Commission Implementing Regulation (EU) 2019/482 of 22 March 2019 amending Commission Implementing Regulation (EU) 2016/1368 establishing a list of critical benchmarks used in financial markets pursuant to Regulation (EU) 2016/1011 of the European Parliament and of the Council (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) 2019/482

of 22 March 2019

amending Commission Implementing Regulation (EU) 2016/1368 establishing a list of critical benchmarks used in financial markets pursuant to Regulation (EU) 2016/1011 of the European Parliament and of the Council

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014[(1)], and in particular Article 20(1) thereof,

Whereas:

(1) Benchmarks play an important role in the determination of the price of many financial instruments and financial contracts and in the measurement of performance for many investment funds. The contribution to and administration of benchmarks are in many cases vulnerable to manipulation and persons involved often face conflicts of interest.

(2) In order to fulfil their economic role, benchmarks need to be representative of the underlying market or economic reality they intend to measure. Should a benchmark no longer be representative of an underlying market, such as interbank offered rates, there is a risk of negative effects on, inter alia, market integrity, the financing of households (loans and mortgages) and businesses in the Union.

(3) Risks to users, markets and the economy of the Union generally increase where the total value of financial instruments, financial contracts and investment funds referencing a specific benchmark is high. Regulation (EU) 2016/1011 therefore establishes different categories of benchmarks and provides for additional requirements ensuring the integrity and robustness of certain benchmarks considered as being critical, including the power of competent authorities to mandate, under certain conditions, contributions to or the administration of a critical benchmark.

(4) Pursuant to Article 20(1) of Regulation (EU) 2016/1011, the Commission is empowered to adopt implementing acts to establish and review at least every two years a list of critical benchmarks.

(5) Commission Implementing Regulation (EU) 2016/1368[(2)] established a list of critical benchmarks used in financial markets pursuant to Regulation (EU) 2016/1011.

(6) According to point (b) of Article 20(1) of Regulation (EU) 2016/1011, benchmarks may be included in the list of critical benchmarks where those benchmarks are based on input data submitted by contributors the majority of which are located in one Member State and are recognised as being critical in that Member State.

(7) On 10 October 2018, the Polish competent authority, Komisja Nadzoru Finansowego ('KNF'), notified the European Securities and Markets Authority ('ESMA') of its proposal to recognise the Warsaw Interbank Offered Rate ('WIBOR') as a critical benchmark, under point (b) of Article 20(1) of Regulation (EU) 2016/1011, because it is critical in Poland and it is based on submissions of contributors, all of which are located in Poland.

(8) WIBOR is a reference rate based on an average of the interest rates at which banks operating in the Polish money market are willing to lend unsecured funds to each other at different maturities. As of 10 October 2018, eleven banks participate in the WIBOR panel, all of which are located in Poland.

(9) In its assessment submitted to ESMA, the KNF concluded that the cessation of WIBOR, or its provision on the basis of input data or of a panel of contributors no longer representative of the underlying market or economic reality, could have a significant adverse impact on the functioning of financial markets in Poland.

(10) The assessment by the KNF illustrates that WIBOR is used as a reference in 60 % of total loans to households in Poland, and in 70,1 % of outstanding mortgages. In mortgages subscribed since 2013, WIBOR's prevalence has increased to 98,5 %. In addition, WIBOR serves as a reference for the coupon payments for nearly 26 % of the total nominal value of Polish bonds. KNF also presented data showing that WIBOR is used as a reference in OTC interest rate derivatives for an outstanding notional amount of EUR 366 billion. Finally, KNF concluded on the basis of a survey that WIBOR is referenced in investment funds with a total net asset value of EUR 2,6 billion. The total value of financial instruments and financial contracts referencing WIBOR is therefore larger than the gross national product of Poland. The assessment concludes that WIBOR is of vital importance for financial stability and market integrity in Poland, and that WIBOR's discontinuity or unreliability could have a significant adverse impact on the functioning of financial markets in Poland and on companies and consumers as it is used in loans, consumer credit products and investment funds.

(11) On 8 November 2018, ESMA sent the Commission its opinion setting out that the KNF had taken into consideration all the elements and criteria included in Article 20(3) of Regulation (EU) 2016/1011 and that it had provided quantitative data to support the case for the recognition of WIBOR as a critical benchmark, as well as analytical reasoning highlighting the crucial role of WIBOR in the Polish economy.

(12) Implementing Regulation (EU) 2016/1368 should therefore be amended accordingly.

(13) In light of the crucial importance of WIBOR, its widespread use and its role in the allocation of capital in Poland, this Regulation should enter into force as a matter of urgency.

(14) The measures provided for in this Regulation are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Implementing Regulation (EU) 2016/1368 is replaced by the text in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 22 March 2019.

For the Commission

The President

Jean-Claude JUNCKER