



## **Contingency Plan for Benchmarks**

*adopted by CaixaBank, S.A. – Italian Branch pursuant to Article 28, para. 2 of Regulation (EU) No. 2016/1011 and Article 118-bis, para. 1, of the Legislative Decree No. 385 of 1<sup>st</sup> September 1993*

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## Summary of changes

Version	Date	Amendments / Update
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## 1. Introduction

### 1.1 Subjective scope

This contingency plan (the “**Contingency Plan**” or the “**Plan**”) was prepared by CaixaBank, S.A. – Italian Branch (the “**Branch**”) to implement the provisions set forth in Article 28, para. 2, of Regulation (EU) No. 2016/1011 (the “**Benchmark Regulation**”) and Article 118-bis of the Legislative Decree No. 385 of 1<sup>st</sup> September 1993 (the “**Italian Banking Act**”).

The Plan applies only to banking transactions entered into, and to the relationships established, by the Branch (whether as creditor or debtor) in connection with its operations in Italy and does not affect transactions concluded or relationships established by CaixaBank, S.A. (“**CaixaBank**” or the “**Bank**”) outside the Italian territory, including through branches established in other EU Member States.

In particular, this Plan does not apply, by way of example only, to the securities issued by the Bank.

### 1.2 Definitions

For the purpose of this Plan the following capitalized terms shall have the meaning set forth hereunder:

- “**Benchmark Administrator**” or “**Administrator**” means a natural or legal person that has control over the provision of a Benchmark, pursuant to Article 3, para. 1, No. (6) of the Benchmark Regulation;
- “**Branch**” means CaixaBank S.A., Italian Branch, as defined in paragraph 1.1;
- “**Benchmark**” means a benchmark as defined pursuant to Article 3, para. 1, No. (3) of the Benchmark Regulation;
- “**Benchmark Regulation**” means Regulation (EU) No. 2016/1011, as defined in paragraph 1.1;
- “**CaixaBank**” or the “**Bank**” means CaixaBank S.A., as defined in paragraph 1.1;
- “**CAS**” means the credit adjustment spread, *i.e.* the positive or negative adjustment in the credit spread applied as a result of the application of a Substitute Benchmark following a Cessation of the Benchmark;
- “**Cessation**” means a Cessation of the Benchmark as defined in paragraph 5.1;
- “**Euribor**” means the benchmark denominated Euro Interbank Offered Rate, corresponding to the interest rate applied to unsecured interbank loans in Euro.
- “**Fallback Provisions**” means the fallback provisions set out in a contract governing the consequences of a Material Change or Cessation event, as applicable, concerning a Benchmark;
- “**Italian Banking Act**” means the Legislative Decree No. 385 of 1<sup>st</sup> September 1993, setting forth the Italian Banking Law, as defined in paragraph 1.1;
- “**Material Change**” means a material change of a Benchmark, as defined in paragraph 4.1;
- “**Plan**” means this contingency plan, as defined in paragraph 1.1;
- “**Regulation 2021/168**” means Regulation (EU) No. 2021/168, which amended the Benchmark Regulation;
- “**Substitute Benchmark**” means a substitute benchmark of a Benchmark identified in accordance with the provisions of this Plan and/or the applicable Fallback Provisions;

- “**Transparency Rules**” means the rules set forth in Title VI of the Italian Banking Act and the related implementing regulations.

## 2. Legal Framework

### 2.1 The Benchmark Regulation

The Benchmark Regulation sets forth a harmonised regulatory framework at European level for the development and use of Benchmarks, with a view of strengthening the confidence of market operators and the public in general in the use of Benchmarks preventing possible manipulations.

The Benchmark Regulation introduced an authorization and supervisory regime for Benchmark Administrators, imposing them to comply with specific organisational, operational and internal governance requirements. It also identified the requirements applicable to supervised entities providing input data for the calculation of Benchmarks or making use of Benchmarks in connection with contracts, products and relationships falling within the scope of the Benchmark Regulation.

As a result of the amendments introduced by Regulation 2021/168, the Benchmark Regulation provides for specific statutory replacement mechanisms that can be applied by the European Commission or national competent authorities, depending on the case. The statutory replacement mechanisms do not apply, among others, if the relevant contracts contain Fallback Provisions which comply with the requirements set forth in the Benchmark Regulation.

