



EUROPEAN COMMISSION

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Dear President,

The Commission would like to thank the Sénat for its Opinion concerning the Proposal for a Regulation of the European Parliament and of the Council on indices used as benchmarks in financial instruments and financial contracts {COM(2013) 641 final}.

The Commission welcomes the support of the Sénat for the effective regulation of benchmarks, which is necessary to ensure the robustness and reliability of benchmarks in the EU and to protect them from manipulation. However, many important benchmarks are of a global nature and the risk of manipulation is not limited to specific categories of benchmarks, as evidenced by the ongoing investigations into the manipulation of different types of benchmarks at international level. Against this background, the Commission has deemed it necessary to set a wide scope for its proposal whilst ensuring its requirements are effective and proportionate in line with its impact assessment. This approach is also consistent with the initiatives on the regulation of benchmarks at international level and in particular with the Principles on Financial Benchmarks issued by the International Organization of Securities Commissions (IOSCO) and endorsed by the Financial Stability Board (FSB) and the G20.

Concerning the Sénat's recommendations for the supervision of critical benchmarks at EU level, such as LIBOR and Euribor, an effective framework has been ensured by combining supervision by national supervisors with colleges of relevant national supervisors and a binding mediation role for the European Securities and Markets Authority (ESMA). This is a balanced and effective approach as national supervisors have the knowledge of and proximity to the markets where these benchmarks have their center of gravity. At the same time, the legitimate, wider European dimension of the supervision of these critical benchmarks with cross-border impacts is addressed by the colleges and ESMA's power of binding mediation, to ensure appropriate information sharing and coordination on key supervisory decisions.

On the issue of the perceived frequent introduction of delegated acts in this proposal on benchmarks, the Commission would like to highlight that as this is a new field of regulation,

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and as the regulatory efforts at global level are still ongoing¹, there is a significant degree of uncertainty on the evolution of a number of regulatory and technical issues which require the flexibility provided by delegated acts to adapt and specify some of the more detailed provisions of this approach. Article 290 of the Treaty on the Functioning of the European Union² (TFEU), sets out the conditions under which such powers are granted and used. In particular, the delegation of power can only address non-essential elements of the legislation and is limited by the Union legislator in terms of objective, content and scope. Moreover, the TFEU sets clear control mechanisms for the exercise of the Commission's delegated empowerments, as delegated acts are subject to scrutiny by the Union legislator before they are published.

Finally, the Commission would like to reassure the Sénat that it will particularly take into consideration the central question of the role of ESMA in the context of the proposal for a Regulation on benchmarks during the legislative process with the European Parliament and the Council.

The Commission hopes that these clarifications address the concerns raised by the Sénat and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*

¹ For example IOSCO's reviews on the Implementation of its Principles for Financial Benchmarks and for Oil Price Reporting Agencies (PRAs), and the outcomes of the FSB Official Sector Steering Group's work on potential alternative interest rate benchmarks and contingency planning

² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:326:FULL:DE:PDF>