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Euribor-EBF Public Comment on OICV-IOSCO Consultation on Financial Benchmarks

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Introduction:

Euribor-EBF is an international non-profit making association under Belgian law founded in 1999 with the launch of the Euro and based in Brussels (56, avenue des Arts, 1000 Brussels). Its members are national banking associations in the Member States of the European Union which are involved in the Eurozone and the Euro-system[1].

Euribor-EBF has a mission of informing its members, other organizations, the European authorities and the national regulatory authorities on issues relating to the interbank rates. It develops and supports activities related to the Euribor (Euro Interbank Offered Rate), the USD Euribor, the Eonia (Euro OverNight Index Average), the Eurepo (benchmark rate of the large Euro repo market) and the Eonia Swap Index (derivatives market reference rate for the Euro).

It also supports other practical initiatives, fostering the further integration of the European financial market. These initiatives include the improvement of the liquidity and transparency of the short term commercial paper markets, by means of a harmonized framework for short-term European paper 'STEP', in collaboration with the European Central Bank.

Background documentation:
Euribor Code of conduct: http://www.euribor-ebf.eu/assets/files/Euribor_code_conduct.pdf
Euribor Technical Features: http://www.euribor-ebf.eu/assets/files/Euribor_tech_features.pdf
Euribor Panel Composition: http://www.euribor-ebf.eu/euribor-org/panel-banks.html
Frequently Asked Questions about Euribor:
http://www.euribor-ebf.eu/assets/files/Euribor%20FAQs%20Final.pdf
Euribor-EBF website: www.euribor-ebf.eu

[1] The list of Euribor-EBF National Members Associations is available at http://www.euribor-ebf.eu/assets/files/euribor-ebf-members.pdf

Key Points:

- Euribor-EBF welcomes the opportunity to answer the OICV/IOSCO consultation on financial benchmarks. Euribor-EBF's response will mainly refer to the Euribor benchmark.
- Euribor EBF whishes to emphasize that this response purports to discuss the possible evolution of the benchmark production and use but is in no way meant to express any comment on the current benchmark production process and the various parties who currently participate in it as well as the parties using such benchmarks.
- Euribor-EBF believes that the introduction of regulation on benchmarks should focus on high-level principles and allow enough flexibility to adapt to each benchmark's features. In addition, Euribor-EBF underlines that market participants' expertise is crucial in order to ensure that the measures taken at Euribor-EBF and regulatory/supervisory level are adapted to the market.
- Euribor-EBF supports the introduction of European public supervision on benchmarks. Supervision should also apply *ex-ante* and *ex-post* (before and after the fixing delivery).
- With a view to further enhance the accuracy of Euribor, Euribor-EBF is currently elaborating on the clarity of its definition, guidelines contribution criteria and contribution process.
- Euribor-EBF believes that the Euribor benchmark should be run by an independent, non-profit driven structure, with the introduction of public supervision. Euribor-EBF will envisage structural changes if needed and develop further the independence and diversity of the Steering Committee, with the possible appointment of other classes of stakeholders in the Steering Committee.
- Considering the disruption in the fixing that an actual transactions-based index may generate, Euribor-EBF supports an evolution of the current benchmarks based on enhanced governance and public supervision rather than changes to the definition or calculation, thereby limiting any potential impact on existing legal contracts and customer loans as well as potential litigation due to such definition amendments.
- Euribor-EBF is currently analysing the technical feasibility of setting, along with the large majority of Euribor panel banks and in addition to Euribor, a transactions-based benchmark. A real-transactions calculation test is currently being set up with the collaboration of the European Central Bank.
- In light of the volume of outstanding financial contracts based on these benchmarks, including loans to households and SMEs, the potential impact of introducing a regulatory framework for benchmarks should be carefully assessed.

Response to Consultation Questions:

Chapter 1: Scope

1. Do you agree with the scope of the report and intended audience? Are there other Benchmarks or stakeholders that have idiosyncrasies that should place them outside of the scope of the report? Please describe each Benchmark or stakeholder and the idiosyncrasies that you identify and the reasons why in your view the Benchmark or stakeholder should be placed outside of the scope of the report.

Yes, Euribor-EBF agrees with the scope of the report.

Chapter 2
Benchmark design

2. Do you agree that the design of a Benchmark should clearly reflect the key characteristics of the underlying interest it seeks to measure?

Yes, Euribor-EBF agrees that the design of a benchmark should reflect, as much as possible, the key underlying characteristics of the underlying interest it seeks to measure as defined in the report.

Quality and integrity of Methodologies

3. What measures should Administrators take to ensure the integrity of information used in Benchmarking-setting and that the data is bona fide? Please highlight any additional measures required where Benchmarks are survey based. Please also comment on each of the factors identified in the discussion on the 'vulnerability of data inputs' such as voluntary submission, discretion exercised by Administrators. Are these measures adequately reflected in the discussion of roles and responsibilities of the Administrator discussed in section E?

First, the benchmark-setting process must rely on a **robust Code of Conduct**, setting out, *inter alia*, a clear definition of the benchmark and transactions to be taken into account (where applicable), clear contributions process guidelines including sufficient safeguards at contributors' level and calculator agent's level and appropriate sanctions from a supervising authority.