Considering the potential impact of Material Changes or the Cessation of a Benchmark, supervised entities (other than Administrators of Benchmark) must comply with certain obligations under Article 28, para. 2, of the Benchmark Regulation:

- **Drafting of contingency plans:** supervised entities that use a Benchmark must produce and maintain robust written plans setting out the actions that they would take in the event of a Material Change or Cessation of a Benchmark.
- **Designation of Substitute Benchmarks:** within the above-mentioned plans, supervised entities must designate one or several alternative Benchmarks that could be referenced to substitute the Benchmarks that would no longer be provided, indicating the reasons for the suitability of such alternative Benchmarks. This obligation applies only where feasible and appropriate.
- **Making plans available to competent authorities:** supervised entities shall, upon request and without undue delay, provide the relevant competent authority with those plans and any updates thereto.
- **Contractual relationship with customers:** the contents of the plans drafted in accordance with the foregoing must be reflected in the contractual relationship with customers.

### 2.2 Article 118 - bis of the Italian Banking Act

In addition to the EU rules, the national provisions set forth in Article 118 bis of the Italian Banking Act – introduced as a result of the Legislative Decree No. 207 of 7 December 2023 – are also applicable.

Article 118 bis of the Italian Banking Act provides as follows:

- **Publication of contingency plans:** banks and financial intermediaries must publish and keep up to date on their website the contingency plans adopted in accordance with article 28, para. 2, of the Benchmark Regulation (or an abstract thereof).
- **Updates of contingency plans:** banks and financial intermediaries must ensure that any

updates to the contingency plans are communicated to their customers at least on an annual basis (or on the first possible occasion). The communication must be made in accordance with the modalities provided for in article 119 of the Italian Banking Act.

- **Fallback Provisions:** banks and financial intermediaries must ensure that the contractual clauses concerning interest rates are drafted in a way which allows for the identification of the amendments to the benchmark rate or the substitute rate applicable in case of material change or cessation of the benchmark referred to in the contract.
- **Notification obligation:** In the event of a Significant Change or Cessation of a Benchmark, banks or financial intermediaries must notify their customers of any changes to the benchmark or the replacement benchmark identified in accordance with the Fallback Provisions included in the contracts. The notice must be given within thirty days in writing or through any other durable medium previously accepted by the customer.
- **Customer's right of termination and approval:** the customer is entitled to terminate the contract with no charges within 2 months of receipt of the notice of Material Change or Cessation of the Benchmark. If the contract is terminated, it remains subject to the previous contractual terms until the termination becomes effective – including as regards the interest rate applied and taking into account, where necessary, the latest available value of the reference benchmark. If the customer does not exercise its termination right within the term referred to above, then the change is deemed to be approved.

The provisions of Article 118 – bis shall apply starting from 10 January 2025.

### 3. Goals and Objective Scope

#### 3.1 Goals of the Plan

This Plan constitutes the contingency plan adopted by the Branch in order to comply with the requirements contained in the regulations referred to in paragraph 2 above.

In particular, the Plan:

- defines the actions and measures to be taken by the Branch in the event of a Material Change or Cessation of a Benchmark;
- identifies, where feasible and appropriate, the Substitute Benchmark applicable in the event of Material Change or Cessation of a Benchmark;
- specifies the disclosure obligations towards customers and the further rights granted to the latter in the cases under consideration;
- details how the Plan is to be published and updated as required by the applicable law.

#### 3.2 Objective Scope of the Plan

The provisions of this Plan shall apply to all contracts and relationships entered into by the Branch that fall within the scope of the Transparency Rules and provide for the application of a Benchmark - with reference both to active banking transactions (e.g. loans, etc.) and passive banking transactions (e.g. bank deposits, etc.).

This is without prejudice to the scope of application of the Benchmark Regulation, as far as the Branch operations are concerned and with respect to those matters that are not regulated in this Plan.

#### 3.3 Benchmarks used by the Branch

This Plan has been prepared taking into account the circumstance that the Branch mainly uses Euribor as Benchmark for the transactions with its customers.

Therefore, the Branch considers that it is not necessary or appropriate to identify Substitute Benchmarks in relation to Benchmarks other than Euribor in the light of the Branch's operations.

Should the Branch use a Benchmark other than the Euribor, the substitute benchmark will be identified in accordance with the applicable contractual provisions.

#### **4. Material Changes of Benchmarks**

##### **4.1 Cases of Material Changes**

The Branch continuously monitors the methodologies used for the elaboration of the Benchmarks used in its business, together with the competent Functions of the Bank.

For the purposes of the provisions of this Plan, a “**Material Change**” means:

- any change related to the Benchmark which is defined as material by the Benchmark Administrator;
- any change or event that is qualified as a Material Change in the relevant Fallback Provisions or otherwise in the contractual documentation signed by the Branch in relation to transactions concluded with customers; and/or
- any other change that is otherwise material and relates to the formula or methodology used to calculate or elaborate the Benchmark (whether mathematically or otherwise); it is understood that, for these purposes, normal quantitative variations due to fluctuations in the Benchmark in its ordinary course of business shall not be deemed to qualify as Material Changes.

