



EUROPEAN COMMISSION

Brussels, 26.2.2014
C(2014) 808 final

Dear Mr Cash,

The Commission would like to thank the House of Commons for its Reasoned 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 would like to respond to the points raised in the Reasoned Opinion.

The House of Commons argues that there has been a failure by the Commission to comply with the principle of subsidiarity as well as with essential procedural requirements in Article 5 of Protocol No.2. The Commission considers that it has provided sufficient reasons leading to the conclusion that the objectives of the proposal can be better achieved at Union level, both in the explanatory memorandum and in the impact assessment accompanying the proposal.

Regarding the first limb of the subsidiarity test (“if and in so far as the objectives of the proposed action cannot sufficiently be achieved by the Member States”), and the argument that the proposal does not address a common issue in all Member States, both the explanatory memorandum and the impact assessment explain that the benchmark industry is international and benchmarks are in particular vital for pricing cross border transactions. Action by Member States could address some of the problems at a national level; such an approach could, however, not achieve wider European objectives because a patchwork of divergent national rules would result in an inconsistent and uncoordinated approach and impede the cross border use and provision of benchmarks. While national approaches could tackle problems with entirely national benchmarks, few benchmarks are entirely national in their production and use. Nor would it be permissible for a benchmark provider to restrict the use of a benchmark to its own Member State and thereby ensure that it remained subject to national legislation. In practice, it would therefore be difficult for a set of national approaches to achieve the objectives of this proposal.

Regarding the second limb of the subsidiarity test (“but rather, by reason of the scale or effects of the proposed action, be better achieved at EU level”), the impact assessment provides strong and clear evidence that benchmarks are used to price a wide variety of cross border transactions, in particular in the mortgages, interbank funding market, commodity and derivatives areas. As a result, the impact assessment as well as the explanatory memorandum conclude that a patchwork of national rules would impede the provision of cross border benchmarks and therefore impede cross border transactions. This need has been recognised by the G20 and the Financial Stability Board (FSB), which charged the

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international standard setter International Organisation of Securities Commissions (IOSCO) with producing a global set of principles to apply to financial benchmarks. Common EU rules based on the IOSCO principles will help enhance the single market by creating a common framework for reliable and correctly used benchmarks across different Member States, subject to the same rules.

The Commission would like to point out that the wide scope of the proposal is aligned with that of the Principles on Financial Benchmarks issued by IOSCO and endorsed by the FSB and the G20. A narrower scope would result in an inconsistent application of the international standards to the provision and use of different types of benchmarks in the EU. Thus, the reliability and robustness of different types of benchmarks would not be consistent across the EU which would negatively impact the single market. In addition, the risk of manipulation across different types of benchmarks evidenced in the impact assessment would not be effectively addressed.

The Commission considers that the administrative burdens for benchmark administrators and contributors to benchmarks would not be as significant as argued by the House of Commons, since the requirements of the proposal are broadly in line with those of the IOSCO Principles for Financial Benchmarks and existing industry good practice. Furthermore, any additional costs relating to administration and registration are unlikely to result in the discontinuation in the provision of some benchmarks, as their reliability and competitiveness will be enhanced.

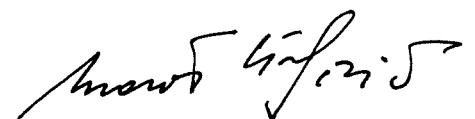
The Commission's impact assessment does not base the calculation of the total costs of compliance on the total number of benchmarks provided in the EU as the key requirements, and particularly those carrying potential additional costs, apply to the benchmark administrators and contributors and not the benchmarks themselves. Thus, the aggregate costs depend more on the aggregate number of administrators than on the total number of benchmarks.

Benchmarks provided by statistical authorities also fall under the scope of the proposal as they share the same risks and vulnerabilities identified for other types of benchmarks in the impact assessment. If necessary, the requirements for statistical authorities can be adapted to take account of their specificities in order to ensure their independence.

In the light of the above, the Commission remains of the view that the proposal is justified in terms of subsidiarity and that a European framework for the provision and use of benchmarks is necessary to ensure the robustness and reliability of benchmarks provided and used in the EU and to prevent manipulation.

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

Yours sincerely,



*Maroš Šefčovič
Vice-President*