



EUROPEAN COMMISSION  
Impact Assessment Board

Brussels,  
D(2013)

**Opinion**

**Title**

**DG MARKT - Impact Assessment on a European Framework on the production and use of indices serving as benchmarks in financial and other contracts**

**(draft version of 20 February 2013)\***

**(A) Context**

An index is a statistical measure, typically of a price or quantity, calculated from a representative set of underlying data. When this index is used as a reference price for a financial instrument or other financial contract it becomes a benchmark. A wide variety of benchmarks are currently produced. These benchmarks differ not only regarding the underlying data used, but also on the methods used to collect the data, the calculation of the index and their ultimate use. The recent alleged manipulation of the interest rate benchmarks LIBOR and EURIBOR has highlighted both the importance of benchmarks and their vulnerabilities.

The integrity of benchmarks is the focus of the Wheatley Review of LIBOR in the United Kingdom, the work of the International Organization of Securities Commissions (IOSCO) on oil price reporting agency oversight, the IOSCO taskforce on benchmarks and further discussions at Financial Stability Board (FSB) and G20 level. The European Commission is also undertaking an investigation into a possible cartel in relation to EURIBOR and a joint task force by the European Supervisory Authorities ESMA (Securities and Markets) and EBA (Banking) has carried out a review of Euribor and is working on intermediate non-binding principles on the benchmark-setting process. A banning of benchmark manipulation and a sanctioning regime have already been introduced in the market abuse proposal adopted in 2012 by the Commission.

**(B) Overall opinion: POSITIVE**

**The report needs to be improved in a number of respects. First, the problem definition should better explain the nature and scale of the problem related to the use of benchmarks and underpin it with further examples and, where possible, quantitative evidence. It should also provide greater detail on the situation prevailing in the different Member States (including a description of the solutions adopted in Denmark and the United Kingdom) and better explain why the forthcoming international principles on benchmarks will not be sufficient. Second, the report should put forward a simplified and more realistic set of alternative options. Finally, the analysis of the options should be developed, in particular with respect to the assessment of social impacts. The costs-benefits analysis should be enhanced by better**

\* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted.

assessing the benefits (e.g. in terms of lower investor/borrower detriment) and clarifying the methodology used to calculate the costs. The impacts on competitiveness, smaller benchmarks' contributors/producers and third countries should also be assessed in more detail.

### **(C) Main recommendations for improvements**

**(1) Improve the problem description.** The report should better describe the problems the initiative is intended to address, in particular regarding the risks from the benchmarks' users point of view. In addition, it should better explain how important and frequent those risks are, e.g. compared to the risk of manipulation, and underpin their description with evidence, where possible, of a quantitative nature. Regarding some of the identified problems, such as the lack of knowledge by investors or borrowers, the report should explain whether other instruments/measures exist that already address them and, if yes, why these are insufficient. Furthermore, the report should provide greater detail on the situation prevailing in the different Member States, including a brief description of the solutions adopted in Denmark and the United Kingdom for the CIBOR and LIBOR respectively. The baseline scenario should be developed and clarify whether other Member States are planning to act and in which direction. Moreover, it should better explain why the combination of the sanctions foreseen in the market abuse proposal together with the forthcoming IOSCO and EBA/ESMA principles on benchmarks will not solve the identified problems.

**(2) Improve the design of options and better link options with problems and objectives.** The report should streamline the presentation of the options and put forward a simplified and realistic set of alternative options (or packages thereof). The report should describe more clearly which options aim to tackle the problems related to the use of benchmarks and how the retained option to reverse the burden of proof should help attaining the objective of robust, representative and fit for purpose benchmarks (i.e. improving the 'intervention logic'). The report should also explain why it has not considered other alternative options, such as the solution implemented in Denmark. If such options have been discarded up-front, the reasons should be provided.

**(3) Better assess impacts.** The report should develop the assessment of the options, in particular their economic and social impacts. For example, the risk that as a result of the envisaged rules some benchmark providers might disappear is not properly analysed. The report should also strengthen its cost-benefit analysis by developing the discussion on the expected benefits (e.g. in terms of financial stability, lower investor/borrower detriment...) and by underpinning it with further quantitative data, where possible. It should, moreover, better explain the methodology used for the calculation of the costs and be transparent about its limitations. Calculations need to be double-checked to ensure correct estimations. Furthermore, the report should better assess the impact on the competitiveness of the European financial sector, in particular, of the more stringent rules to be applied with regard to European systemic benchmarks and better illustrate, e.g. with a practical example, how the third country regime will work in practice. It should better explain how proportionality, particularly for smaller or less risky benchmarks' contributors/producers will be ensured. Finally, wherever stakeholders' views differ significantly from the Commission's assessment, this should be spelled out in the report.

*Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report*

**(D) Procedure and presentation**

The report should be shortened and brought closer to the page limit recommended in the Impact Assessment guidelines. Technical terms should be better explained and acronyms spelled out in full the first time they are used and added to the glossary in annex I.

**(E) IAB scrutiny process**

Reference number	2013/MARKT/011
External expertise used	No
Date of IAB meeting	20 March 2013