

Exemption of certain third country spot foreign exchange benchmarks and the designation of replacements for certain benchmarks in cessation

2020/0154(COD) - 24/07/2020 - Legislative proposal

PURPOSE: to amend EU rules on financial benchmarks to address the problems arising from the likely cessation of certain widely used LIBOR rates in the EU.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: this proposal to amend [Regulation \(EU\) 2016/1011](#) on EU Financial Benchmarks is based on the fact that one of the most important indices for the financial world, the London Interbank Offered Rate (LIBOR), is to be phased out by the end of 2021.

Financial benchmarks are indices by reference to which the amount payable under a financial instrument or a financial contract or the value of a financial instrument is determined. By setting out governance and data quality standards for benchmarks that are referenced in financial contracts, the Benchmark Regulation aims to strengthen the trust of capital market participants in indices used as benchmarks in the Union.

In light of the anticipated cessation of LIBOR after the end of 2021, supervised entities (such as banks, investment firms or asset managers) in the European Union shall be faced with legal uncertainty for hundreds of thousands of financial contracts. In order to avoid adverse consequences for the lending capacity of the European banking sector, early clarification as to the availability of a statutory replacement rate for use by supervised entities in all LIBOR referencing contracts that mature beyond the end of 2021 is necessary.

The fact that the Benchmarks Regulation does not provide for mechanisms to organise the orderly discontinuation of a systemically important benchmark in the Union could lead to heterogeneity in the solutions adopted by different Member States, which would lead to disruptions in the internal market.

CONTENT: this proposal amending the Financial Benchmarks Regulation introduces various tools to ensure that the phasing out of a widely used interbank rate does not unduly affect the ability of the banking sector to provide funding to EU companies and therefore jeopardise a key objective of the Capital Markets Union. By providing the necessary tools for a legally sound transition away from IBOR rates, this initiative would benefit retail customers who have taken out loans with IBOR rates as a benchmark.

Orderly termination of a financial benchmark

The proposed amendments to the provisions of the Benchmarks Regulation governing the winding down of a benchmark with systemic relevance in the Union are based on three main pillars:

1. The European Commission may designate a replacement rate if and when a benchmark whose cessation would result in significant disruption in the functioning of financial markets in the Union ceases to be published. In designating the statutory replacement rate, the European Commission shall take into account

the recommendations of the risk free rate working groups operating under the auspices of the central banks responsible for the currency in which the rates of the benchmark in cessation are denominated.

2. The statutory replacement rate shall replace, by law, all references to the 'discontinuing benchmark' in all contracts concluded by an EU supervised entity. In order to benefit from the statutory replacement rate, contracts using the Cessation Benchmark should be ongoing at the time the designation enters into force; no contract concluded after the entry into force of the implementing act designating the statutory replacement rate would be allowed to use the statutory replacement rate as a reference.

3. For contracts not involving an EU supervised entity, Member State are encouraged to adopt national statutory replacement rates. At the appropriate time, the European Commission may issue a recommendation that the national statutory replacement rates will be identical to the statutory replacement rate that is designated for contracts involving EU supervised entities.

Exemption of specific foreign exchange benchmarks

The proposed amendments aim at exempting specified third country spot foreign exchange benchmarks from the scope of the Regulation where they fulfil certain criteria.

In order for the spot foreign exchange benchmark to qualify for exemption, it has to: (1) measure the spot exchange rate of a third-country currency that is not freely convertible and (2) be used by EU supervised entities, on a frequent, systematic and regular basis as settlement rate to calculate the pay-out under a currency forward or swap contract.

Furthermore, to enable the Commission to have all the necessary elements to designate exempted benchmarks, ESMA and the ECB are required to provide it with relevant information and views on specific exemption criteria.