In this context, Euribor-EBF believes that a **strong and harmonized contribution process with *pre* and *post* submission controls** must be established in order to ensure sufficient safeguards and integrity of the data. In this perspective, as described under question 4, Euribor-EBF has been working on written guidelines on the contribution process and general responsibilities, including *ex-ante* and *ex-post* controls. These processes include four-eyes principle when determining the contribution and inputting the rates, authorized persons to contribute, *ex-ante* and *ex-post* controls at banks' level, recordkeeping of data and communications, as well as internal and external audit on processes.

In addition, Euribor-EBF introduced a **Euribor Management Certification Form** in July 2012, whereby panel banks must certify that *(1)* all internal procedures are set up to ensure a **robust process for the submission of contributions, excluding any internal and external influences**, *(2)* that all submitted contributions are the **bank's appreciation of the evolution of the interbank market in the Eurozone according to the Euribor definition** and *(3)* that the **Euribor Code of Conduct** is fully respected when contributing to the fixing.

Euribor-EBF also believes that **substantive back-testing** of the quoted rates must be performed by the calculator agent and the Administrator, with report to the Steering Committee. In this context, the Administrator and the calculator agent must ensure that **robust and transparent controls and safeguards during the collection and calculation process** are in place in order to detect any incorrect or unusual submission, and that Administrator and Calculation Agent have in place a specific Code of Conduct.

Similarly, the benchmark's Code of Conduct or the technical features of the benchmarks must define clear **re-fix rules, contribution window and fallback provisions**.

We do believe that the above-mentioned measures, combined with the contribution guidelines described under question 4, are adequately reflected in the discussion of roles and responsibilities of the Administrator discussed in section E.

Separately, regarding the factors identified as potential vulnerabilities of data inputs in the report, Euribor-EBF would like to share the following comments:

- **Voluntary submission and continuity of participation:**

With the recent events, contributing to an index may be considered as an extra, unbearable burden, given the costs and resources that additional compliance and governance measures will generate, as well as a potential source of reputational risk.

Five contributing banks left the Euribor panel since July 2012. The risk to face a contagion effect to other panel banks, and therefore lose additional contributors, should not be underestimated, also considering, on the other hand, that being part of a panel has not any "upside" or positive effect or treatment.

While making the contribution to the benchmarks compulsory might be a solution in order to preserve their accuracy and representativeness, Euribor-EBF recommends that the regulators envisage the possibility of introducing incentive measures in order to encourage panel banks to continue participating in setting these benchmarks.

- **Administrator discretion:**

Robust safeguards and controls during the collection and calculation of data by the calculator agent, if different from the Administrator, should prevent from any risk to alter the algorithm or composition of inputs at the sole Administrator's discretion.

In addition, Euribor-EBF believes that a 'four-eye principle' (cross checking by different parties) on the calculation process run by the calculator agent should be performed by the European Supervisor.

- **Composition of submitting panels:**

Euribor-EBF believes that the panel must be as large and representative as possible in order to preserve the credibility, the representativeness and accuracy of the Euribor benchmark. It also reduces the impact of manipulation attempts. Nevertheless, for real-transactions based benchmarks, it does not eliminate the possibility of non-existing data because of the lack of current market depth and therefore lack of transactions for medium to long term maturities. It should also be taken into account that, when considering real transactions, the choice of contributors in the panel is of paramount importance: changing the panel composition may generate extremely different results.

The Code of Conduct must define clear criteria to apply for and stay on the panel, as well as the procedure followed by the Steering Committee to review new applications. The Steering Committee must also review the panel composition at each meeting (bi-monthly).

Finally, with regard to the management of potential conflict of interests between the submitters and the Administrator, Euribor-EBF is currently reviewing the composition of the Euribor Steering Committee by reducing the number of members from panel banks to a minority and including other classes of stakeholders in order to further develop its independence and diversity. It is also important to note that the members of Euribor-EBF are national Associations, not banks.

4. What measures should Submitters implement to ensure the integrity of information provided to Administrators? Are these measures adequately reflected in the discussion of a code of conduct for Submitters discussed in section E? In particular, should Submitters submit all input data and not a selection of such data so as to maximise the representation of the underlying market? Please comment on any practical issues that compliance with such an approach may give rise to.

As mentioned previously, Euribor-EBF believes that a **strong contribution process** must be defined by the Administrator and implemented by the submitters. Euribor-EBF has been defining written guidelines on the contribution process and general responsibilities, including *ex-ante* and *ex-post* controls, as well as homogenous criteria for the determination of the contributions, based on market indicators:

Determination of the contribution:

- There should be a clear **definition of roles** in the contribution process and segregation of duties (physical and systems) of the contribution team in order to manage and reduce conflicts of interests. This means that, in any case, conflicts of interests between the employee responsible for the quotes and Money Markets Desks (respectively Derivatives Traders) must be avoided when possible, and reduces to the minimum when not possible.
- In addition, **contributing professionals should receive appropriate training** and confirm understanding of rules and policies. **Panel banks should appoint authorized persons to make the contribution**.
- The **responsibility of Euribor submissions should be at Treasury senior management level.** The daily contributions should be done by an operational team under the control of the senior management. Treasury departments have strong market knowledge, having daily involvement in the cash balance sheet management, as well as a complete view of the degree of price liquidity in the market.
- **Four-eye principle and pre-submission control:** The **quality of the contribution** should be reviewed by a neutral group within the bank with no P&L responsibility but sufficient market expertise about the Euro cash market (e.g. Market Risk Department), taking into account evolution of interest rate level, market criteria, ECB rates with appropriate levels of alerts (thresholds).
- In case the neutral group has any issues or concerns with the respective panel Bank's contributions, the panel bank should implement a well-documented escalation process within its organisation. The panel bank should implement an information and communication process between the business and the neutral control group. Any communication or exchange of views during the pre-submission control process should be well documented on a daily basis.

