



**EPC** | European  
Publishers  
Council

## Media Alert

### REPORTING UNDER THREAT FROM NEW EU BENCHMARK REGULATION - ADOPTION DUE 18 SEPTEMBER 2013:

#### EUROPE'S PUBLISHERS CALL FOR MEDIA EXEMPTION IN LINE WITH MARKET ABUSE DIRECTIVE

This Wednesday 18th September, the European Commission is due to publish long-awaited proposals for a Regulation on Benchmarks (indices used for financial and other contracts). We are concerned that the Commission may be ignoring the lessons learned during the adoption of the Market Abuse Directive in 2003 that rightly acknowledged that reporting on financial markets should not be regulated as a financial services activity.

The European Publishers Council (EPC) is very worried that, unless key changes have been made to an earlier draft, to protect the freedom of the press:

- some journalistic activity will be considered as “benchmark setting” and worse, that a media company could be viewed and regulated as a benchmarks “administrator” ” simply because some readers/users decide to use journalistically produced price assessments as benchmarks;
- the benchmark regulation will interfere in the relationship between journalists and their market sources and
- independent journalism, which underpins the European Union as a democratic entity, will come under threat if financial services regulators are permitted to begin to decide what journalism is and what it is not.

As with much journalistically-produced content, the same information can be used in different ways, by different readers who first and foremost rely on its independence and accuracy. The fact that those uses may differ, does not transform the original journalistic content into something else, with a different status that then requires

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regulation. Thus journalism does not cease to be journalism when a user uses journalistically-produced content as the basis of a benchmark, particularly when other users will continue to use precisely the same content for purely information purposes.

This Regulation could have implications for journalists and media who report on a wide range of markets including equity indexes, currency exchange rates and commodities markets, as well as retail markets in credit and mortgages. Therefore, in line with the Market Abuse Directive that recognised the need to exempt the media, and with respect to fundamental rights and principles in the Charter of Fundamental Rights of the European Union and in Article 10 of the European Convention on Human Rights, we have requested an exemption to protect the freedom of the press and journalists.

In 2009, in the “Interbrew” case, the European Court of Human Rights affirmed that constitutional protections for the relationships between journalists and their sources applies equally to financial journalism. (*Financial Times & others v UK* Application no. 821/03).

By requiring journalists to enter into codes of conduct with their sources and to police them and report them to the authorities, the Benchmark proposal clearly rides roughshod over this judgement.

Questions to be put to the Commission on the impact on the work of journalists who report financial and commodities markets:

1. The Market Abuse Directive exempts the press and other media that are subject to self-regulation, in order to protect freedom of expression and independent reporting. Will there be an exemption for the press and journalism in the benchmark Regulation?
2. Many newspapers publish price assessments of market prices as part of their journalistic role to provide independent information to the market. Some of these are sourced to third parties, but not all. How will the Commission provide safeguards for the press and journalism to ensure that editors are not brought within a regulation designed for a different purpose?
3. How will the Commission ensure that [un-elected] regulators do not commence a process of progressively withdrawing journalistic status, and the constitutional protections that flow from that status, on the basis of the use that is made of the journalism?
4. Is there a precedent for such a process?
5. What steps has the Commission taken to ensure there will be no negative effect on market sources, which provide information to journalists voluntarily and in confidence?



The draft includes a bureaucratic notification procedure whereby editors could be contacted by the regulator to check if they approve or reject the use of their independently produced price assessments as a benchmark in a contract? This would bring the media to the heart of benchmarking regulations. What is the estimated scale of such requests? What is the estimated cost to newspapers? The media are unwilling to create a precedent by instructing their readers on what uses they can make of the content they receive.

6. What is the full cost of implementation of the regulation across the EU; and by market sector? Is this covered in the Impact Assessment?

7. Did the Impact Assessment consider how much trade will leave the EU as a result of increased compliance costs in EU? Or indeed, did it consider the impacts on the media and journalists at all?

8. Is the EU Regulation fully consistent with international norms on benchmarking commodities markets, in particular those of IOSCO's PRA Principles, which IOSCO has reaffirmed the applicability of: <http://www.iosco.org/news/pdf/IOSCONEWS289.pdf>

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**ENDS**  
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