

**COMMISSION IMPLEMENTING REGULATION (EU) 2021/1122****of 8 July 2021****amending Implementing Regulation (EU) 2016/1368 adding the Norwegian Interbank Offered Rate to and removing the London Interbank Offered Rate from the list of critical benchmarks used in financial markets established pursuant to Regulation (EU) 2016/1011 of the European Parliament and of the Council****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to 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 <sup>(1)</sup>, and in particular Article 20(1) thereof,

Whereas:

- (1) Benchmarks can be recognised as critical in accordance with Article 20(1), point (a), point (b) or point (c) of Regulation (EU) 2016/1011. Article 20(1), point (b) requires that benchmarks, for such benchmarks to be recognised as critical benchmarks, are based on input data submitted by contributors the majority of which are located in one Member State and are recognised as being critical in that Member State. On 11 August 2016, the Commission adopted Commission Implementing Regulation (EU) 2016/1368 <sup>(2)</sup>, which established a list of critical benchmarks.
- (2) Regulation (EU) 2016/1011 is applicable in the European Economic Area (EEA) and was implemented in Norwegian legislation on 6 December 2019.
- (3) On 3 December 2020, the Norwegian competent authority, the Finanstilsynet, notified the European Securities and Markets Authority ('ESMA') of its proposal to recognise the Norwegian Interbank Offered Rate ('NIBOR') as a critical benchmark under Article 20(1), point (b), of Regulation (EU) 2016/1011, because the NIBOR is critical in Norway and is based on submissions of contributors, all of which are located in Norway.
- (4) NIBOR is a reference rate based on an average of the interest rates at which banks operating in the Norwegian money market are willing to lend unsecured funds to each other at different maturities. NIBOR is determined on a daily basis for five different maturities: one week and one, two, three, and six months. As of 3 December 2020, six banks participate in the NIBOR panel, all of which are located in Norway.
- (5) In its assessment submitted to ESMA, the Finanstilsynet concluded that the cessation of NIBOR, or its provision on the basis of input data that are, or of a panel of contributors that is, no longer representative of the underlying market or economic reality, could have a significant adverse impact on the functioning of financial markets in Norway.
- (6) The assessment by the Finanstilsynet illustrates that NIBOR is used as a reference in loans to households and non-financial institutions amounting to approximately EUR 418 billion, which corresponds to 94 % of the total of loans granted in Norway to households and non-financial institutions, and to 136 % of Norway's gross domestic product (GDP). In addition, NIBOR serves as a reference for the coupon payments for around 60 % of the total nominal value of variable rate bonds in Norway, for a total amount of around EUR 130 billion. The Finanstilsynet, based on data from a single central counterparty, also evidenced that NIBOR is used as a reference in over-the-counter (OTC)

<sup>(1)</sup> OJ L 171, 29.6.2016, p. 1.

<sup>(2)</sup> Commission Implementing Regulation (EU) 2016/1368 of 11 August 2016 establishing a list of critical benchmarks used in financial markets pursuant to Regulation (EU) 2016/1011 of the European Parliament and of the Council (OJ L 217, 12.8.2016, p. 1).

interest rate derivatives for an outstanding notional amount of at least EUR 1988 billion as of October 2020. Finally, Finanstilsynet indicated that NIBOR is currently referenced in investment funds with a total net asset value of EUR 0,3 billion. The total value of financial instruments and financial contracts referencing NIBOR is therefore at least eight times higher than the gross national product of Norway.

- (7) The assessment by the Finanstilsynet concluded that NIBOR is of vital importance for financial stability and market integrity in Norway, and that NIBOR's discontinuity or unreliability could have a significant adverse impact on the functioning of financial markets in Norway and on companies and consumers as it is used in loans, consumer credit products, OTC interest rate derivatives and investment funds.
- (8) On 28 January 2021, ESMA transmitted to the Commission its opinion setting out that the assessment by the Finanstilsynet complies with the requirements of Article 20(3) of Regulation (EU) 2016/1011 and that the Finanstilsynet had provided quantitative data to support the case for the recognition of NIBOR as a critical benchmark, as well as analytical reasoning highlighting the crucial role of NIBOR in the Norwegian economy.
- (9) According to Article 20(1) of Regulation (EU) 2016/1011, the Commission is required to review the list of critical benchmarks at least every two years, and those benchmarks are to be provided by administrators located in the Union. On 31 January 2020, the United Kingdom left the Union. Benchmarks provided by an administrator located in the United Kingdom can therefore no longer qualify as critical benchmarks and should be removed from the list of critical benchmarks in the Annex to Implementing Regulation (EU) 2016/1368. The London Interbank Offered Rate (LIBOR) was qualified as a critical benchmark on 19 December 2017, LIBOR should therefore be removed from the list of critical benchmarks in the Annex to Implementing Regulation (EU) 2016/1368.
- (10) Regulation (EU) 2016/1011 was amended by Regulation (EU) 2019/2175 of the European Parliament and of the Council <sup>(9)</sup>, inter alia to appoint ESMA as the competent authority for administrators of critical benchmarks as referred to in Article 20(1), points (a) and (c), of Regulation (EU) 2016/1011 as of 1 January 2022. However, the competence for administrators of critical benchmarks as referred to in Article 20(1), point (b), of Regulation (EU) 2016/1011 will remain with the relevant national competent authority. It is therefore appropriate that the list of critical benchmarks established by the Commission distinguishes between critical benchmarks referred to in Article 20(1), points (a) and (c), of Regulation (EU) 2016/1011 and those referred to in Article 20(1), point (b), of that Regulation.
- (11) Implementing Regulation (EU) 2016/1368 should therefore be amended accordingly.
- (12) In light of the crucial importance of NIBOR, its widespread use and its role in the allocation of capital in Norway, this Regulation should enter into force as a matter of urgency.
- (13) The measures provided for in this Regulation are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

The Annex to Implementing Regulation (EU) 2016/1368 is replaced by the text in the Annex to this Regulation.

<sup>(9)</sup> Regulation (EU) 2019/2175 of the European Parliament and of the Council of 18 December 2019 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, and Regulation (EU) 2015/847 on information accompanying transfers of funds (OJ L 334, 27.12.2019, p. 1).

*Article 2*

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

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

Done at Brussels, 8 July 2021.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

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ANNEX

ANNEX

**List of critical benchmarks pursuant to Article 20(1), points (a) and (c), of Regulation (EU) 2016/1011**

No	Benchmark	Administrator	Location
1	Euro Interbank Offered Rate (EURIBOR®)	European Money Markets Institute (EMMI)	Brussels, Belgium
2	Euro Overnight Index Average (EONIA®)	European Money Markets Institute (EMMI)	Brussels, Belgium

**List of critical benchmarks pursuant to Article 20(1), point (b), of Regulation (EU) 2016/1011**

No	Benchmark	Administrator	Location
1	Stockholm Interbank Offered Rate (STIBOR)	Swedish Bankers' Association (Svenska Bankföreningen)	Stockholm, Sweden
2	Warsaw Interbank Offered Rate (WIBOR)	GPW Benchmarks S.A.	Warsaw, Poland
5	Norwegian Interbank Offered Rate (NIBOR)	Norske Finansielle Referanser (NoRe)	Oslo, Norway'