- The panel bank should ensure through specific and detailed guidelines and policies that the processes for the Euribor submission, in general, and for determining the Euribor contributions, in particular, are transparent and well documented, that is, information, comments, and data used for determining the contribution rates should be stored according to the respective archiving requirements.
- A panel bank's contribution rates should be classified and treated as confidential, non-public, price-sensitive information prior to their publication on a daily basis. The respective bank internal key operating procedures, guidelines, and policies should represent the basis for this classification.

Submission of the contribution:

- The contribution team, under the supervision of the Treasury senior management, should be responsible for inputting the rates into the calculator agent's system, once it is validated by the Market Risk Department (or other neutral group as described above).
- A 'four-eye' principle should also be applied when inputting the rates, in order to avoid any mistyping mistakes.
- Panel bank must also ensure the correct and timely submission of its contribution rates to the calculation agent by implementing processes and procedures. (An automatic reminder procedure is already in place on the calculator agent's side.)
- Panel banks must communicate the names of the contributing persons and senior management responsible to Euribor-EBF and the calculator agent. (Already in place through a contact form to be returned to Euribor-EBF on an annual basis). Any change in the contact list must be communicated without delay to Euribor-EBF and the calculator agent.
- Recordkeeping of contributors' names, internal communications, argument for contribution and data related to the process for a set period of time, in particular when there are different opinions on the rate, must be ensured.
- The system(s) used for the submission process must meet minimum security standards in order to avoid unwanted, uncontrolled changes and amendments to the contribution rates (e.g. personal logins, passwords, etc.)

Post-submission controls

- In addition to the pre-contribution control, the **Market Risk Department** (or other neutral group as described above) should review and analyze the bank's contributions over a wider time horizon (e.g. one calendar month) in close cooperation with other stakeholders within the bank on a regular basis (e.g. monthly review meeting).

- The **Compliance Department** should be in charge of controlling **the internal contribution processes and respect of the Code of Conduct**. The Compliance department should be able to review the process on real-time basis.

Internal audit

- Each panel bank should ensure that the internal audit department regularly reviews, checks, and validates all processes and procedures relating to the Euribor submission.

With regard to the above-mentioned common contributions guidelines, Euribor-EBF acknowledges that banks' internal structures may differ significantly from one to another and that some adjustments might be necessary.

We do believe that these measures are adequately reflected in the discussion of a code of conduct for Submitters discussed in section E.

Transparency of Benchmark methodologies

5. What level of granularity with regard to the transparency of Methodologies would enable users to assess the credibility, representativeness, relevance and suitability of a Benchmark on an on-going basis and its limitations with respect to their intended use? Relevant factors could include; criteria and procedures used to develop the Methodology, type of data used, how data is collected, relative weighting of data used, how and when judgment is used, contingency measures (e.g., methods when transaction data is unavailable etc), publication of information supporting each Benchmark determination, etc. Please provide examples where you consider there are currently significant gaps in the provision of this information.

Euribor-EBF agrees that the benchmark criteria, processes and governance must be clearly defined and transparent to market participants, regulatory authorities and others on a fair and non-discriminatory basis.

In this context, Euribor-EBF publishes, on a free basis, delayed daily rates (90mn after the fixing time) and individual submissions. The Code of Conduct and the technical features of the benchmarks, setting out the governance, setting methodology, including fallback provisions in case insufficient data is available are also publicly available. Similarly, the composition of panel and the Steering Committee as well as the minutes of its meetings are available on www.euribor-ebf.eu. With a view to further enhance transparency, minutes of the Steering Committee will be published promptly after the meetings, once approved by the Chair and Committee members.

In addition, Euribor-EBF has been working on clarifying the key terminology of the Euribor benchmark, by defining the "prime bank" and "interbank transactions" wording in the definition.

Finally, Euribor-EBF agrees that benchmark's transparency should be considered in conjunction with appropriate controls and safeguards in order to avoid the use of transparent procedures for manipulation purpose.

Transparency of contingency provisions for episodes of market disruption, illiquidity or other issues

6. What steps should an Administrator take to disclose to Market Participants and other stakeholders the contingency measures it intends to use in conditions of market disruption, illiquidity or other stresses?

While the Steering Committee is responsible for the benchmark's governance and technical changes, market participants must be directly informed, in a reasonable timeframe, and, when possible, consulted about any change in the Code of Conduct and technical features of the benchmark.

As an example, Euribor-EBF has organised a workshop with panel banks representatives, European authorities and stakeholders Associations in October 2012 to draw a common approach at European level on the future of the Euribor index. This workshop was followed by a questionnaire sent to all panel banks to gather their views on the evolution of the index.

In this context, Euribor-EBF strongly believes that market participant's expertise is crucial in order to ensure that the measures taken by Euribor-EBF and at regulatory/supervisory level are adopted by the market.

Transparency over changes to the Methodology

7. What steps should an Administrator take to notify Market Participants of material changes to a Benchmark Methodology (including to Benchmark components) and to take their feedback into account?

Please refer to the answer to question 6.

