

DEPARTMENT Integrated Supervision  
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(To be quoted in further correspondence)

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## **Response of the Austrian Financial Markets Authority (FMA) and the Oesterreichische Nationalbank (OeNB) to the published initiatives on the Draft Implementing Act on the statutory replacement rate for Swiss Franc LIBOR (CHF LIBOR)**

Dear Sir or Madam

Please find below the official response of the Austrian Financial Market Authority (FMA) and the Oesterreichische Nationalbank (OeNB) to your published initiative on the Draft Implementing Act on the statutory replacement rate for Swiss Franc LIBOR (CHF LIBOR):

FMA and OeNB highly welcome the present Draft Implementing Act on the statutory replacement rate for the CHF LIBOR. As we have already noted in our response to the Targeted consultation on the designation of a statutory replacement rate for CHF LIBOR in May, without a European legislative solution, the discontinuation of the CHF LIBOR will create a significant legal and contract continuity risk for a substantial amount of Austrian retail loans. This risk could significantly disrupt the functioning of the Austrian financial market.

The present Draft Implementing Act would create legal certainty and mitigate contract continuity risks for all stakeholders and thus pave the way for a smooth benchmark transition fostering financial stability.

FMA and OeNB strongly support the following aspects of the Draft Implementing Act:

- As not only the 3M CHF LIBOR rate is used in financial contracts, we highly appreciate that the Draft Implementing Act (compared to the targeted consultation on 3M CHF LIBOR replacement in May) includes statutory replacement rates for all of the four main tenors in CHF LIBOR. For example in Austria not just 3M CHF LIBOR only (approx. 53% of CHF LIBOR loans), but also 1M CHF LIBOR (approx. 45%) is a relevant tenor in Austrian CHF LIBOR linked loans to private households.
- We want to point out, that we deem the precise, detailed and transparent definition of the SARON calculation method<sup>1</sup> following the recommendations of the “Working Group”<sup>2</sup> in the Draft Implementing Act an important factor in order to reduce the legal risk to a minimum extent, as there is no room for interpretation left.
- We also support the fact that contracts concluded after the date of application of the

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<sup>1</sup> compounded SARON, last rest method, spread adjustment

<sup>2</sup> National Working Group on Swiss Franc Reference Rates

Benchmark Regulation on January 1<sup>st</sup>, 2018, which do not contain any fall-back provisions or suitable fall-back provisions were included in the scope of the Draft Implementing Act.

- We agree with the information-sharing obligation for financial counterparts as stated in Article 2 of the Draft Implementing Act.

In addition, we would like to comment on the following individual aspect of the draft delegated act as follows:

**Recital 13:**

In recital 13 it is stated, that *“it is appropriate for the Commission to designate a statutory replacement for those four tenors of CHF LIBOR to be used in products such as savings accounts, mortgages and loans, including consumer credit agreements and small business loans, governed by the laws of one of the Union Member States, which do not contain suitable fall-back provisions.”*

For the matter of clarity and to align the wording with Article 1 of the Draft Implementing Act and Article 23a Benchmark Regulation we would suggest to implement the following wording:

*“It is appropriate for the Commission to designate a statutory replacement for those four tenors of CHF LIBOR to be used in contracts and financial instruments, including but not limited to savings accounts, mortgages and loans, including consumer credit agreements and small business loans, governed by the laws of one of the Union Member States, which do not contain suitable fall-back provisions.”*

We kindly ask you to consider our suggestion and are at your disposal for any further questions.

Financial Market Authority  
Department Integrated Supervision

On behalf of the Executive Board

Dr. Christoph Kapfer, LL.M. MBA  
Abteilungsleiter

Mag. Andrea Kuras-Goldmann  
Stellvertretende Abteilungsleiterin

signed electronically

<b>Signaturwert</b>	ZpwOfAJDdTQds2BhHW27TKVgQjjkS8fK4ftV616xCDCBGBsqvYvGFivOeIGPVnqaeIUq6gQL3f0fwkQm6Lo nN3hMjF0EOfa9YjplRJ+LZ+bx8QEovnyh0rUb+zrPDhX+lRM8/b/sDJ0/65QgCvz12HXu+uCXgcSX98ywqXU H00QVA/g7RAQ/+ /O5ye5qTk8rKlp/DpbGyenECPKxumAM1VKR7wVwh0HYdFRV0nQzSaBuYFMnJvMDA7i8idb TUW4shmg67saUQE+LrVgdOdX5Gg9NcccxpBH8YjNdHbdzif6wffa6kpUwdxAlEA7ThvgcbtRo4dd3SWun0DL QkQQgw==	
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