##### **4.2 Detection of the event giving rise to a Material Change**

The occurrence of an event giving rise to a Material Change is subject to verification and detection by the competent organisational units of the Branch and/or the Bank.

Following the detection, a specific assessment is made of the actions to be taken, as set out in this Plan, and the relevant decisions are made by the Bank and the Branch

##### **4.3 Consequences in the event of a Material Change**

In the event of Material Change of the Benchmark, the Benchmark calculated by the related Administrator in accordance with the new methodology resulting from such Material Change shall apply to the contracts already entered into by the Branch, unless otherwise provided for in the contractual documentation signed by the Branch.

The Branch keeps track of the contractual provisions that provide for the application of a regime different from the one described above for cases of Material Changes.

For contracts to be entered into after the date when the Material Change becomes applicable, the Branch will consider whether to apply, instead of the Benchmark in question, a Substitute Benchmark identified in accordance with the provisions of paragraph 5.3 below, which shall apply *mutatis mutandis*.

This assessment shall be carried out taking into account, among others:

- the significance of the Material Change with respect to the characteristics of the Benchmark;
- any indications or recommendations provided on this matter by the competent authorities, the Benchmark Administrator and/or trade associations or working groups set up for this purpose;

- the suitability of the Benchmark, also following the Material Change, with respect to the type of contract(s) for which it is used.

Where the consequences resulting from a Significant Change are determined by the European Commission and/or a competent national authority, the Branch shall abide by the determinations taken by such authorities – to the maximum extent possible, also with regard to existing contractual relationships.

#### 4.4 Prevalence of the Fallback Provisions

The application of the mechanisms described in this paragraph 4 is in any event subject to the contents of the Fallback Provisions and other clauses contained in the contracts entered into by the Branch with its counterparties.

In particular, in certain circumstances (e.g. syndicated or bilaterally negotiated loans) it may not be possible for the Branch to impose the application of the mechanisms described in this paragraph 4.

In such cases, the Branch shall use its reasonable endeavours, having regard to the circumstances of the case, to obtain the application mechanisms which are substantially consistent with those described above.

## 5. Cessation of Benchmarks

### 5.1 Cases of Cessation

For the purpose of this Plan, “**Cessation**” means any event as a result of which the Benchmark is no longer calculated, determined and/or published on a permanent basis or for a significant period of time.

In particular, the cases of Cessation include the following:

- **Permanent unavailability of the Benchmark:** a permanent unavailability of the Benchmark occurs in the following cases:
  - publication by the Administrator (or a person acting on its behalf) of a public statement or otherwise of public information that the Administrator has commenced (or will commence) the wind-down of the Benchmark or has ceased (or will cease) to provide such Benchmark (or certain tenors thereof, or certain currencies) permanently or indefinitely;
  - publication by the national competent authority or any entities with insolvency or resolution authority over the Administrator of a public statement or public information having the same content as that set out in the preceding indent;
  - suspension or revocation of the authorisation granted to the Administrator leading to the Cessation of the Benchmark in accordance with the provisions set forth in the above indents;

In all of the cases listed above, the Benchmark shall not be deemed to be permanently unavailable if there is a successor Administrator who can continue to calculate and provide such Benchmark *in lieu* of the former Administrator.

A Cessation occurs in all other cases where the Benchmark ceases to be available permanently or indefinitely, irrespective of any declaration, announcement or statement publicly made by the Administrator or the national competent authority.

- **Non-representativeness:** the Cessation due to non-representativeness occurs where the national competent authority of the Administrator responsible for the Benchmark has issued a

public statement whereby (i) the Benchmark no longer reflects the underlying market or economic reality it purports to measure in relation to a certain date and (ii) such representativeness will not be restored (as determined by such authority).

- **Illegality:** a Cessation of the Benchmark for the purpose of this Plan occurs whenever it is or becomes contrary to the law for the Branch or otherwise for the parties to the agreement to use the Benchmark for whatever reason.

Where the Benchmark is unavailable for a specified period of time or otherwise on a temporary basis, the Branch shall assess the period of time during which the Benchmark in question cannot be used and whether the contract provides for adequate mechanisms to deal with such unavailability through Fallback Provisions or otherwise. A temporary disruption to the provision of a Benchmark does not constitute by itself a Cessation. In case of a temporary disruption of a Benchmark, the Branch is not automatically required to initiate the actions described in this Plan.

The fact the Administrator calculates the Benchmark on the basis of contingent measures specifically designated to deal with extraordinary events or events of temporary duration should not, in itself, lead to the application of the measures identified in this Plan for the case of Cessation.

#### 5.2 Detection of an event giving rise to a Cessation

The occurrence of an event triggering a Cessation is subject to verification and detection by the competent organisational units of the Branch and/or the Bank.