8. How often should the Administrator review the design and definition of the Benchmark to ensure that it remains representative?

The representativeness of a benchmark should be reviewed on a regular basis, in particular in turbulent market conditions.

At every meeting, Euribor Steering Committee members review the level and use of the index and how it reflects market conditions, the composition of the panel and the compliance of panel banks with their obligations under the Code of Conduct. Under these items, they discuss whether the index definition and features are in line with the market, whether the panel is large and representative enough, and review the individual submissions of panel banks (top/bottom 15% contributions; any missing contribution).

The number of Steering Committee meetings has been increased to bi-monthly meetings.

Governance

9. The Consultation Report discusses a number of potential conflicts of interest that may arise at the level of the Submitters, between Submitters at different entities, and between Submitters, Administrators and other third parties. Are there other types of conflicts of interest that have not been mentioned that you consider may arise? If so, how best should these conflicts of interest be addressed? Are the measures discussed in the Consultation Report sufficient to address potential conflicts of interests at the level of the Submitters, between Submitters at different entities, and between Submitters, Administrators and other third parties?

As soon as an entity, private or public, has an interest in the level of the final fixing, there may be conflicts of interests. In this context, Euribor-EBF believes that the Euribor index should be run by an independent, non-profit driven structure, with the introduction of public supervision and sufficient safeguards and controls.

Different measures have been implemented or are currently under discussion within Euribor-EBF in order to identify and manage potential conflicts of interests at different levels:

- At **submitters level**: each panel bank is required to sign a Euribor certification form, in which they must certify, *inter alia*, that all internal procedures are set up to ensure a robust process for the submission of contributions, **excluding any internal and external influences** […]. In addition, clean contributions guidelines (as described under question 4) including, amongst other provisions, a clear **definition of roles** in the contribution process and **segregation of duties (physical and systems)** of the contribution team in order to prevent conflicts of interests will be annexed to the Euribor Code of Conduct. Panel banks will be requested to detail their processes to the Administrator.

- At **Steering Committee level**: Euribor-EBF is currently reviewing the composition of the Steering Committee by reducing the number of members from panel banks to a minority and including other classes of stakeholders in order to further develop its independence and diversity. In addition, according to the Euribor Code of Conduct, "All the members must be independent and not subject to instructions from the companies or organisations to which they belong".
- At **structure level**: Euribor-EBF is currently envisaging the creation of an independent body responsible for identifying and managing potential conflicts of interests. It is meanwhile important to note that the members of Euribor-EBF are national Associations and that, therefore, Euribor-EBF is not controlled or owned by market participants who subscribe or contribute to the benchmark; structure finance contracts or instruments that reference the benchmark; are active participants in the underlying market of the benchmark; or carry large positions on products linked to the benchmark.

Euribor-EBF believes that these measures are adequately reflected in the Consultation Report.

10. Do you agree that the Administrator should establish an oversight committee or other body to provide independent scrutiny of all relevant activities and management of conflicts of interest? Please comment if and why any different approaches might be appropriate for different kinds of Benchmarks. What is the minimum level of independent representation this committee or body should include?

As explained under question 9, Euribor-EBF is in favour of the creation of an independent body responsible for identifying and managing potential conflicts of interests. While the composition of such committee is still to be determined, Euribor-EBF believes that it should be independent from the banking sector and include audit, compliance and/or legal experts. This Committee should have regular meetings and transparent procedures regarding its membership, processes and decisions.

Meanwhile, Euribor-EBF believes that the technical aspects (including monitoring of submissions, consideration of changes to the Methodology) and the overall governance of the production of the benchmark should remain a prerogative of the Steering Committee, composed of a narrowed number of members belonging to panel banks and enlarged to other key stakeholders. Indeed, Euribor-EBF strongly believes that market participants' expertise is crucial in order to ensure that the measures taken at Euribor-EBF and/or regulatory/supervisory fit the market's needs. Decisions or choices taken not considering market practitioners' opinion may be disruptive for the community.

Accountability

11. Should the Submitters establish accountability procedures to assess their compliance with operational standards and scrutiny of Benchmark submissions?

First, Euribor-EBF believes that *ex-ante* and *ex-post* controls must be reinforced at contributors' level. As described under question 4, Euribor-EBF is establishing common contribution guidelines, including *pre* and *post* submission controls by a neutral group of the bank with no profit-making interests (e.g. Market Risk Department).

The above-mentioned contribution guidelines require that recordkeeping of contributors' names, internal communications, argument for contribution and data related to the process for a set period of time, in particular when there are different opinions on the rate, must be ensured.

Each panel bank should also ensure that the internal audit department regularly reviews, checks, and validates all processes and procedures relating to the Euribor submission.

Those contributions guidelines will be annexed to the Code of Conduct, to which panel banks must subject themselves unconditionally. In addition, panel banks will be required to detail their processes to the Administrator.

Separately, Euribor-EBF believes that regular audit of the submissions must be held on a regular basis by the Steering Committee, including supervisor representatives. In this perspective, the number of Steering Committee meetings will increase to bi-monthly meetings. Should the Steering Committee consider that panel banks do not comply with their obligations under the Code of Conduct, they *(1)* send a warning to the relevant banks and ask them to remedy the situation quickly and *(2)* if such warning is ignored, they can suspend or exclude the contributor (see article 7 of the Code of Conduct: Sanctions).

