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## **Euribor-EBF Position on the EC's Proposal for a Regulation on Indices used as Benchmarks in financial instruments and financial contracts**

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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<sup>1</sup>.

Euribor-EBF has a/the mission of informing its members, other organisations, European authorities and national regulatory authorities on issues relating to the interbank rates. It develops and supports activities related to the Euribor (Euro Interbank Offered Rate), 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 harmonised 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](http://www.euribor-ebf.eu/assets/files/Euribor_code_conduct.pdf)

Euribor Panel Composition: <http://www.euribor-ebf.eu/euribor-org/panel-banks.html>

Euribor Steering Committee Composition and minutes: <http://www.euribor-ebf.eu/euribor-org/steering-committee.html>

Euribor Reform dedicated webpage: <http://www.euribor-ebf.eu/euribor-org/euribor-reform.html>

Euribor-EBF website: [www.euribor-ebf.eu](http://www.euribor-ebf.eu)

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<sup>1</sup> 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 introduction of a Regulation on indices used as benchmarks in financial instruments and financial contracts to improve the framework under which benchmarks are provided.
- Euribor-EBF welcomes the introduction of public supervision on benchmarks. Nevertheless, Euribor-EBF is concerned that the complexity of the proposed supervisory mechanism may be counterproductive, in particular in situations where fast decisions involving different national authorities are required. A compromise solution could be that a single European Supervisor (e.g. ESMA) is appointed for benchmarks administered in the eurozone.
- While the administrator must be responsible for ensuring an appropriate governance and control framework, the contributors should remain responsible for the integrity, accuracy and reliability of their submissions in accordance with the Code of Conduct and EU legislation. Euribor-EBF considers that quality and integrity of a benchmark is the result of a partnership between the contributors, the administrator and the supervisory authorities.
- The responsibility to control that regulation is implemented by contributors, in particular with regard to the identification of breaches of the Market Abuse Regulation (MAR), should rest with the contributors and the public/supervisory authorities. Meanwhile, the administrator should establish sufficient whistleblowing mechanism to detect inappropriate submissions and report any irregularity to the relevant authorities.
- Euribor-EBF welcomes the possibility under the proposed Regulation to use expert judgment to determine input data in the absence of sufficient transaction data provided that such data is verifiable. Meanwhile, when a market becomes illiquid or with very few transactions for some maturities, it might be difficult to justify the experts' estimations only on transactions based on verifiable data. In such case, back-testing should rather be based on contribution criteria/deviation safeguards.
- Euribor-EBF welcomes the possibility for the competent authority of the administrator's country to impose mandatory contribution to a critical benchmark. Nevertheless, it has concerns regarding the enforcement of such decisions under the proposed supervisory mechanism by competent authorities of the several contributors' countries.

## General remarks:

Euribor-EBF welcomes the introduction of a Regulation on indices used as benchmarks in financial instruments and financial contracts to improve the framework under which benchmarks are provided. Euribor-EBF wishes to underline the importance to coordinate benchmarks' reforms at European and global level to ensure consistency and a level-playing field.

Euribor-EBF also supports the introduction of **public supervision** on benchmarks. Nevertheless, Euribor-EBF is concerned that the complexity of the proposed supervisory mechanism involving the national authority of the administrator's country, colleges of supervisors for critical benchmarks and ESMA's binding mediation could be counterproductive in case of critical/urgent situation. In this context, Euribor-EBF believes that there is a need for improved coordination between supervisors at both national and European level. A compromise solution could be that a single European Supervisor (e.g. ESMA) is appointed for benchmarks administrated in the eurozone.

Separately, having considered the disruption in the fixing that a move to a transactions-based index may generate, and ruling out any change of definition which may have caused a severe damage to consumer and corporate loans and assets (e.g. litigations issues), Euribor-EBF has undertaken an in-depth reform of the Euribor based on enhanced governance and controls.

Meanwhile, Euribor-EBF agrees that a real-transactions based calculation would be a preferred option in order to ensure the transparent credibility of a benchmark. In this context, it is currently working on a new index, in addition to Euribor, with a wider inclusion of products beyond interbank lending.

Finally, Euribor-EBF believes that the Regulation should be operational as soon as possible and therefore hopes that it will still be adopted under the mandate of the current European Parliament.

Euribor EBF wishes to emphasize that this document 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.

## Specific remarks:

### Article 6 Outsourcing

Euribor-EBF would like to point out that, while the Administrator should define its expectations regarding procedures and controls being applied by the calculation agent and retain adequate control on the activities of the calculation agent, the calculation agent must also have a responsibility to ensure that it has in place robust safeguards and controls in order to prevent from any irregularities in the benchmark's computation.

### Article 7 Input data and methodology, section C of Annex 1 and article 5 of Annex 2

The proposed Regulation provides under article 7 that *“input data which is not transaction data may be used provided that such data is verifiable”*.

In addition, Section C of Annex 1 provides that *“an administrator shall use benchmark methodologies that a) are rigorous, continuous and capable of validation, including back-testing [...]”*

Similarly, Annex II art. 5 provides that *“in the absence of sufficient transaction data in paragraph 1, in accordance with Article 7(1)(a), quotes by third parties to contributors in the same markets and expert judgment may be used to determine the input data.”*

In the current environment, the number of interbank lending transactions being particularly limited for medium to longer dated maturities, Euribor-EBF welcomes the possibility under the proposed Regulation to use expert judgment to determine input data in the absence of sufficient transaction data to represent accurately and reliably the market or economic reality that the benchmark is intended to measure.

