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## **Critical benchmarks: the AMF encourages French users to prepare for transition to new risk-free rates**

**Following the implementation of the Benchmark Regulation (BMR) and the recommendations of the Financial Stability Board, some major interbank market benchmarks are expected to disappear in the coming years. Users must now prepare the various steps necessary for a gradual transition to alternative benchmarks.**

The European Benchmark Regulation (BMR), which came into force on 1 January 2018, aims to implement the international principles established by the International Organisation of Securities Commissions (IOSCO) and creates a uniform legal framework for the provision of benchmarks, the contribution to a benchmark and the use of a benchmark within the European Union. This regulation defines three categories of benchmarks according to their importance: critical, significant or not significant. At this stage, five interbank market benchmarks have been designated critical: EONIA, EURIBOR, LIBOR, STIBOR and WIBOR.

In the context of the implementation of the European regulation and the IOSCO principles, the administrators of EONIA, EURIBOR and LIBOR have been required to review and, where necessary, modify these benchmarks' methodologies in order to make them compliant with BMR.

### **The discontinuation of some benchmarks**

In a second step, in accordance with the recommendations of the Financial Stability Board, the administrators of these critical benchmarks may however be required to cease publishing them. For example, the European Money Markets Institute (EMMI), the administrator of EONIA and EURIBOR, announced that EONIA would cease to be published as of 3 January 2022. Similarly, according to Andrew Bailey, the Chief Executive Officer of the UK Financial Conduct Authority (FCA), the panel of LIBOR contributing banks is likely to dwindle or disappear after 2021 and stakeholders will have to be able to operate without LIBOR from that date.

EURIBOR, whose methodology has recently been modified, continues to be published under the conditions provided for in BMR.

To compensate for the disappearance of these critical benchmarks, which are currently widely used, the authorities suggest using alternative risk-free rates (RFRs), which are intended to become new standard benchmark indices.

At European level, the European Central Bank has developed the €STR rate, based on data provided daily by banks in accordance with the Regulation on money market statistics (MMSR) on unsecured euro transactions in the overnight money market. This rate has been available since October 2, 2019. Similarly, alternative RFRs are in the process of being identified for each of the main LIBOR currencies.

## Preparing for transition

Given the number and diversity of transactions referring to European critical benchmarks and the potential economic consequences of their discontinuation, it is essential that their users prepare for a gradual transition to alternative RFRs as soon as possible.

The AMF therefore invites all users of critical benchmarks that are likely to be discontinued to start preparing the various stages of this transition by considering, for example, the following matters:

- identification of contracts impacted by transition;
- amendment of the relevant contracts to refer to an alternative RFR depending on the applicable law, for example by amending the reference rate or by adding a fall-back clause referring to the alternative RFR that will apply in the event of the discontinuation of the reference rate mentioned in the contract;
- management of any transfer of value related to the change of benchmark;

- updating information systems to take into account alternative RFRs; and
- potential effects on hedge accounting.

## Find out about the work undertaken by the industry

In order to support this transition process, several work streams have been launched on the initiative of public and private stakeholders. For example, a working group of private stakeholders was set up on the initiative of the ECB, ESMA and the European Commission in September 2017 (the Working Group on Euro Risk-Free Rates or WG RFR) to identify RFRs that could serve as alternatives for EONIA and EURIBOR. In particular, the RFR WG published reports on the impact and legal aspects of the transition from EONIA to €STR and general recommendations on the introduction of fall-back clauses in contracts referring to EURIBOR.

On the basis of this work, EMMI redefined EONIA as €STR +8.5 basis points, which corresponds to the historical average spread between EONIA and €STR as calculated by the ECB. EMMI is expected to cease the publication of the EONIA index on 3 January 2022. By that date, parties to contracts that still refer to EONIA must then have determined a replacement benchmark for EONIA which, in the light of the ECB's publications and the work of the WG RFR, is expected to be the €STR +8.5 basis points.

Regarding the initiatives led by industry associations, it should also be noted that ISDA and the Loan Market Association (LMA) regularly publish work on the transition to alternative RFRs. Regarding accounting matters the International Accounting Standards Board (IASB) has amended IAS 39 and IFRS 9 as part of the IBOR reform.

In France, in July 2018 the *Haut Comité Juridique de Place* (Legal High Advisory Committee for Financial Markets or HCJP) published a report on the legal aspects of changes of benchmarks, which deals in particular with the contractual approach to changes of benchmarks and the impact of the discontinuation or modification of the benchmarks on contracts. In this report, the HCJP points out that under French law, article 1167 of the Civil Code states that "*When the price or any other element of the contract must be determined by reference to an index that does not exist or has ceased to exist or to be accessible, it shall be replaced by the index that comes closest to it*". On the basis of this article, the HCJP report concludes that "*the risk of the contract lapsing in the event of the discontinuation of an index appears limited under French law, all the more so when a "successor" index is designated by the author of the discontinued index*".

Lastly, at European level reflexion is under way in order to ensure that legacy contracts transition towards an RFR will not affect the regulatory treatment of these contracts with regard to initial margin and clearing requirements.

In particular, the AMF wishes to stress that non-bank stakeholders and fund managers be well-informed on this subject and hereby invites all stakeholders to draw inspiration from these initiatives in order to best prepare for transition to alternative RFRs.

### En savoir plus

- [AMF webpage on benchmark administrators](#)
- [Link to the Working group on euro risk-free rates webpage](#)
- [Link to the HCJP report of July 2018](#)
- [Link to the IOSCO final report on « Principles for Financial Benchmarks »](#)
- [Link to FSB's benchmarks webpage](#)
- [Link to IASB's webpage](#)

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