12. Are the measures discussed in the Consultation Report (e.g. Audit Trail, external audits and requirement for regulatory cooperation) sufficient to ensure the accountability of Submitters? Should additional mechanisms be considered?

Euribor-EBF believes that the measures discussed in the Consultation Report are sufficient to ensure accountability of Submitters, provided that they are based on clear and transparent requirements and guidelines as further described under question 11.

In addition, Euribor-EBF believes that external audit on panels' contribution processes would help secure confidence in the index and strengthening its credibility.

Nevertheless, two aspects of external audit should be carefully assessed: *(1)* the criteria on which the audit process will lie must be clearly defined and harmonized at European level and the external audit company must have enough expertise *(2)* such measures will add extra costs to panel banks which may represent an additional burden for the contributors.

Indeed, the introduction of additional audit measures and strong processes will require extra cost and personnel investment and some banks with smaller structures and teams may experiment difficulties in setting up all requested process.

Meanwhile, Euribor-EBF believes that this potential disadvantage does not supersede the benefit that strong validations procedures will have on the integrity and credibility of the Euribor. It also considers it will help restoring the market's confidence in these benchmarks.

Finally, Euribor-EBF believes that, in addition to the internal/external audits at contributors' level on the submission and processes, the index provider and the appointed supervisor should be responsible for auditing contributed data, by applying a four-eye principle before the publication of the benchmark, and through regular controls on past contributions.

13. How frequently should Submitters be subject to audits? Should these be internal or external audits?

In addition to *pre* and *post* submission controls by a neutral group of the bank with no profit-making interests on a daily basis, each panel bank should also ensure that the internal audit department regularly reviews, checks, and validates all processes and procedures relating to the Euribor submission.

Internal and external audits at submitter's level should be held at least once a year.

Separately, the Euribor Steering Committee must review individual contributions at least every two months (at each bi-monthly meeting).

Accountability of the Administrator

14. Are the measures discussed in the Consultation Report (e.g., complaints process, Audit Trail, external audits and requirement for regulatory cooperation) sufficient to ensure accountability of the Administrator? Should additional mechanisms be considered?

Euribor-EBF agrees that Administrators should have written procedures for receiving, investigating and retaining records concerning user complaints, including benchmark determinations and operational concerns.

Euribor-EBF also concurs that, when Administrator and Submitters become aware of any failure to comply with the benchmarks' rules and governance, the Administrator should address the issue immediately and alert the relevant Regulatory Authority. Meanwhile, Euribor-EBF considers that it is the regulator's responsibility to provide the Administrator with relevant procedure to alert the relevant Authority.

Finally, Euribor-EBF agrees that the Administrator's processes should also be subject to audit reviews, including by an independent third party when requested.

15. If recommended, how frequently should Administrators be subject to audits? Should these be internal or external audits?

The Administrators' processes and governance structure should be subject to both internal and external audits, followed by public disclosure of the results. Internal and external audits should be performed once a year.

16. Is public self-certification of compliance with industry standards or an industry code another useful measure to support accountability? This approach might also contemplate explanation of why compliance may not have occurred. If so, what self-certification requirements would make this approach most reliable and useful to support market integrity.

Euribor-EBF believes that self-certifications of compliance with an industry code may be another useful measure to support accountability, but should be accompanied with validation procedures at submitters and Administrators' level followed by internal and external audits and with public Supervision.

As an example, Euribor panel banks have been required, since July 2012, to sign a yearly Euribor management certification form, whereby panel banks must certify that *(1)* all internal procedures are set up to ensure a **robust process for the submission of contributions, excluding any internal and external influences**, *(2)* that all submitted contributions are the **bank's appreciation of the evolution of the interbank market in the Eurozone according to the Euribor definition** and *(3)* that the **Euribor Code of Conduct** is fully respected when contributing to the fixing.

Code of conduct for Submitters

17. The Consultation Report discusses elements of a code of conduct for Submitters. Are the measures discussed (e.g., adequate policies to verify submissions, record management policies that allow the Submitter to evidence how a particular submission was given, etc.) sufficient to address potential conflicts of interest identified or do you believe that other control framework principles should be added?

Euribor-EBF agrees that the Administrator must provide standards and procedures for Submitters in a Code of Conduct, including clear contribution guidelines and rules to address potential conflicts of interest.

In this respect, clean contributions guidelines (as described under question 4) including, amongst other provisions, a clear **definition of roles** in the contribution process and **segregation of duties (physical and systems)** of the contribution team in order to prevent conflicts of interests will be annexed to the Euribor Code of Conduct. Panel banks will be requested to detail their processes to the Administrator.

In addition, each panel bank is required to sign a Euribor certification form, in which they certify that must certify, inter alia, that all internal procedures are set up to ensure a robust process for the submission of contributions, excluding any internal and external influences […].

18. What would be the key differences in the code of conduct for Benchmarks based on different input types, for example transactions, committed quotes and/or expert judgment?

The key differences in the code of conduct for benchmarks based on different input types will rely on the definition of the index, the criteria used to proceed with the expert's estimation or transactions to report, the contributions process and the scrutiny of the submissions by the Administrator/Steering Committee.

Chapter 3
Approaches to enhanced oversight

19 and 20. What are the advantages and disadvantages of making Benchmark submissions and Administration a regulated activity?

