



Haut Comité Juridique
de la Place financière de Paris

PRESS RELEASE

Legal aspects of benchmark reform
Haut Comité Juridique de la
Place Financière de Paris (HCJP)

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LEGAL ASPECTS OF BENCHMARK REFORM

RECOMMENDATIONS OF THE WORKING GROUP OF THE HAUT COMITÉ JURIDIQUE DE LA PLACE FINANCIÈRE DE PARIS

The Haut Comité Juridique de la Place Financière de Paris (« **HCJP** ») has organized a working group to analyze the legal issues arising from the reform of interest rate benchmarks.¹ Following events that impacted the integrity of benchmarks such as LIBOR and EURIBOR, initiatives have been undertaken in various fora to reform or replace them, with a view to eliminating or reducing the vulnerabilities exhibited by existing benchmarks.

In a report published on July 20, 2018, the HCJP working group presented its conclusions and its recommendations for market participants, authorities and benchmark administrators:

- The benchmark reform process underway since 2012 has already produced beneficial effects by reinforcing the regulatory structure applicable to benchmarks, with improvements in the reliability of the data collected by administrators and the procedures used by administrators to determine the benchmarks.
- At the same time, the work conducted to date to define new benchmarks, some of which are still in the test phase, does not lead to the conclusion that market participants will have a full range of benchmarks sufficient to ensure an orderly transition as of the following key dates:
 - January 1, 2020, when benchmarks used in the European Union must effectively comply with the requirements of the European Benchmark Regulation, or
 - The end of 2021, when the UK authorities will no longer require panel banks to contribute data used to establish LIBOR.
- The newly created benchmarks have different profiles than existing benchmarks, as they do not incorporate the credit risk of the banking sector, and they are not available for the various tenors for which existing benchmarks are published. They are very short-term benchmarks. These differences could lead to legal risks, particularly for legacy contracts in place when the

¹ The members of the working group are listed in **Annex 1** to the Report of the Working Group.

² Regulation (EU) 2016/1011 of June 8, 2016.



transition occurs. Many financial products depend on longer-term benchmarks, particularly so-called “cash” products such as loans, financings and bonds. As of the date of the working group’s report, no solution has been identified to define term benchmarks that can replace EURIBOR or LIBOR.

- The vast majority of existing contracts with terms linked to benchmarks do not include clauses that contemplate the disappearance of a benchmark. They generally contain clauses that work properly only if a benchmark is temporarily unavailable. As a result, these contracts are particularly at risk for significant disruptions.
- One of the most important problems presented by the modification of benchmarks relates to the continuity of legacy contracts that are in place at the time of transition. The working group believes that the termination of a contract by a court or a decision to release a party from its obligations is unlikely, but not impossible, particularly if a clear successor benchmark is not identified at the time a benchmark is discontinued.

The Working Group’s Recommendations. Given these difficulties, it seems important to the working group that market participants (banks, borrowers, bond issuers, users of derivatives, etc.) rapidly take a number of measures: review contracts to evaluate clauses relating to benchmarks; take the necessary steps to adapt contracts by inserting clauses that provide for the discontinuation of benchmarks before the 2020/2021 deadlines; harmonize the triggers in different contracts (financings / derivatives) referencing the same benchmarks.

The working group also recommends that regulatory and supervisory authorities take steps to limit the impact of these risks and to ease the transition: authorize the use of EURIBOR and EONIA after January 1, 2020, for a period sufficient to allow an orderly transition; actively pursue work on new forward-looking term rates so that, by the relevant deadlines, market participants will be able to use benchmarks other than the recently created overnight rates; designate officially, through legislative or regulatory measures, successor benchmarks that would, as a matter of law, replace existing benchmarks in contracts that lack adequate fallback clauses; limit the legal consequences of the replacement of a benchmark in order to avoid the cancellation or non-performance of a large number of legacy contracts.

Finally, the working group recommends that administrators, with the support of competent public authorities, take steps to ensure that bank panels remain widely representative given that benchmarks based on panel contributions would appear to remain necessary, and to establish a clear legal regime designed to encourage banks to continue to contribute to benchmarks, defining and circumscribing their liability, particularly when they are required to resort to expert judgments as a result of significant market disruptions.

The report of the working group is available in French (with an Executive Summary in English) on the website of the Haut Comité Juridique de la Place Financière de Paris, www.hcjp.fr.