

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

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The Committee on Economic and Monetary Affairs adopted the report by Caroline NAGTEGAAL (Renew, NL) 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.

As a reminder, the proposed amendment to the Benchmarks Regulation aims to regulate the replacement rate of benchmarking cessation, in this case the London Interbank Offered Rate (LIBOR), and to avoid a legal vacuum.

The committee recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the proposal as follows:

Mandatory replacement of a benchmark

The Commission may, by means of implementing acts, designate one or more replacement benchmarks for a benchmark that would cease to be published if the cessation of the publication of that benchmark would have a significant negative impact on market integrity, financial stability and the real economy in one or more Member States, and if certain conditions are fulfilled. A fallback provision would not be deemed suitable where the conditions set out in the amended text are met.

Before establishing a new replacement benchmark, the Commission should carry out a public consultation and consult the European Securities and Markets Authority (ESMA) and the competent national authority of the index administrator of the benchmark.

These provisions would apply to:

- any financial contract or instrument, within the meaning of Directive 2014/65/EU on Markets in Financial Instruments Directive, governed by the law of one of the Member States, which refers to a benchmark index;
- any contract subject to the law of a third country, but where the parties are all established in the EU and where the law of that third country does not provide for the orderly wind down of a benchmark.

List of exchange rate benchmarks

By 31 December 2022 at the latest, the Commission should conduct public consultations to identify exchange rate benchmarks that meet the criteria set out in the Regulation. By 31 December 2023 at the latest, the Commission should adopt delegated acts to create a list of spot foreign exchange benchmarks for hedging against third country currency volatility and should update that list on a regular basis.

Replacement of interest rate benchmarks and incorporation of contractual fallback provisions in historical transactions

The amended text amends Regulation (EU) n° 648/2012 on OTC derivatives, central counterparties and trade repositories to clarify that legacy trades will not be subject to those clearing and margin requirements when those trades are replaced, amended or novated for the sole purpose of replacing the interest rate benchmark they refer to in order to implement or prepare for that reform or otherwise in order to enhance the robustness of their contracts.