Euribor-EBF acknowledges the important role of Euribor in monetary policy decisions and for the European financial stability, as well as the social role it has taken with time, being used as a reference in a wide range of financial instruments, including loans to SMEs and households. In this perspective, it is important to take adequate measures to preserve its integrity and credibility, through high-level principles for benchmarks, further enhanced contribution processes and governance measures and public supervision.

Nevertheless, each benchmark has its own features and needs specific measures. As an example, Euribor and Libor rely on different definitions, different panels and different governance structures and processes.

Against this background, **Euribor-EBF believes it is appropriate to have a common set of core principles for benchmarks governance but stresses the need to allow enough flexibility to adapt to each benchmark's features. Euribor-EBF also supports the introduction of European public supervision on benchmarks.**

In addition, Euribor-EBF believes that an evolution of Euribor based on further enhanced governance and public supervision reduces the need for detailed regulation and brings enough flexibility to ensure that the necessary evolution of the Euribor index is adapted to the market. In this context, Euribor-EBF also emphasizes the contributors' willingness to take all necessary measures to restore confidence in Euribor and further enhance its accuracy and reliability.

For the same reasons, market practitioners should, through the index provider, continue being involved in the benchmark management.

Euribor-EBF considers that private sector initiatives play an important role in the development of the financial systems and that the regulatory measures envisaged should allow for the development of market-led initiatives. As mentioned previously, market participants' expertise is crucial in order to ensure that the measures taken at Euribor-EBF and regulatory/supervisory level are adopted by the market.

In this context, we do believe that the Euribor index should be run by an independent, non-profit driven structure, with the introduction of public supervision.

In addition, the impact of introducing a regulatory framework for benchmarks, in particular for the numerous existing contracts, including loans to non-financial institutions, which use these benchmarks as references, should be carefully assessed.

Finally, Euribor-EBF underlines the importance to coordinate benchmarks' reforms at European and global level to ensure consistency and a level-playing field.

23. Assuming that some form of enhanced regulatory oversight will be applied to an asset class Benchmark, should such enhanced oversight be applied to the Submitters of data as well as the Administrator?

Euribor-EBF supports the introduction of European public supervision on benchmarks, on both Submitters and Administrators' sides. In this context **High level core principles** for benchmarks should be decided at European level, with a **harmonized supervisory framework** and improved coordination between supervisors at both national and European level.

24. What are the considerations that should be taken into account if the Submitters to a Benchmark operate in an otherwise unregulated market (e.g., physical oil, gold or agricultural commodity markets) and are not otherwise under any obligation to submit data to an Administrator?

As expressed under question 3, with the recent events, contributing to an index may be considered as an additional burden, given the costs and resources that additional compliance and governance measures will generate, as well as a potential source of reputational risk.

Five banks withdrew from the Euribor panel since July 2012. The risk to face a contagion effect to other panel banks, and therefore lose additional contributors, should not be underestimated.

Euribor-EBF believes that the panel must be as large and representative as possible in order to preserve the credibility and accuracy of the Euribor benchmark. It also reduces the impact of manipulation attempts. Nevertheless, for real-transactions based benchmarks, it does not eliminate the possibility of non-existing data because of the lack of current market depth and therefore lack of transactions for medium to long term maturities.

While making the contribution to the benchmarks compulsory might be a solution in order to preserve their accuracy and representativeness, Euribor-EBF recommends that the regulators envisage the possibility of introducing incentive measures in order to encourage panel banks to continue participating in setting these benchmarks.

25. Do you believe that a code of conduct, either on its own or in conjunction with other measures outlined within the report, would provide sufficient oversight to mitigate the risks that have been identified in Chapter 2? What measures should be established in conjunction with a code of conduct? For which Benchmarks is this approach suitable?

Euribor-EBF believes that a Code of Conduct, in conjunction with a clear benchmark definition and detailed and transparent contributions guidelines, a robust control framework with *pre*- and *post*-submission controls, regular audits and public supervision, would provide sufficient oversight to mitigate the risks that have been identified in the Consultation Report.

26. What other measures outlined in the report, if any, should apply in addition to a code of conduct? If you believe a code of conduct, either on its own or in conjunction with other measures outlined within the report, would provide sufficient oversight to mitigate the risks that have been identified in Chapter 2, what type of code of conduct should apply (e.g., a voluntary code of conduct, an industry code of conduct submitted to and approved by the relevant Regulatory Authority, a code of conduct developed by IOSCO, etc.)?

As mentioned above, Euribor-EBF believes that a Code of Conduct, in conjunction with a clear benchmark definition and detailed and transparent contributions guidelines, a robust control framework with *pre*- and *post*-submission controls, regular audits and public supervision, would provide sufficient oversight to mitigate the risks that have been identified in the Consultation Report.

Euribor-EBF believes that each benchmark should have its own Code of Conduct, established by the Administrator in collaboration with the relevant Regulatory/Supervisory Authorities.

27. Do you believe that the creation of a Self-Regulatory Organisation (.e.g., one that exercises delegated governmental powers) and itself subject to governmental oversight, whether or not in conjunction with industry codes is a viable alternative for sufficient oversight and enforcement to mitigate the risks that have been identified in Chapter 2? For which Benchmarks is this approach suitable? What if any complementary arrangements might be necessary, such as new statutory obligations or offences for Administrators and/or Submitters?

Euribor-EBF would like to stress the importance of ensuring that regulation/supervision on European benchmarks such as Euribor is coordinated at European and global level. In this context, there is a need for a harmonized supervisory framework and improved coordination between supervisors at both national and European level.

