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EUROPEAN
COMMISSION

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COMMISSION IMPLEMENTING REGULATION (EU) …/...

of XXX

on the designation of a statutory replacement for certain settings of CHF LIBOR

(Text with EEA relevance)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2016/1011[1] of the European Parliament and of the Council, and in particular Article 23b(8) thereof,

Whereas:

(1) The Swiss franc London Interbank Offered Rate (CHF LIBOR) is one of the 5 LIBOR currency rates administered by the Ice Benchmark Administration (IBA). CHF LIBOR reflects the rate of interest at which large, leading, internationally active banks with access to the wholesale, unsecured funding market can fund themselves in such market in Swiss francs. The IBA calculates the rate based on data submissions communicated to IBA by a panel of banks.

(2) The Financial Conduct Authority of the United Kingdom (UK FCA) has announced the cessation of certain LIBOR benchmarks, including CHF LIBOR, by the end of 2021. The cessation is due to the concerns about whether LIBOR, in certain of its settings, adequately represents an underlying market or economic reality reflective of wholesale, unsecured funding market given the unwillingness of the majority of LIBOR panel banks to continue contributing to the relevant LIBOR settings, as announced by IBA on 5 March 2021 in its ICE LIBOR Feedback Statement on Consultation on Potential Cessation.

(3) In the past, a number of banks have used CHF LIBOR in the Union as a reference rate in a large number of outstanding retail mortgages, most of which will expire after the end of 2021. According to the responses to a public consultation held by the European Commission, there are currently industry-wide ca. EURO 35 billion mortgage contracts in the Union that reference CHF LIBOR. The greatest number of those contracts are outstanding in Poland, with the rest outstanding in Austria, Slovenia, the Netherlands, France.

(4) In particular, it emerged from the consultation that, at the end of 2020, more than 430 000 households in Poland had CHF LIBOR-related mortgages. That represents around 21 % of the total Polish mortgage loan portfolio, accounting for a total value of PLN 99 billion (ca. EUR 22 billion). The majority of those mortgages is long-term and will remain outstanding beyond 2030.

[1] Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L 171, 29.6.2016, p. 1).

(5) In Slovenia, over 6700 consumer credit agreements for a total value in excess of EUR 300 million referenced CHF LIBOR on 31 December 2020, with the last batch of those contracts not expiring until 2043.In addition, 9 out of 15 banks are exposed to CHF LIBOR. The share of housing loans in CHF LIBOR in those 9 banks compared to all housing loans represents 6,34 % and the share of mortgage loans in CHF LIBOR compared to all mortgage loans represents 7,13 %.

(6) In Austria at the end of 2020, between 50.000 and 60.000 mortgage loans to Austrian households reference CHF LIBOR , which represents about 7% of the total number of mortgages in Austria. Around 400 Austrian banks are engaged in mortgage portfolios referencing CHF LIBOR. There is a total volume of loans of ca. EURO 10,8 billion, which represents 6,54% of all Austrian private household debt.

(7) In the Netherlands, it is estimated that ca. EUR 500 million worth of retail mortgages without fall-back clauses reference Swiss CHF LIBOR.

(8) In France, regional banks have about 6 400 retail loan contracts referencing CHF LIBOR maturing after 2021.

(9) Regulation (EU) 2016/1011 requires that users of benchmarks produce and maintain robust written plans setting out the actions that they would take in the event that a benchmark materially changes or ceases to be provided and, where feasible and appropriate, designate one or several alternative benchmarks as fall-backs for a benchmark that would no longer be published. Contracts referencing CHF LIBOR have been concluded long before the cessation of CHF LIBOR could be foreseeable and before Regulation (EU) 2016/1011 started to apply. Those contracts do not contain fall-back provisions that address the unlikely event that a benchmark administrator can no longer publish a contractual reference after a certain date due to compliance concerns.

(10) Due to the difficulty to identify an appropriate replacement for CHF LIBOR before clear recommendations were offered to the market by the Swiss NWG, also contracts concluded after the date of application (1 January 2018) of Regulation (EU) 2016/1011 do not contain fall-back provisions or suitable fall-back provisions.

(11) Without transitioning such contracts to a designated replacement for a benchmark, there is a serious risk of contract frustration in several Member States, including Poland and Austria. The designation of the replacement for such benchmark should therefore ensure the avoidance of such risk, whose materialisation might significantly disrupt the functioning of financial markets in the Union.

(12) On 5 March 2021, the UK FCA announced the future loss of representativeness and cessation of all CHF LIBOR settings. Such statement constitutes a trigger for the Commission to exercise its power to designate a statutory replacement for Swiss franc LIBOR pursuant to Article 23b(8) of Regulation (EU) 2016/1011.

(13) The result of the public consultation by the Commission established the important role of certain CHF LIBOR tenors in mortgage contracts, particularly the 1-month, 3-month, 6-month and 12-month tenors. The lack of a clear and unambiguous replacement rate in CHF LIBOR mortgage contracts would give rise to legal uncertainty, which may trigger litigation and contract frustration. It is therefore appropriate for the Commission to designate a statutory replacement for those four tenors of CHF LIBOR to be used in products such as savings accounts, mortgages and loans, including consumer credit agreements and small business loans, governed by

the laws of one of the Union Member States, which do not contain suitable fall-back provisions.

