

COMMISSION IMPLEMENTING REGULATION (EU) 2021/1848
of 21 October 2021
on the designation of a replacement for the benchmark Euro overnight index average

(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 ⁽¹⁾ of the European Parliament and of the Council, and in particular Article 23b(8) thereof,

Whereas:

- (1) The Euro overnight index average (EONIA) is a critical benchmark representing the interest rates on unsecured overnight lending transactions denominated in euros. EONIA is used in the context of overnight index swaps, and a wide range of other products. It is essential for cash settlement and highly relevant for other purposes such as different valuation procedures as applied as part of collateral and risk management processes or accounting.
- (2) The original methodology for the calculation of EONIA was based on submissions provided by contributing panel banks. In February 2018, the European Money Market Institute (EMMI), acting as administrator of EONIA, announced that compliance of EONIA with Regulation (EU) 2016/1011 could not be achieved by the time such obligations would apply. Work on EONIA's orderly wind-down was therefore initiated by EMMI and the financial industry. On 13 September 2018, the Working group on euro risk-free rates recommended the euro short-term rate (€STR) as the euro-denominated risk-free rate as a replacement for EONIA. On 14 March 2019, the working group also published recommendations on a transition from EONIA to €STR, which included a phase during which the methodology for calculating EONIA would be modified and based on €STR, as well as the method to determine the spread adjustment between €STR and EONIA.
- (3) Following those recommendations, on 31 May 2019 the European Central Bank (ECB) calculated a one-off spread between EONIA and €STR, set at 8,5 basis points. On the same day, EMMI announced the discontinuation of EONIA as of 3 January 2022. During the transition, EMMI published a reformed methodology for EONIA under which EONIA is equal to €STR as published by the ECB plus the one-off spread adjustment of 8,5 basis points. That reformed methodology applies to EONIA from 2 October 2019 until its cessation on 3 January 2022. On 11 December 2019, EMMI was granted authorisation by the Belgian Financial Services and Markets Authority (FSMA) for the provision and administration of EONIA under Article 34 of Regulation (EU) 2016/1011, allowing EONIA to be used until its discontinuation on 3 January 2022.
- (4) Despite the early announcement of the discontinuation of the EONIA rate as of 3 January 2022 and the early industry recommendations to replace any EONIA references by €STR especially for contracts maturing after that date, a large volume of contracts and financial instruments referencing EONIA are still outstanding in a number of Member States. EONIA therefore continues to play a crucial role for financial markets in the European Union. Furthermore, because of the process of reaching expert and industry-wide consensus over the appropriate transition pathway, such contracts and financial instruments generally do not contain suitable fall-back provisions covering the permanent cessation of EONIA. The cessation of EONIA is therefore likely to have a significantly disruptive impact on those contracts and financial instruments.