In addition, Euribor-EBF believes that the benchmarks' construction should remain a market-led initiative and its contributions must come out from entities quoting and providing liquidity to the instrument over which the index is fixed. Its strength and credibility should rest in a strong governance and public supervision.

29. Do you believe that users of a Benchmark, specifically, the users who are regulated or under the supervision of a national competent authority should have a role in enhancing the quality of Benchmarks? Which form should this role take: on a voluntary basis (e.g. the user being issued a statement that will only use Benchmarks that follow IOSCO principles), or on a compulsory basis (e.g., the competent authority could request that users who are registered under their jurisdiction should only use Benchmarks that fulfill IOSCO principles)?

Assuming that a principle-based regulation is in force, the competent authority should supervise the compliance of benchmarks through the approval of the detailed implementing measures or self-regulation referring to each of them.

Meanwhile, market participants must ensure that they select appropriate benchmarks suiting their index referenced products.

Finally, Euribor-EBF believes that benchmarks' users may have a role in enhancing the quality of benchmarks by participating in relevant Steering Committees.

Chapter 4
Data sufficiency

30. Do you agree that a Benchmark should be anchored by observable transactions entered into at arm's length between buyers and sellers in order for it to function as a credible indicator of prices, rates or index values? How should Benchmarks that are otherwise anchored by bona-fide transactions deal with periods of illiquidity due to market stress or long-term disruption?

In theory, a real-transactions based calculation would be a preferred option in order to ensure the transparent credibility of a benchmark, even though it would not be risk-free: whenever market, for a number of reasons, becomes illiquid (as it is now in interbank activity) or with very few transactions for some maturities (longest ones), there could be an incentive for counterparts to agree on transactions price for a specific tenor. This kind of manipulation would cause an erratic behaviour of the fixing (with unpredictable consequences for the community), and be very difficult to detect (and impossible to prevent) if the rates were to be based on real transactions.

In a market with few real transactions, the more information sources there are, the more realistic the market valuation will be.

A hybrid approach may be considered as a transitory solution to deal with periods of illiquidity due to market stress, but may be very complex to implement for some benchmarks, as further detailed under question 33.

31. Are there specific Benchmarks for which you consider that observable transactional data is not an appropriate criterion or the sole criterion? If so, please provide a description of such Benchmarks and what value you think such Benchmarks provide?

Euribor-EBF believes that the Euribor, with its current definition, should remain an estimation of the market price levels by a panel bank, as it was originally conceived, while strengthening the contribution guidelines, controls and overall governance of the index. It relies on an expert judgment of the market, by the market, which also contributes to reduce market disruptions in periods of illiquidity and in a fragmented market environment.

In our view, a transactions-based calculation would be inadequate for Euribor, for the following reasons:

- The Euribor quotation **is not based on the "borrowing cost"** of a contributing bank, but on the estimate of the rate at which one prime bank is offering funds to another prime bank in the Eurozone. In other words, panel banks do not show their cost of funding, but an estimation of the funding cost in the wider interbank market.

- In the current environment, **the number of interbank lending transactions is particularly limited for medium to longer dated maturities**. If the fixing was based on real-transactions, it is highly likely that, due to credit constraints on banks, there would be no quote for most maturities, which would have an impact on the existing contracts based on Euribor.

- Because of current European government debt crisis, a 'real transactions' based fixing is likely to result in **a significant spread in the prices amongst countries** participating in the fixing. It would consequently **increase market fragmentation** by focusing on the huge difference of pricing between countries and banks. Banks operating in peripheral countries have a floor, in their cost of funding, based on domestic government bills. The cost of funding for banks is very rarely below that of the Sovereign state in which it is domiciled. In general these banks' fixings based on actual transactions would be at a premium to their domestic government issuance and therefore lead to a generic shift higher in contributions from these regions. When a country suffers from a widening in the spread *vis-à-vis* the so-called "core countries", their cost of borrowing rises immediately. If the index was based on real transactions, systemic banks in peripheral countries would necessarily contribute higher rates, whilst core countries would contribute lower or unchanged rates. For the above-mentioned reasons, banks would trade at higher spreads, thus contributing to a very diverse range of rates for the same period. The implications of such behaviours should not be underestimated.

- **Real transactions-based rates might rise drastically**, depending on a series of factors: Would the final rate be the simple average of all transactions for a specific tenor? Would it be a weighted average and, if so, which weights would be used? If there weren't any transactions for a specific tenor, which rate would be used? Which statistical model would be used for interpolation, if it is the case? All these questions would need to be carefully assessed. Depending on the parameters employed, very different rates might be calculated, with the possibility of resulting in an inverted interest rate curve (e.g. 3m rate at 2% and 6m rate at 0.50%), or very volatile rates, even day-to-day, which would not be the result of an objective economic situation, but rather the simple outcome of a mechanical calculation.

- **The fixing time might also be an issue**. Currently, the Euribor is published at 11.00 CET, whereas overnight effective rates like Eonia are published at close of business (6 pm CET). In this case, Exchanges would need to change their calendar for futures and options. Additionally, middle and back offices in banks may be forced to work long hours to settle deals. Finally, in relation to the US Open time, if Euribor was fixed at 6pm CET, then many trades would have to be settled with half a day less time compared to the current situation and American banks' activity may impact the fixing directly.

