

## Comments

CONSULTATION DOCUMENT - Targeted consultation on the designation of a statutory replacement rate for CHF LIBOR

Register of Interest Representatives  
Identification number in the register: 52646912360-95

Our ref  
Ref. DK: EG-IND-BM  
Ref. DSGVO:7106

Contact: Sebastian Brinschwitz  
Telephone: +49 30 20225 - 5376  
Telefax: +49 30 20225 - 5665  
E-Mail: sebastian.brinschwitz@dsgv.de

Berlin, May 17, 2021

The **German Banking Industry Committee** is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public-sector banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent more than 1,700 banks.

Coordinator:  
German Savings Banks Association  
Charlottenstraße 47 | 10117 Berlin | Germany  
Telephone: +49 30 20225-0  
Telefax: +49 30 20225-250  
[www.die-deutsche-kreditwirtschaft.de](http://www.die-deutsche-kreditwirtschaft.de)

## CONSULTATION QUESTIONS

### 1. ON THE EFFECTIVE NEED FOR A REPLACEMENT FOR CHF LIBOR

Pursuant to article 23a of the EU BMR, the Commission may only designate replacement rates for third-country benchmarks "if their cessation or wind-down would significantly disrupt the functioning of financial markets in the Union or pose a systemic risk to the financial system in the Union."

**Question 1.** Do market participants agree that the situation as described above, requires that the Commission exercises the statutory replacement powers for the CHF LIBOR? Please explain and provide data if available.

#### a) Yes

We share the assessment of the Member States Austria and Poland. The discontinuation of CHF LIBOR would pose comparable challenges to the contracting parties. We therefore very much welcome and support the envisaged approach of the Commission to designate a replacement rate by adopting an implementing act pursuant to Article 23b para. 8 of the Amending Regulation ((EU) 2021/168). Such a statutory replacement of the 3M CHF LIBOR would provide the necessary legal certainty for market participants.

Considering that 3M CHF LIBOR is mainly used in savings accounts, mortgages and loans, narrowing the scope of the statutory replacement rate as proposed by the Commission seems in principle to be appropriate in this particular case. However, any further statutory replacements regarding other problematic benchmarks may require a significantly broader scope. It should be considered that as a starting point for further public consultations (Art. 23b para. 10 (EU) 2021/168) contracts and financial instruments according to Art. 23a (EU) 2021/168 should be included.

Such a need for a statutory replacement may in particular exist regarding US Dollar LIBOR and EONIA references. With a view to these reference rates we are convinced that a similar or even more serious potential for financial market disruptions may also exist regarding other types of financial instruments (such as bonds) and even derivatives transactions. Here, the transition to new reference rates will in these cases be at least equally challenging and give rise to similar legal uncertainties. Consequently, they should be considered in future implementing acts introducing statutory replacement rates.

As to the cut-off date, we strongly believe that the intended positive effects on financial markets and legal certainty could be significantly improved by choosing a later cut-off date for the statutory replacement. Currently, it is proposed that only contracts concluded before the full applicability of the Benchmark Regulation ((EU) 2016/1011, BMR) on 1 January 2018 are included in the scope of the replacement rate. This date is, however, not an appropriate cut-off date. Even though supervised entities have been required to establish and maintain robust written plans after entry into force of the BMR, a successor benchmark for CHF LIBOR (and other LIBOR tenors and currencies) was unknown for a long time. The absence of recommended and publicly available substitutes led to uncertainty over what successor benchmark would be appropriate and accepted in the market. Market participants therefore had to resort to very recently – after the cessation announcement by the Financial Conduct Authority as of 5 March 2021 – been in a position to introduce suitable/detailed and market accepted fallback provisions and/or replacement rates. Especially as it was only on this date that a reasonable spread

adjustment could be made. This central element is essential to ensure an economically neutral outcome for the contracting parties in the transition. Such an approach is also in line with the recommendations of all major RFR working groups. These see the inclusion of the spread as a central element in the transition. Against this background, the more appropriate and practically relevant cut-off date would be 5 March 2021. This event marks the official end of CHF LIBOR for all market participants and is also communicated in the contractual relationships in accordance with the contingency plans.

## **2. ON THE FAIRNESS AND ACCEPTABILITY OF THE SOLUTION RECOMMENDED BY THE SWISS NATIONAL WORKING GROUP**

**Question 2.** Do consumers, small and medium enterprises and relevant consumer bodies agree that the proposed replacement rate (3M SARON calculated as a compounded SARON under a last reset methodology) plus the ISDA adjustment spread (calculated as a historical median approach over a five-year lookback period) is a fair and equitable solution for a replacement of CHF LIBOR in mortgages and small business loans and consumer credit agreements? Please explain and, if necessary, provide alternative solutions.

### **a) Yes**

The replacement of the 3M CHF LIBOR by the 3M compounded SARON plus the ISDA Spread-Adjustment seems in principle appropriate and fair. However, this requires that the final Spread-Adjustment (for 3M CHF LIBOR = 0.0031 %) is directly fixed and published in the implementing act - instead of a mere reference to the ISDA/Bloomberg website.

This is imperative. It is not reasonable for consumers to have to search for the information required to check the interest rate in different places (SIX and Bloomberg webpage). This could be seen as a violation of the legal requirement for transparency.

However, regarding other CHF LIBOR tenors, the 3M compounded SARON plus ISDA Spread seems not be suitable.

## **3. ON THE COMPATIBILITY OF THE CHOSEN METHODOLOGY WITH EU AND MEMBER STATES LAWS PROTECTING CONSUMERS**

**Question 3.** Do market participants agree that the proposed calculation method (so called last reset) is compatible with the requirements of the MCD, the CCD, Directive 93/13/EEC and of other legislation protecting consumer credit and national implementation laws and with any other applicable legislation? Please explain.

### **a) Yes**

If the forward looking approach cannot be used, the last reset method is an acceptable way to inform customers of the relevant interest rate at the beginning of the contractual relationship ("in advance"). In

our opinion, this procedure is in line with the requirements of European and German civil law.

In this context, it is important that the interest rate is made available by the administrator in a manner, that allows a central and public access which is e.g. the case by the SIX Index Data Center since 30 March 2021. Furthermore, the relevant spread has to be fixed in the implementing act. If these requirements are fulfilled, the counterparties can clearly verify and identify the applicable interest rate themselves. Only such a comprehensible, transparent approach can meet the relevant civil law requirements.