Commission Implementing Regulation (EU) 2017/2446 of 19 December 2017 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) 2017/2446

of 19 December 2017

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) The additional obligations and powers of competent authorities of administrators of critical benchmarks require a formal process for the determination of critical benchmarks. In accordance with Article 20(1)(a) of Regulation (EU) 2016/1011, a benchmark is considered as being a critical benchmark where it is used directly or

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2017/2446. (See end of Document for details)*

indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance of investment funds, having a total value of at least EUR 500 billion on the basis of all the ranges of maturities or tenors of the benchmark, where applicable.

(5) The London Interbank Offered Rate (LIBOR) measures unsecured inter-bank offered rates in five currencies, including the Euro, with seven maturities ranging from overnight to 12 months. It is one of the most important interest rate benchmark worldwide. It is used as the floating rate for many financial contracts, from interest rate swaps to student loans, mortgages and corporate funding instruments.

(6) The Financial Conduct Authority (FCA) has identified approximately USD 156,8 trillion in over-the-counter derivatives that made a reference to LIBOR in October 2016.

(7) In addition, the FCA points out that there is significant reference to LIBOR in exchange traded derivatives, bond and corporate debt markets and that these exposures are relevant with regard to systemic risk and the real economy.

(8) The list of critical benchmarks established by Commission Implementing Regulation (EU) 2016/1368[(2)] should therefore be amended by adding LIBOR.

(9) In light of the importance of LIBOR for interbank market and the high number of financial instruments in the Union referencing it, this Regulation should enter into force as a matter of urgency.

(10) In accordance with Article 20(1) of Regulation (EU) 2016/1011, the applicability of this Regulation is dependent on the administrator providing a critical benchmark being located within the Union.

(11) 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, 19 December 2017.

For the Commission

The President

Jean-Claude JUNCKER