority  
(NCA)**



- Circumstances and cases in which the benchmark is not subject to the Regulation (Authorization in Art.22 is not applicable);
- Identifying Regulation requirements that can be waived by competent authorities.

**Based on these standards and during the authorisation process, the NCA would be allowed to waive certain requirements (regarded as disproportionate, duplicative and onerous).**

## 2- Critical benchmark (Art. 3.1.21)

Commission's definition is based on:

1-Majority of contributors are supervised entities; and

2-Financial instruments having a notional value of at least 500 billion Euro



**Uncertainty, since mainly based on a numerical threshold**

An alternative definition is based on:

1-Majority of contributors are supervised entities;

2-Financial instruments having a notional value of at least **500 billion EUR**;

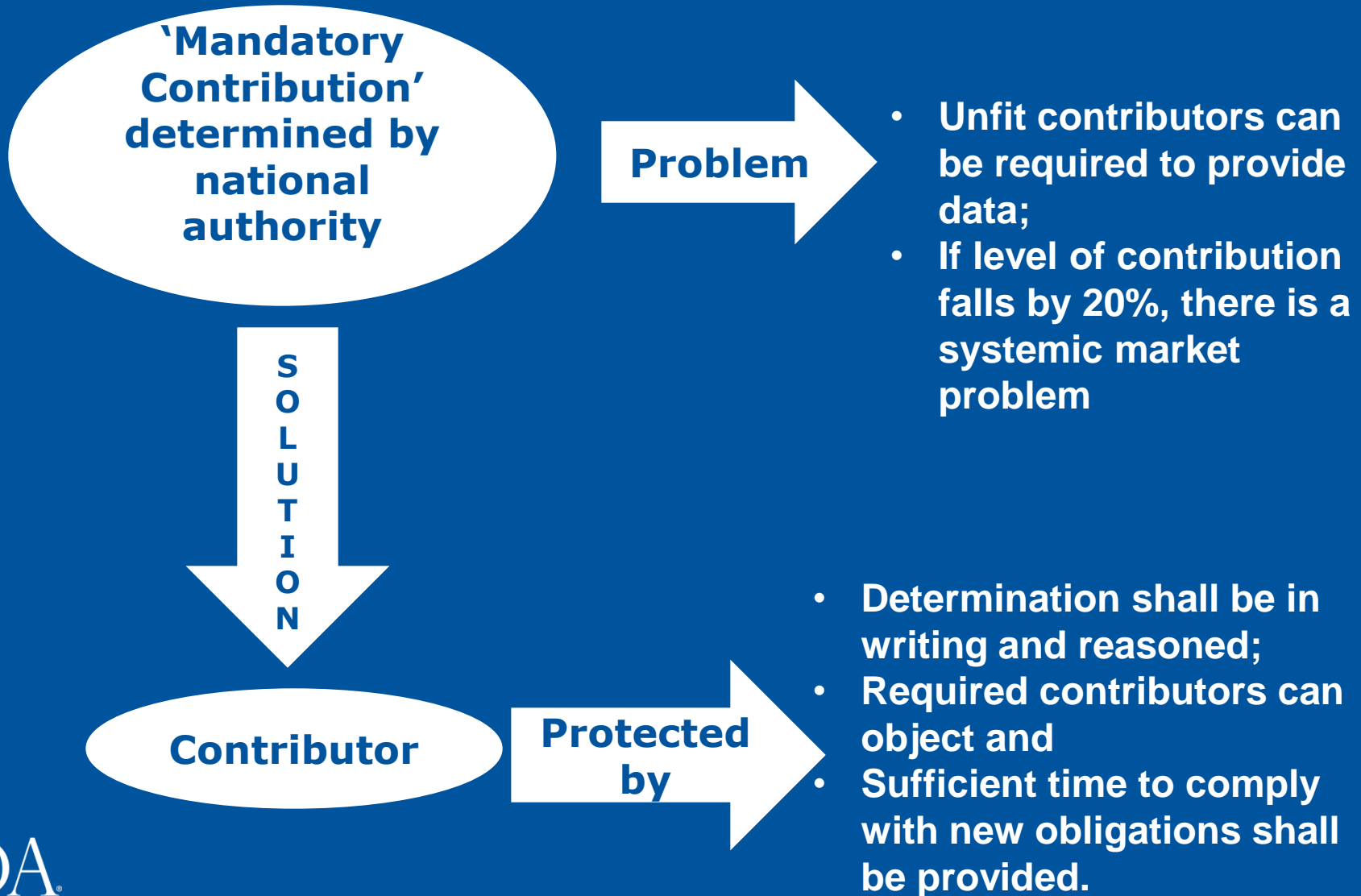
3-Data is not Regulated data (Art. 3.1.11);