Following the detection, a specific assessment is made of the actions to be taken, as set out in this Plan, and the relevant decisions are made by the Bank and the Branch

#### 5.3 Consequences in the event of Cessation

In the event of Cessation of a Benchmark, the Substitute Benchmarks identified in accordance with the table included in Appendix A shall apply.

In addition to the Substitute Benchmark, the contracts entered into by the Branch may provide for the application of a CAS determined as a result of the substitution of the Benchmark. The CAS shall be determined in accordance with the provisions set out in Schedule A.

As specified in Schedule A, if the European Commission or the national competent authority directly designates a Substitute Benchmark, or if a Substitute Benchmark is identified by the applicable regulations, the Branch will apply the Substitute Benchmark identified by such authorities or regulations together with the relevant adjustment criteria, where defined

#### 5.4 Prevalence of the Fallback Provisions

The application of the Substitute Benchmarks in question and the CAS, as well as in general of the provisions set forth in this paragraph 5, is in any event subject to the contents of the Fallback Provisions and other clauses contained in the contracts entered into by the Branch with its counterparties.

In particular, in certain circumstances (e.g. syndicated or bilaterally negotiated loans) it may not be possible for the Branch to impose the application of the Substitute Benchmarks or the mechanisms for determining the CAS set out in Appendix A.

In such cases, the Branch shall use its reasonable endeavours, having regard to the circumstances of the case, to obtain the application of Substitute Benchmarks or a CAS in accordance with mechanisms that are substantially consistent with those set out in Schedule A.

## **6. Communication duties and termination right**

### **6.1 Communication duties**

The Branch shall give notice of any Material Change or Cessation of the Benchmark within a period of 30 (thirty) days. The notice must be given in writing or by other durable medium previously accepted by the customer. It must state the changes to the Benchmark or the possible Substitute Benchmark, if any, identified in accordance with the Fallback Provisions included in the contractual documentation.

### **6.2 Termination right**

The client has the right to terminate the contractual relationship with the Branch, without charge, within a period of two months from receipt of the notice referred to in paragraph 6.1.

The notice shall be sent in the manner applicable to the transmission of notices to the Branch in accordance with the applicable contractual provisions.

In the event that the termination right is exercised, the customer is entitled, when settling the relationship, to the application of the conditions previously applied, also with reference to the interest rate and taking into account, where necessary, the last available value of the Benchmark.

### **6.3 Effectiveness of the amendments**

The change shall be deemed to have been approved if the customer does not exercise the termination right within the time limit specified in paragraph 6.2 above.

## **7. Publication of the Plan**

This Plan – which shall be constantly updated – is published on the Branch's website available at [www.caixabank.it](http://www.caixabank.it), within the special section dedicated to the documentation required by the Transparency Rules.

## **8. Plan updates and customer notice**

In the event of any updates to the contents of the Plan, the Branch shall publish the relevant updated version on its website, as specified in paragraph 7.

Updates to the Plan are brought to the attention of the branch's customers at least once a year or at the first possible opportunity in the manner provided for in Article 119 of the Italian Banking Act.

## Annex A – Substitute Benchmark

### a) Substitute Benchmarks

In the event of the Cessation of a Benchmark, the Substitute Benchmark designated or identified by the competent authority or applicable legislation shall apply in the first instance.

In the absence of such designation, the Substitute Benchmarks listed in the table below shall apply—where the Substitute Benchmark applicable is specified in the absence of a different agreement included in the Reserve Clauses, as well as, by way of example, additional alternative indices otherwise accepted by the Branch in contracts with its clients.

These Substitute Benchmarks are deemed suitable considering the characteristics of the products offered by the Branch and the reputation of the Administrators and entities responsible for their publication.

Product	Primary Substitute Benchmark	Additional Permitted Substitute Benchmarks
Corporate Lending	Term €STR	Compounded €STR ECB Deposit Rate
Credit account for dispositions	Term €STR	Compounded €STR ECB Deposit Rate
Credit account	Term €STR	Compounded €STR ECB Deposit Rate
Confirming / Factoring	Term €STR	Compounded €STR ECB Deposit Rate
Current account	ECB Deposit Rate	N/A
Deposit account	ECB Deposit Rate	N/A

### b) Determination of CAS

In the case of application of the Substitute Benchmark, the CAS is determined with regard to:

- the applicable legal and regulatory provisions (including with reference to any regulations adopted by the European Commission);
- in the absence of the above provisions, any determination made by ISDA;
- in the absence of such determination, the average of the daily difference between the Euribor rate and the €STR rate taking into account the 5 years prior to the Cessation of the Euribor.

The determination of the CAS is made unilaterally by the Branch in accordance with the above criteria, unless otherwise provided by the Fallback Provisions or other clauses included in the contracts entered into by the Branch.