

Procedure file

Basic information	
<p>COD - Ordinary legislative procedure (ex-codecision procedure) Regulation</p> <p>2020/0154(COD)</p>	Procedure completed
<p>Exemption of certain third country spot foreign exchange benchmarks and the designation of replacements for certain benchmarks in cessation</p> <p>Amending Regulation 2016/1011 2013/0314(COD)</p> <p>Subject</p> <p>2.50.03 Securities and financial markets, stock exchange, CIUTS, investments</p> <p>2.50.04 Banks and credit</p> <p>2.50.08 Financial services, financial reporting and auditing</p> <p>2.50.10 Financial supervision</p> <p>2.80 Cooperation between administrations</p> <p>4.60.06 Consumers' economic and legal interests</p> <p>Legislative priorities</p> <p>Joint Declaration 2021</p>	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<p>ECON Economic and Monetary Affairs</p>	<p> NAGTEGAAL Caroline</p> <p>Shadow rapporteur</p> <p> NIEDERMAYER Luděk</p> <p> FERNÁNDEZ Jonás</p> <p> NIINISTÖ Ville</p> <p> MEUTHEN Jörg</p> <p> JAKI Patryk</p>	
	Committee for opinion	Rapporteur for opinion	Appointed
	<p>ITRE Industry, Research and Energy</p>	The committee decided not to give an opinion.	
Council of the European Union	Council configuration	Meeting	Date
	Economic and Financial Affairs ECOFIN	1365	08/12/2020
European Commission	Commission DG	Commissioner	
	Financial Stability, Financial Services and Capital Markets Union	MCGUINNESS Mairead	

Key events

24/07/2020	Legislative proposal published	COM(2020)0337	Summary
14/09/2020	Committee referral announced in Parliament, 1st reading		
19/11/2020	Vote in committee, 1st reading		
19/11/2020	Committee report tabled for plenary, 1st reading	A9-0227/2020	Summary
19/11/2020	Committee decision to open interinstitutional negotiations with report adopted in committee		
23/11/2020	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 71)		
25/11/2020	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 71)		
08/12/2020	Debate in Council		
10/12/2020	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	PE662.133 GEDA/A/(2020)007414	
19/01/2021	Results of vote in Parliament		
19/01/2021	Decision by Parliament, 1st reading	T9-0002/2021	Summary
02/02/2021	Act adopted by Council after Parliament's 1st reading		
10/02/2021	Final act signed		
10/02/2021	End of procedure in Parliament		
12/02/2021	Final act published in Official Journal		

Technical information

Procedure reference	2020/0154(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
	Amending Regulation 2016/1011 2013/0314(COD)
Other legal basis	Rules of Procedure EP 159
Mandatory consultation of other institutions	European Economic and Social Committee
Stage reached in procedure	Procedure completed
Committee dossier	ECON/9/03679

Documentation gateway

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Legislative proposal		COM(2020)0337	24/07/2020	EC	Summary
Document attached to the procedure		SWD(2020)0142	27/07/2020	EC	
Document attached to the procedure		SWD(2020)0143	27/07/2020	EC	
Committee draft report		PE658.859	06/10/2020	EP	
Amendments tabled in committee		PE660.111	29/10/2020	EP	
Committee report tabled for plenary, 1st reading/single reading		A9-0227/2020	19/11/2020	EP	Summary
Coreper letter confirming interinstitutional agreement		GEDA/A/(2020)007414	09/12/2020	CSL	
Text agreed during interinstitutional negotiations		PE662.133	09/12/2020	EP	
Text adopted by Parliament, 1st reading/single reading		T9-0002/2021	19/01/2021	EP	Summary
Draft final act		00063/2020/LEX	10/02/2021	CSL	
Commission response to text adopted in plenary		SP(2021)89	02/03/2021	EC	

Additional information

Research document	Briefing	06/10/2020
Research document	Briefing	01/10/2020
Research document	Briefing	30/11/2020

Final act

[Regulation 2021/168](#)
[OJ L 049 12.02.2021, p. 0006](#)

Final legislative act with provisions for delegated acts

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

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.

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

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 Parliaments 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.

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

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.