

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

2020/0154(COD) - 19/01/2021 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 592 votes to 3, with 98 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) 2016/1011 as regards the exemption of certain third country foreign exchange benchmarks and the designation of replacement benchmarks for certain benchmarks in cessation.

Parliament adopted its position at first reading in accordance with the ordinary legislative procedure by amending the Commission proposal as follows:

## *Objective*

The proposed amendment to the Benchmarks Regulation aims to establish a harmonised approach to deal with the cessation or abandonment of certain benchmarks of systemic importance to the EU. In particular, from 31 December 2020, the London Interbank Offered Rate (LIBOR) benchmark interest rate index will no longer qualify as a critical benchmark under Regulation (EU) 2016/1011.

The aim of the amendments is to create a framework to ensure that a statutory replacement benchmark is in place before a critical benchmark such as LIBOR ceases to be used. This would reduce legal uncertainty regarding existing contracts and avoid risks to financial stability.

## *Legal replacement of a benchmark index*

The new rules would give the Commission the power to designate a statutory replacement rate to replace all references to a benchmark index, the winding-down of which would lead to a serious disturbance in the functioning of EU financial markets if certain conditions, specified in the amended text, are met.

The mandate of the Commission to designate a replacement for a benchmark should apply:

- to any contract and any financial instrument as defined in Directive 2014/65/EU that is subject to the law of a Member State;
- to contracts that are subject to the law of a third country but all the parties to which are established in the Union, in cases where the contract meets the requirements of this Regulation and where the law of that third country does not provide for an orderly wind-down of a benchmark.

Before exercising its implementing powers to designate a replacement for a benchmark, the Commission should:

- conduct a public consultation and should take into account recommendations by relevant stakeholders and in particular by private sector working groups operating under the auspices of the public authorities or the central bank;
- take into account recommendations of other relevant stakeholders, including the competent authority of the benchmark administrator and the European Securities and Markets Authority (ESMA).

### ***Replacement of a benchmark by national law***

The national competent authority of a Member State where the majority of contributors is located may designate one or more replacements for a benchmark under certain conditions. The competent authority of that Member State should then immediately inform the Commission and ESMA.

### ***Contingency plans***

As the experience with LIBOR has shown, it is important that contingency plans are prepared for cases in which a benchmark materially changes or ceases to be provided. Therefore, supervised entities should keep their contingency plans, and any updates to them, readily available so that they can forward them, upon request, to the competent authorities without delay.

### ***Spot foreign exchange benchmarks***

The Commission may designate a spot foreign exchange benchmark that is administered by administrators located outside the Union where certain criteria are fulfilled.

After public consultation, the Commission should, by 15 June 2023 at the latest, adopt a delegated act in order to create a list of spot foreign exchange benchmarks which meet those criteria.

### ***Third-country benchmarks***

To ensure the smooth functioning of the internal market and the availability of third-country benchmarks for use in the EU after the end of the transitional period, the Commission should, by 15 June 2023, present a report on the review of the scope of Regulation (EU) 2016/1011, as amended by this Regulation, with particular regard to its effect on the use of third-country benchmarks in the EU.

### ***Amendments to legacy contracts for the purpose of the implementation of benchmark reforms***

The amended text amends Regulation (EU) No. 648/2012 on OTC derivatives, central counterparties and trade repositories to clarify that market participants that contracts entered into or novated before the start of application of the clearing or margin requirements to over-the-counter (OTC) derivative contracts that reference a benchmark (legacy contracts) will not be subject to those requirements if those contracts are amended with regard to the benchmark they reference and if those amendments serve the sole purpose of implementing or preparing for the implementation of a replacement for a benchmark or introducing fallback provisions during the transition to a new benchmark as part of a benchmark reform.