4-A significant adverse impact on financial stability



**More realistic approach by considering qualitative and quantitative factors**

# 3-Mandatory contribution (Art. 14)



# 4-Third-country regime (Art. 20): Problem (1/2) 7

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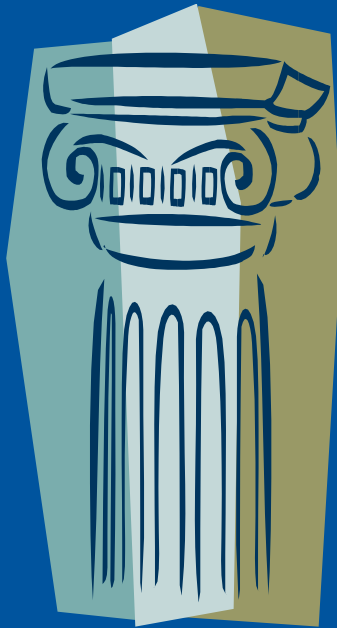


- 1-Sudden withdrawal of liquidity in products referencing a non-EU benchmark;**  
**2-Serious limitation to hedge FX risks vis-à-vis non-EU economies;**  
**3-Unlevel playing field.**

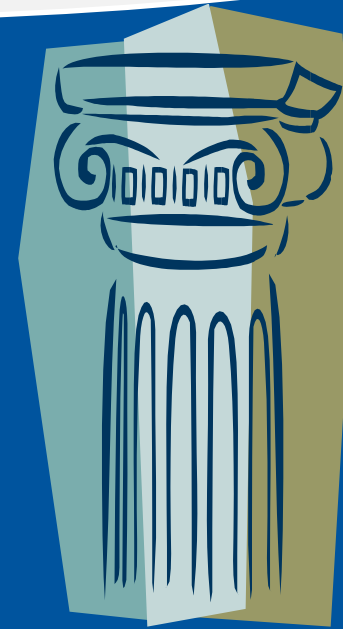
# 4-Third-country regime (Art. 20): Proposal (2/2)

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Allowing benchmarks provided by non-EU administrators to be used by EU supervised entities



Non-EU Administrator  
complies with IOSCO  
principles



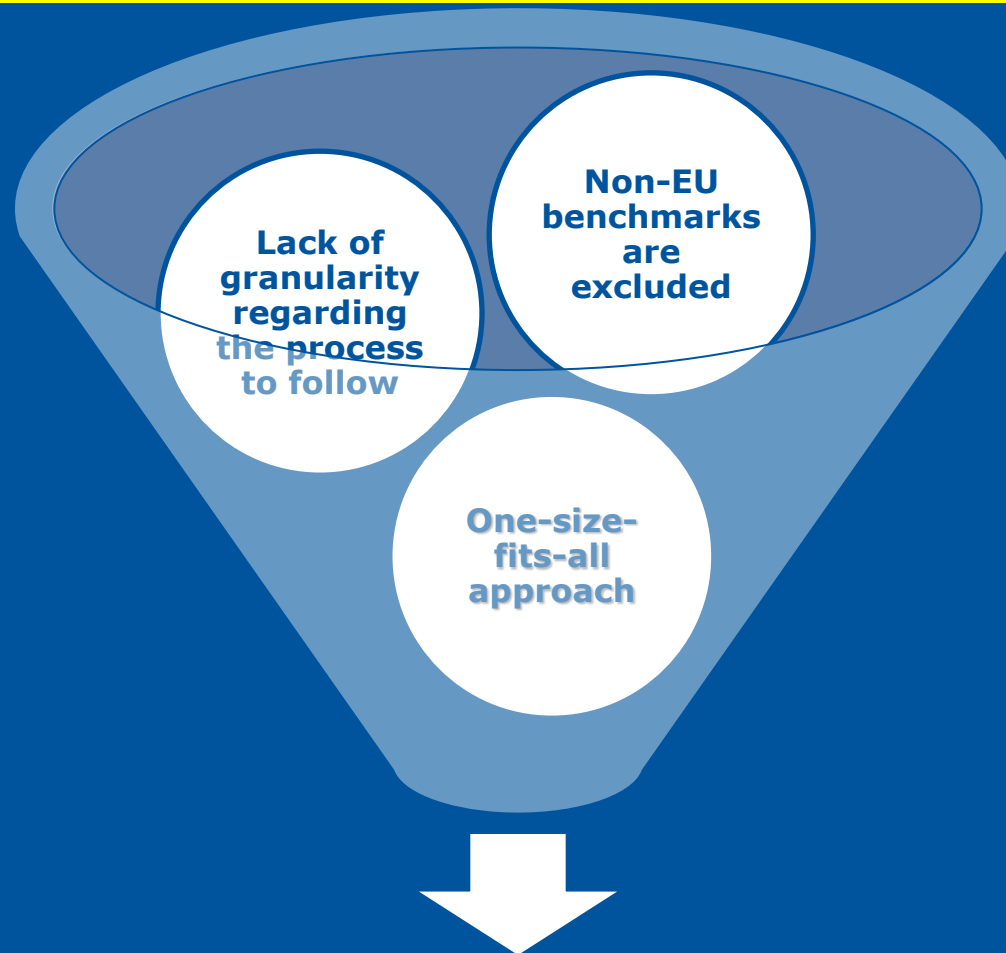
ESMA determines the non-  
EU jurisdictions that have  
implemented the IOSCO  
principles (based on  
IOSCO's assessment)



