Commission Implementing Regulation (EU) 2018/1557 of 17 October 2018 amending 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) 2018/1557

of 17 October 2018

amending 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 investments 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 of 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 conflict of interests.

(2) In order to fulfil their economic role, benchmarks need to be representative of the underlying market or economic reality they reflect. 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) Commission Implementing Regulation (EU) 2016/1368[(2)] established a list of critical benchmarks used in financial markets pursuant to Regulation (EU) 2016/1011.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2018/1557. (See end of Document for details)*

(5) 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.

(6) In accordance with point (b) of Article 20(1) of Regulation (EU) 2016/1011, benchmarks may be included in the list of critical benchmarks where those benchmarks, inter alia, are 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 22 January 2018, the Swedish competent authority ('Finansinspektionen') notified the European Securities and Markets Authority ('ESMA') of its proposal to recognise the Stockholm Interbank Offered Rate ('STIBOR') as a critical benchmark, under point (b) of Article 20(1) of Regulation (EU) 2016/1011, because it is critical in Sweden and it is based on submissions of contributors, the majority of which are located in Sweden.

(8) STIBOR is a reference rate based on an average of the interest rates at which a number of banks active on the Swedish money market are willing to lend unsecured funds to each other at different maturities. On 22 January 2018, seven banks participated in the STIBOR panel, six of which were located in Sweden and one in Denmark.

(9) In its assessment submitted to ESMA, Finansinspektionen concluded that the cessation of STIBOR, 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 Sweden.

(10) The assessment by Finansinspektionen illustrates that STIBOR is used as a reference in the pricing of over-the-counter ('OTC') interest rate derivatives denominated in Swedish krona ('SEK') for an outstanding notional amount of EUR 3 500 billion. Close to one fourth of SEK-denominated bonds reference STIBOR and STIBOR is used in the pricing of 75 % of total loans to Swedish households and non-financial institutions. The total value of financial instruments and financial contracts referencing STIBOR is about eight times larger than the gross national product of Sweden. STIBOR is therefore of vital importance for financial stability and market integrity in Sweden. The assessment concluded that STIBOR's discontinuity or unreliability could have a significant adverse impact on the functioning of financial markets in Sweden and on companies and consumers because it is used in loans, consumer credits products and investment funds.

(11) On 23 February 2018, ESMA sent the Commission its opinion setting out that Swedish Finansinspektion 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 STIBOR as a critical benchmark, as well as analytical reasoning highlighting the crucial role of STIBOR in the Swedish economy.

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

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

***Changes to legislation:** There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2018/1557. (See end of Document for details)*

(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, 17 October 2018.

For the Commission

The President

Jean-Claude JUNCKER