⁽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) EONIA has been designated as a critical benchmark pursuant to Commission Implementing Regulation (EU) 2019/482 ⁽²⁾. Regulation (EU) 2021/168 of the European Parliament and of the Council ⁽³⁾, which introduced into Regulation (EU) 2016/1011 Article 23b, has conferred on the European Commission the power to designate one or more replacements for a critical benchmark where all conditions laid down in Article 23b of Regulation (EU) 2016/1011 are met. The statement by EMMI on 31 May 2019 announcing the discontinuation of EONIA, along with the circumstance that, at the time of the issuance of that statement, there was no successor administrator that would continue to provide that benchmark, satisfies the condition laid down in Article 23b(2), point (b) of Regulation (EU) 2016/1011.
- (6) Furthermore, data reported by members of the Working group on euro risk-free rates suggests that, as of 9 July 2021, several thousands of derivative contracts with direct EONIA exposures and collateral agreements referencing EONIA as the interest rate covering collateral still apply across the Union. Both references already account for a total notional amount of several trillion euros. The same members also indicated that their contractual renegotiation efforts are complete in, on average, less than half of contracts that contain EONIA references. Those completion rates point to the fact that individual renegotiation of all remaining EONIA references will cause a major challenge for contracting parties in the Union, especially supervised entities. Without transitioning such contracts to a designated replacement for a benchmark, there is a serious risk of contract frustration. While continued active efforts are expected from industry members to transition all contracts and financial instruments still referencing EONIA to €STR by the time of EONIA's cessation, a replacement for EONIA references should therefore mitigate the materialisation of such risk, which might particularly affect clients engaging in overnight index swaps to hedge interest rate risk.
- (7) The result of expert working group consultations has established the preliminary assessment on the important role of EONIA in financial markets in the Union. It appeared from those expert working group consultations that the lack of a harmonised approach would give rise to legal uncertainty, which may trigger disputes and disruption. The Working group on euro risk-free rates has also addressed, on 15 July 2021, a formal letter calling for action from the Commission to swiftly designate a statutory replacement for EONIA. It is therefore appropriate for the Commission to designate a statutory replacement for EONIA to be used in any contract, and in any financial instrument as defined in Directive 2014/65/EU of the European Parliament and of the Council ⁽⁴⁾, that does not contain fall-back provisions or suitable fall-back provisions.
- (8) Consultations in the context of the Working group on euro risk-free rates also pointed out that replacing references to EONIA in contracts by means of contractual renegotiation has often been hampered by the volume of contracts that do not reach maturity before EONIA's end date of 3 January 2022, and by the difficulty of obtaining consent from all parties in each and every contract. That explains the amount of contracts that still reference EONIA. Considering that situation, and considering the data reported by members of the Working group on euro risk-free rates, it should be ensured that any contract or financial instrument still referencing EONIA as of the date of its cessation is falling under this implementing regulation, and under the scope of the statutory replacement measure.
- (9) Along with the announcement, on 31 May 2019, of the cessation of the publication of EONIA as of 3 January 2022, EMMI announced changes to the methodology of EONIA to ensure continued compliance with Regulation (EU) 2016/1011 and to ensure a smooth transition until final discontinuation of EONIA. Those changes apply to the EONIA methodology since 2 October 2019, and directly link the EONIA calculation to the development of €STR, by stating that EONIA is equal to €STR plus a fixed spread adjustment based on the spread calculated by the ECB. The addition of a fixed spread adjustment limits the economic impact of designating €STR as the statutory replacement for EONIA in all contracts that mature beyond the EONIA end date of 3 January 2022.

⁽²⁾ Commission Implementing Regulation (EU) 2019/482 of 22 March 2019 amending Commission Implementing Regulation (EU) 2016/1368 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 82, 25.3.2019, p. 26).

⁽³⁾ Regulation (EU) 2021/168 of the European Parliament and of the Council of 10 February 2021 amending Regulation (EU) 2016/1011 as regards the exemption of certain third-country spot foreign exchange benchmarks and the designation of replacements for certain benchmarks in cessation, and amending Regulation (EU) No 648/2012 (OJ L 49, 12.2.2021, p. 6).

⁽⁴⁾ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU Text with EEA relevance (OJ L 173, 12.6.2014, p. 349).

- (10) The formal letter from the Working group on euro risk-free rate dated 15 July 2021 specifically requested that the statutory replacement of EONIA be based on €STR, plus the existing fixed spread adjustment between EONIA and €STR, thus avoiding value transfer in the transition. It is appropriate that the statutory replacement for EONIA reflects recommendations from the risk-free rate working group concerned, and therefore be based on €STR plus the fixed spread adjustment calculated by the ECB.
- (11) A replacement for EONIA replaces, by operation of law, all references to that benchmark in any contract, and in any financial instrument as defined in Directive 2014/65/EU not containing fall-back provisions or suitable fall-back provisions, pursuant to Article 23b(3) of Regulation (EU) 2016/1011. That replacement does therefore not affect contracts that have been successfully renegotiated to cater for the cessation of EONIA, as provided for under Article 23b(11) of Regulation (EU) 2016/1011.
- (12) Considering that EONIA will cease to be published on 3 January 2022, the designated replacement rate should replace references to EONIA from that date.
- (13) The FSMA, as supervisor of the EONIA administrator, and the ECB, as central bank responsible for the currency area of EONIA, provided their views on this Regulation.
- (14) The measures provided for in this Regulation are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Replacement of EONIA

1. The Euro short-term rate (€STR) as published by the European Central Bank is designated as the replacement rate for the Euro overnight index average (EONIA) in references to EONIA in any contract, and in any financial instrument as defined in Directive 2014/65/EU.
2. The fixed spread adjustment that shall be added to the replacement rate designated pursuant to paragraph 1 shall be equal to 8,5 basis points.
3. The replacement rate for EONIA shall be designated in accordance with the following table:

Replaced benchmark	Replacement Rate	Spread Adjustment Value (%)
EONIA ISIN EU0009659945	Euro short-term rate (€STR) ISIN EU000A2X2A25	0,085

Article 2

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 3 January 2022.

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

Done at Brussels, 21 October 2021.

For the Commission
The President
Ursula VON DER LEYEN