# 5- Transitional process (Art. 39): Problem (1/2)

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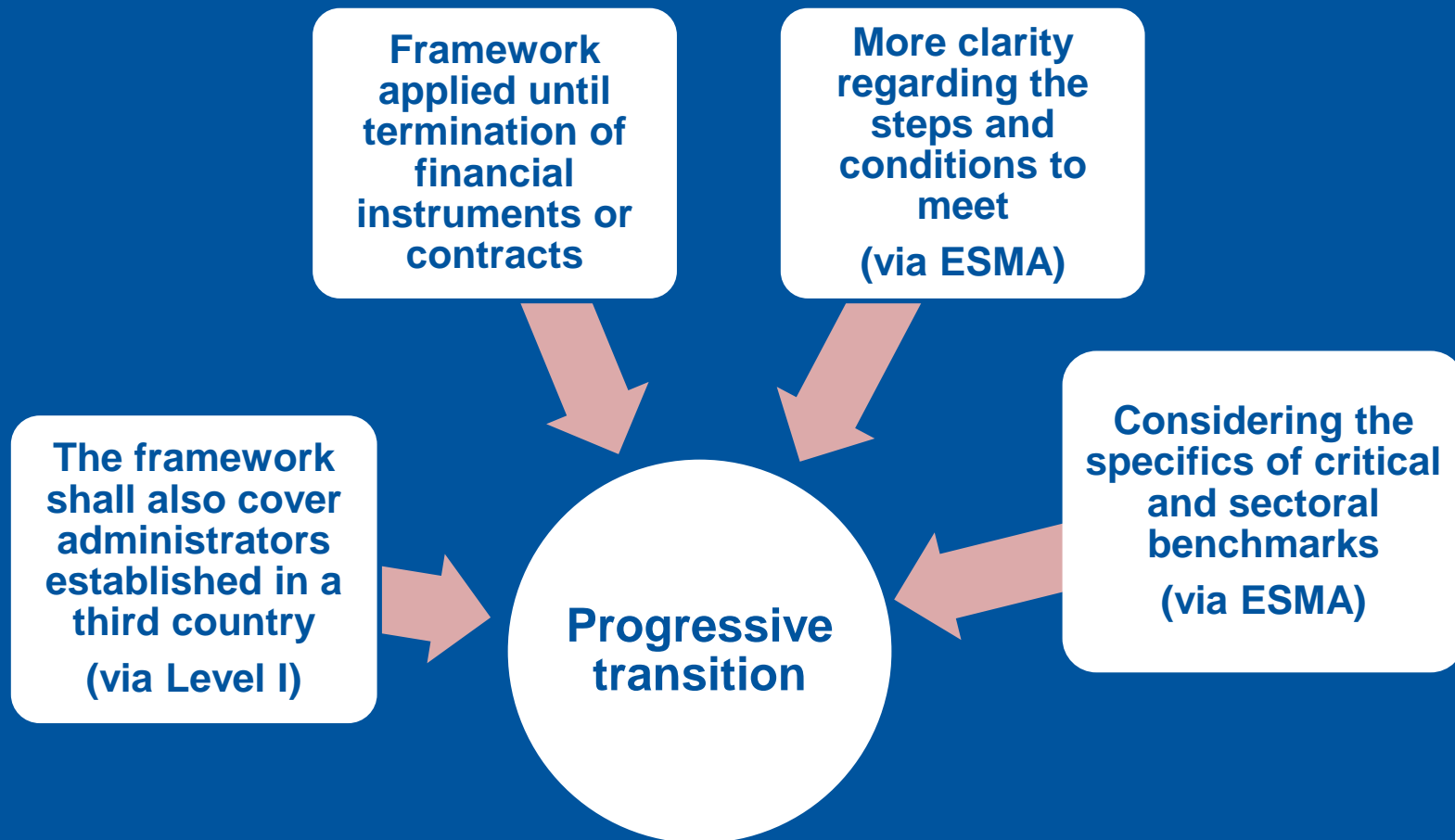