(14) In 2017, the Swiss NWG has recommended the Swiss Average Rate Overnight (SARON) administered by SIX Swiss Exchange Financial Information AG (SIX) as the replacement rate for CHF LIBOR. In September 2020, after acknowledging the impossibility to create a forward looking term rate based on SARON, the Swiss NWG recommended that compounded SARON should be used as the basis for a fall-back rate for references to CHF LIBOR for cash products. A designated replacement for the relevant tenors of CHF LIBOR in legacy cash contracts should therefore be calculated as a compounded rate of SARON.

(15) The result of the consultation has shown broad support for the proposed statutory replacement rate, including by public authorities from the Member States most concerned. The consultation revealed broad support for designating a statutory replacement for all settings of CHF LIBOR in line with the recommendations of the Swiss NWG.

(16) While CHF LIBOR is a forward-looking rate, where the client knows in advance the interest due for the upcoming period, compounded SARON is a backward-looking rate. That means that the interest rate over a given period is only known at the end of that period. In certain circumstances, that may not be acceptable for operational or legal reasons. A potential solution is to determine the interest rate on the basis of an observation period preceding the interest period. On 29 September 2020, the Swiss NWG recommended, in cases where the interest payment has to be known at the beginning of the interest period, to use the compounded SARON in accordance with the "last reset" methodology.

(17) The "last reset" methodology consists of determining the interest rate for the upcoming period on the basis of the observed compounded interest rate for a prior period that is of equal length as the interest period. According to the NWG recommendation, for example, as a replacement rate for CHF 6-Month LIBOR, users should adopt SARON 6-Month Compound Rate determined under the "last reset" methodology. That is the compounded SARON rate as calculated on the basis of the 6-month period directly preceding the interest period. The "last reset" methodology should therefore be considered as the most appropriate replacement for CHF LIBOR in the asset classes affected by the cessation of that benchmark.

(18) It is therefore appropriate that the rates designated by the Commission to replace the relevant tenors of CHF LIBOR correspond to the respective compounded SARON rates observed over a period directly preceding the interest period ("last reset").

(19) There is a difference in value between CHF LIBOR and compounded SARON . In order to reflect such difference and minimise the economic impact of a replacement, a fixed spread adjustment should be added to compounded SARON for each of the CHF LIBOR tenors it replaces.

(20) The public consultation has confirmed the appropriateness of calculating a fixed spread adjustment based on the historical median spread between Swiss franc LIBOR and relevant SARON compounded over a five-year lookback period up to 5 March, 2021.

(21) Benchmark administrator Bloomberg publishes the chosen spread adjustments for each of the relevant compounded SARON tenors (1-month, 3-month, 6-month and 12-month). It is therefore appropriate that the rates designated by the Commission to

replace the relevant tenors of CHF LIBOR correspond to the compounded SARON rate plus the relevant adjustment spread.

(22) Customers or smaller counterparts might not be informed about the transition away from CHF LIBOR and its effects on their contracts. Credit institutions and other financial institutions which have entered into contracts referencing CHF LIBOR should therefore inform those retail customers and smaller counterparties in writing about the application of the statutory replacement for CHF LIBOR and its effects on their contracts. Credit institutions and other financial institutions that are party to a CHF LIBOR contract should inform counterparts as soon as this implementing regulation has entered into force and in any event not later than thirty days before the statutory replacement rate starts to apply.

(23) Considering that LIBOR will cease to be published on 1 January 2022, the designated rates should replace references to CHF LIBOR as of such date.

(24) The UK FCA, as supervisor of the CHF LIBOR administrator, the Swiss National Central Bank in its role of secretariat to the National Working Group on Swiss Franc Reference Rates (Swiss NWG) and the European Securities and Market Authority (ESMA), were duly consulted to determine the measures provided for in this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Replacement of CHF LIBOR

1. The following rates are designated as replacement for the CHF LIBOR in references to CHF LIBOR in contracts and financial instruments as referred to in Article 23a of Regulation (EU) 2016/1011:

   (a) 1-month CHF LIBOR is replaced by 1-month compounded SARON, as observed over the 1-month period preceding the interest period;

   (b) 3-month CHF LIBOR is replaced by 3-month compounded SARON, as observed over the 3-month period preceding the interest period;

   (c) 6-month CHF LIBOR is replaced by 6-month compounded SARON, as observed over the 6-month period preceding the interest period;

   (d) 12-month CHF LIBOR is replaced by 12-month compounded SARON, as observed over the 12-month period preceding the interest period.

2. A fixed spread adjustment shall be added to the designated replacement rates referred to in paragraph 1. That fixed spread adjustment shall be equivalent to the spread published for each relevant tenor and calculated on 5 March 2021 as a historical median spread between the CHF LIBOR concerned and the respective SARON compounded over a five-year lookback period for each particular term.

3. The replacement rates for CHF LIBOR shall be designated in accordance with the following table:

LIBOR	**TENOR**	**Replacement Rate**	**Spread Adjustment Value (%)**
CHF	1M	SARON 1 month Compound Rate (SAR1MC)	-0.0571

		ISIN CH0477123886	
CHF	3M	SARON 3 months Compound Rate (SAR3MC) ISIN CH0477123902	0.0031
CHF	6M	SARON 6 month Compound Rate (SAR6MC) ISIN CH0477123910	0.0741
CHF	12M	SARON 12 month Compound Rate (SAR12MC) ISIN CH0477123936	0.2048

Article 2

Information sharing

Credit institutions and other financial institutions that are a party to a CHF LIBOR contract shall inform their counterparts of the change in the rate and the effects on their contracts in writing and not later than thirty days before the statutory replacement rate starts to apply.

Article 3

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall apply as of 1 January 2022.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
The President
Ursula VON DER LEYEN