

**European Union Benchmarks
Regulation as per article 28(2)
Contingency plans in case of
Benchmark change or cessation**

The Benchmarks Regulation EU 2016/1011 of the European Parliament and of the Council dated 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds (as amended on 10 February 2021 by Regulation 2021/168 and as may be amended from time to time) (the “BMR”), imposes certain requirements on firms that provide, contribute to or use benchmarks as defined in the BMR. The text of the BMR can be found on: https://ec.europa.eu/info/law/benchmarks-regulation-eu-2016-1011_en and https://eur-lex.europa.eu/search.html?DTA=2021&SUBDOM_INIT=ALL_ALL&DB_TYPE_OF_ACT=regulation&DTS_SUBDOM=ALL_ALL&typeOfActStatus=REGULATION&DTS_DOM=ALL&type=advanced&excConsLeg=true&qid=1617289099621&DTN=0168.

As a supervised entity and a user of benchmarks in the EEA, article 28(2) as per Regulation 2021/168 of 10 February 2021 provides inter alia that:

European Union supervised entities “that use a benchmark shall 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. Where feasible and appropriate, such plans shall designate one or several alternative benchmarks that could be referenced to substitute the benchmarks that would no longer be provided, indicating the reasons for the suitability of such alternative benchmarks. The supervised entities shall, upon request and without undue delay, provide the relevant competent authority with those plans and any updates and shall reflect them in their contractual relationship with clients.”

Benchmark cessation or material change to a benchmark

In order to manage the impact of a Benchmark cessation and/or a material change to a Benchmark (defined together as a “Benchmark Event”), Natixis introduced and maintains in its operational processes a robust plan to comply with these requirements, that entails the following actions:

- A continuous monitoring of the Benchmarks, that are being used by Natixis in the products sold to its clientele, is conducted to detect, and identify any Benchmark Event as soon as practicable. A clear allocation of roles and responsibilities within the various concerned department and functions of Natixis SA and a dedicated escalation process were introduced to support this operational plan.
- If a Benchmark Event occurs, a qualitative assessment will be conducted to determine the materiality of the impact in terms of positions, exposures, and documentation as well as in terms of systems, models, and processes.
- Based on the materiality assessment from this qualitative assessment, a quantitative assessment might be conducted to determine the impacted legal contracts, clients, and trades to assess the consequences of the Benchmark Event.
- A review of the affected agreements, products and transactions and a check whether the conditions set out in the existing contractual arrangements already contain alternative

benchmarks and to what extent a Benchmark Event frustrates or otherwise breaches the terms of any financial contracts or financial instrument.

Should a Benchmark Event occur, the provisions of the contract entered into with the client should be referred to as a matter of priority.

If the legal contract does not provide for any substitute benchmark, Natixis may:

- i) use the substitute benchmark notified by the administrator or derived from a market-led consensus;
- ii) contact the administrator of the benchmark in order to ascertain what substitute benchmark may be used;
- iii) contact the competent financial market associations and/or regulatory authorities and bodies to ascertain the market-led position on the substitute benchmark agreed upon;
- iv) contact the client in order to propose and agree on another sustainable benchmark alternative if technically possible and identify any potential impact affecting the clients' positions and contracts; and/or
- v) refer to the statutory replacement of a benchmark (see below).

Statutory replacement of a benchmark (as per Regulation 2021/168 of 10 February 2021)

The Commission may designate one or more replacements for a benchmark provided that specific events have occurred (e.g. announcement that benchmark no longer reflects the underlying market or economic reality or announcement that administrator will commence the orderly wind-down of that benchmark or will cease to provide that benchmark or certain tenors or certain currencies).

As per of the article 23ter, the replacement for a benchmark shall replace all references to that benchmark in financial contracts and instruments as referred to in article 23a where those contracts and financial instruments contain:

- (a) no fallback provision; or
- (b) no suitable fallback provisions.

Replacement of a benchmark by national law (as per Regulation 2021/168 of 10 February 2021)

The national competent authority of a Member State may designate one or more replacements for a benchmark provided that specific events have occurred (e.g. announcement that benchmark no longer reflects the underlying market or economic reality or announcement that that administrator will commence the orderly wind-down of that benchmark or will cease to provide that benchmark or certain tenors or certain currencies).

The replacement for a benchmark shall replace all references to that benchmark in contracts and financial instruments as referred to in article 23a where both of the following conditions are fulfilled:

(a) those contracts or financial instruments reference the benchmark in cessation on the date on which the national law designating the replacement for a benchmark becomes applicable; and

b) those contracts or financial instruments contain no fallback provision or contain a fallback provision that does not provide for a permanent replacement for the benchmark in cessation.

A replacement for a benchmark designated by a competent authority in accordance with article 23 quarter shall not apply where all parties or the required majority of the parties to a contract or financial instrument as referred to in article 23a have agreed to apply a different replacement for a benchmark whether before or after the date of application of the relevant provision of national law.

Note that this publication only provides general information background regarding these potential issues and regulatory obligations related to Benchmark Event.

This publication and above-mentioned plans might be subject to changes without notice.



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