Meanwhile, Euribor-EBF would like to point out that, when a market becomes illiquid or with very few transactions for some maturities, it might be difficult to justify the experts' estimations only on transactions based or verifiable data.

In addition, for the specific case of Euribor, panel banks do not quote a price reflecting their own position in the market, but the rate that each panel bank believes one prime bank is quoting to another prime bank for interbank term deposits within the Euro zone.

It is important to note that, Euribor being an estimation of the market by the panel banks, the back-testing cannot be based on real-transactions (panel banks do not quote their own position) but should rather be based on contribution criteria/deviation safeguards.

### **Article 8 Reporting of breaches**

While Euribor-EBF agrees that the administrator should implement appropriate mechanisms in order to ensure early awareness of any misconduct or other irregularities, a benchmark administrator cannot have the authority to control that regulation is implemented within the entity of a contributing firm. **In particular with regard to the identification of breaches in the Market Abuse Regulation, this is and should remain the responsibility of the contributors and the competent authorities.**

Euribor-EBF believes that an appropriate whistleblowing mechanism must apply at different stages: (1) at the contributors' level, with extensive pre- and post-controls; (2) at the calculator agent's level, with robust and automatic controls and safeguards with regard to the individual submissions; (3) at the administrator's level, with substantive back-testing and report to the Steering Committee and (4) at Supervisory authority level.

When the administrator, the contributing entity or the calculation agent 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 through a procedure defined by the regulator.

The administrator should, of course, take appropriate sanctions towards the contributing entity under its governance framework (Code of Conduct).

To conclude, Euribor-EBF believes that the administrator should monitor the input data and notify the relevant competent authority of breaches of the Market Abuse regulation or any conduct that may involve manipulation or attempted manipulation but not having the primary responsibility to identify such breaches or misconduct. Any investigation in this regard should be a prerogative of the supervisory authorities.

### **Article 11 Governance and controls**

Euribor-EBF considers that quality and integrity of a benchmark is the result of a partnership between the contributors, the administrator and the supervisory authorities.

While Euribor-EBF agrees that the benchmark's administrator must have a clear overall responsibility to ensure a robust governance and control framework for the benchmark's provision, including clear contribution guidelines, *pre*-calculation checks and safeguards and substantive back-testing on the input data, we believe that **the primary responsibility of the contributors** with regard to the **integrity, accuracy and reliability of their submissions** in accordance with the Code of Conduct and EU legislation (including this Regulation and the MAR) should be clearly established in the proposed Regulation.

Nevertheless, the administrator has the responsibility to ensure that a contributing entity respects the framework set out in the benchmark Code of Conduct in accordance with the Regulation and take any appropriate sanction in case of non-compliance with the Code.

#### **Article 16 Transparency of input data**

Article 16 provides that *“an administrator should publish the input data used to determine the benchmark immediately after publication of the benchmark except where publication would have serious adverse consequences for the contributors [...]”*.

The situation where the immediate publication of input data would have serious adverse consequences for the contributors seems unclear. For benchmarks like Eonia, where panel banks report all their overnight interbank lending transactions to the European Central Bank as calculation agent, disclosing such confidential data publicly would represent a competitive disadvantage for panel banks. In this case, the individual input data should remain confidential while aggregated volumes are published. In particular when transactions in the interbank market are considered, very high rates may, if made public, seriously jeopardize a bank’s ability to raise funds in the marketplace.

#### **Article 14 Mandatory contribution**

*“Where contributors, comprising at least 20% of the contributors to a critical benchmark have ceased contributing, or there are sufficient indications that at least 20% of the contributors are likely to cease contributing, in any year, the competent authority of the administrator of a critical benchmark shall have the power to: (a) require supervised entities, selected in accordance with paragraphs 2, to contribute input data to the administrator in accordance with the methodology, code of conduct or other rules.*

*[...]*

*The competent authority of a supervised contributor that has been required to contribute to a benchmark through measures taken in accordance with points (a) and (b) of paragraph 1 shall assist the competent authority of the administrator in the enforcement of such measures.”*

Euribor-EBF welcomes the possibility for supervisors to impose mandatory contributions.

13 banks withdrew from the Euribor panel during the last 12 months. With the recent events, contributing to an index may be considered as an additional burden, given the costs and resources that enhanced compliance and governance measures will generate, as well as a potential source of reputational risk. Repeated departures from the panel may lead to the discontinuation of the index which would have dramatic consequences for the benchmark’s users, including the banks and their clients, and lead to serious financial stability issues.



Euribor-EBF strongly believes that the composition of submitting panels must be as large and representative as possible in order to preserve the credibility, the representativeness and the accuracy of a benchmark, in particular when it is based on submissions.

Nevertheless, Euribor-EBF has serious concerns as to how mandatory contributions will be operationally applied by the relevant national authorities under the proposed supervisory mechanism involving the national authority of the administrator's country, the college of supervisors and ESMA.

Euribor being a European benchmark, it is important to ensure that the panel is large enough to reflect faithfully the geographic diversity of the money market in the eurozone. Currently, the Euribor panel covers 12 European countries and involves both domestic and international banks. The continuity of the index may become quickly critical in case of repeated departures from the panel and may require fast reaction from the authorities.

In this context, Euribor-EBF is concerned that the required coordination between the competent authority of the administrator and the different competent authorities of supervised contributors would not allow for fast/efficient implementation of mandatory contributions.

Finally, Euribor-EBF believes that, given the potential impact of panel composition changes on quality and continuity of critical benchmarks, the proposed portion of 20% contributors ceasing contributing should be revised downwards to 10% in order to protect the representativeness and quality of the benchmark.