**Abrupt move from old benchmarks to successors (leading to market dislocation and significant 'jump risk').**

# 5-Transitional framework (Art. 39): Proposal (2/2)

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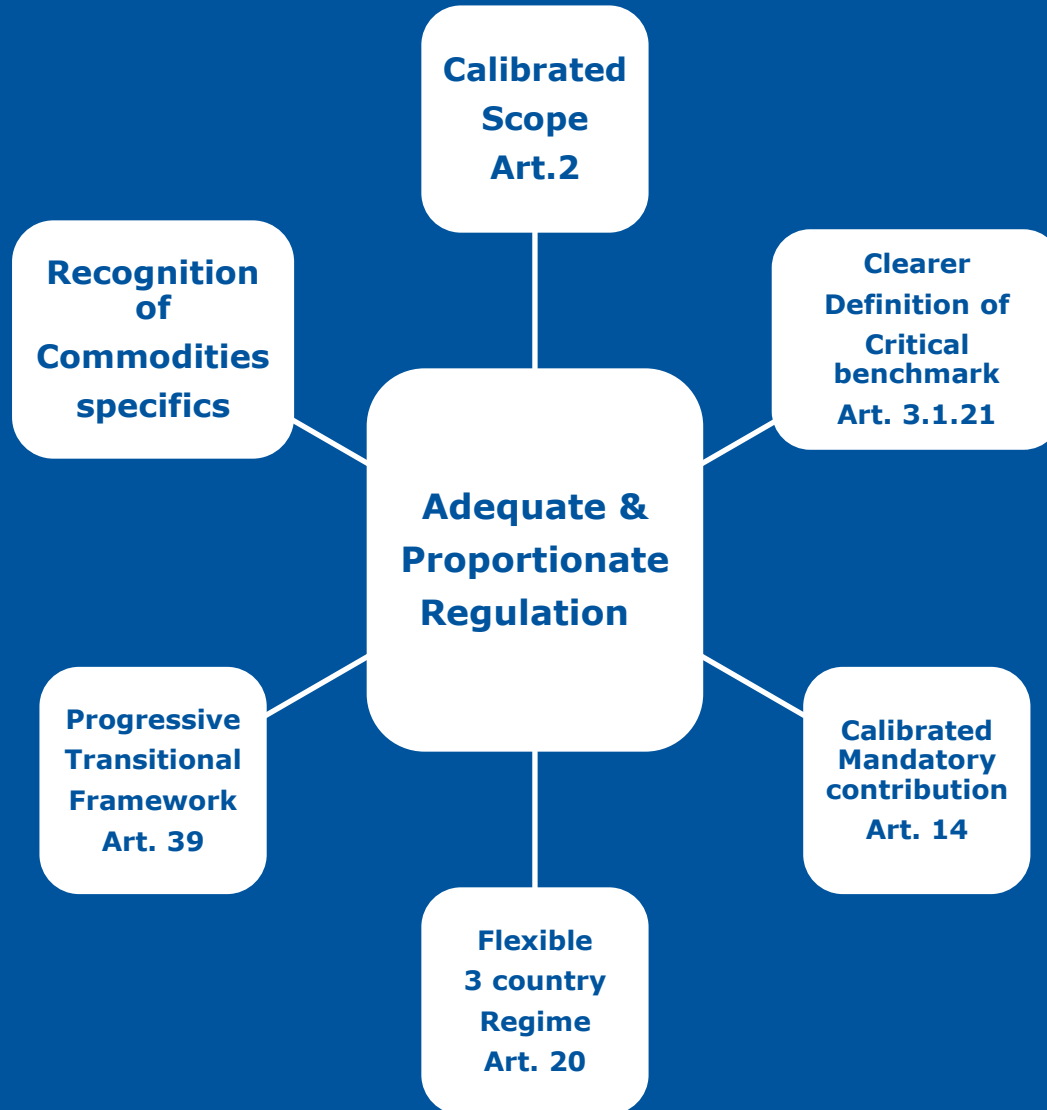


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## Main concerns of the application of the Regulation':

- Code of conduct (Art. 9)
  - Signing a code of conduct in certain cases is not implementable (e.g. non-EU state-owned oil company)
- Annex III (on Commodities)
  - Level I goes into technical details, which can create unintended consequences (i.e., difficulties to update), so Annex III should be left to ESMA.
  - Only applicable to PRAs.
- Annex I A-Sec I-Point 8
  - FO and reporting lines separation could dis-incentivise some firms from contributing, since they need FO's expertise to make sensible contributions.
  - Administrators can only conduct oversight and verification procedure (from input data from FO) when is possible and as soon as practicable.

# 7-Conclusions



## 8-Table: Items and ISDA comments

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ITEM	ISDA comments
Scope (Art.2)	Point 3.1
Critical benchmark (Art.3.1.21)	Point 3.3
Mandatory contribution (Art. 14)	Point 3.3
Third-country regime (Art. 20)	Point 3.10
Transitional framework (Art. 39)	Point 3.13
Commodities	Point 3.14