Euribor-EBF considers that an evolution of the Euribor based on enhanced governance and public supervision rather than on calculation changes is to be preferred option, in order to minimize the impact on existing contracts and, therefore, on customer loans, and potential litigation issues due to changes in the definition and implementation of any such amendments.

Meanwhile, Euribor-EBF acknowledges the need to analyze the technical feasibility of setting, along with the large majority of Euribor panel banks and **in addition to Euribor**, a transactions-based benchmark in a medium to long term perspective. Euribor-EBF is willing to work on a new index with a wider inclusion of products beyond interbank lending, e.g. considering on-balance sheet instruments such as commercial papers for a restricted number of maturities. In this context, Euribor-EBF is planning to set up a transactions-based calculation test with the participation of a large number of panel banks, with the cooperation of the European Central Bank.

33. Do you agree that the greatest weight should be given to transactions in the construction of a Benchmark and that non-transactional information should be used as an adjunct (e.g. as a supplement) to transactions?

Euribor-EBF believes that, whenever it is possible, the use of actual transactions data for benchmarks is beneficial to ensure that they are representative, accurate and, to some extent, less questionable even though, as described under question 30, it would not be immune to potential manipulation or mistakes.

Some benchmarks, such as Eurepo or Eonia Swap Index, could potentially be based on real-transactions.

As mentioned under question 30, a mixture of transactions and estimates (hybrid approach) may be considered as a solution when there is limited liquidity, nevertheless:

- A wider inclusion of products beyond interbank lending could consider on-balance sheet instruments such as CD/CPs, and/or commercial lending and letters of credit. Yet, same robustness concerns on a smooth and continue interest rate curve rise.
- When hybrid approach would mean using both traded prices and estimations in order to create a curve, we do not feel that this approach would increase the confidence in the accountability and enhance the transparency, especially when proposed to the general public.

Rather than disadvantages, a hybrid calculation process might be very complex and problematic for the following reasons:

- When mixing real data with estimations (in case of interest rates) one faces the complex task to blend the curve in order to obtain a smooth set of data. We consider that a non-smooth curve or an oddly shaped one (to make an extreme example, 3m rate fixing at 1%, 6m rate at 2%, 12m rate at 1% again) would be credible only if it represented the real average market situation, not reflecting any outliers;
- Real transactions may produce scattered and erratic data from day to day, thus creating volatility not derived from the general market sentiment and behaviour. This risk is particularly tangible in fragmented markets;
- An arbitrary choice has to be made when deciding *ex-ante* which type of interpolation has to be used;

In addition, panel banks should be carefully chosen, since dissimilar panels may produce very different indices even if observing the same underlying instrument. A system based on real transactions has to be as comprehensive as feasible.

34. What factors and how often should Administrators (or others) consider in determining whether the market for a current Benchmark's underlying interest is no longer sufficiently robust? What effective methods of review could aid in determining the insufficiency of trading activity within the market for a Benchmark's underlying interest?

Given the very large array of benchmarks, one shall point to a general behavior and governance rather than to specific factors or parameters to observe (what can be suitable for, e.g. a commodity but non practicable for a different index). Factors to be taken into account should be, non-exhaustively, independent governance, independent supervision, external auditing, scheduled rotation and/or substitution of involved individual or institutions.

Transition

35. What precautions by Benchmark Administrators, Submitters, and users can aid Benchmark resiliency during periods of market stress, mitigating the potential need for market transition?

The first criteria to take into account when envisaging altering the features of a benchmark is its impact on the market and on the contracts which use the Benchmark as reference. Any change in the definition or calculation methodology of a benchmark may have huge legal and financial impacts, which need to be carefully assessed.

In this context, Euribor-EBF believes that structural changes to existing benchmarks widely used as a referenced in existing contracts should be minimized in order to avoid unnecessary disruptions and litigation issues. Some intermediary measures can be taken such as the limitation of maturities which are less used and which fewer financial transactions are based on.

Benchmarks Administrators should ensure that indices such as Euribor of key importance for financial markets, mortgage loans and the European financial stability, are based on strong governance, rely on defined and robust criteria and processes and on large and diverse panels of contributors, are rule-based, representative and transparent. Those criteria are even more crucial in periods of market stress.

Finally, in all cases, but particularly in case of market stresses, market participants must ensure that they select appropriate benchmarks suiting their needs.

37. By what process, and in consultation with what bodies, should alternatives be determined for Benchmark replacement?

As mentioned previously, the first criteria to take into account when envisaging the discontinuation of a benchmark or its replacement is its impact on the market and on the contracts which use the Benchmark as reference. For some benchmarks, such as Euribor, discontinuation or replacement would even have impacts on financial stability. In this context, any alternative envisaged should be coordinated with the Administrator, the market participants, legal structures and the relevant market authorities.

39. What conditions are necessary to ensure a smooth transition between market Benchmarks?

Considering the volume of outstanding contracts based on these benchmarks, and the final impact on consumer loans, any change to their features need to be carefully assessed.

Should a new benchmark be created, the existing benchmark and the new reference must co-exist until all existing contracts are closed while new contracts would be based on the new benchmark. Otherwise, an approach based on the legacy transactions adopted when domestic reference rates were replaced by Euribor and national legislation and convention were adapted to facilitate the changeover might be envisaged.

Additionally, some existing contracts based on benchmarks such as Euribor having very long maturities (decades), the transition to any new reference must be handled smoothly and on a very long period of time.

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