

2019 CONFLICTS OF INTEREST OVERSIGHT COMMITTEE REPORT TO THE BOARD OF DIRECTORS

Foreword

EMMI has established over the years robust and sound practices for the prevention, identification and management of conflicts of interest.

In 2019, the main focus of the Conflicts of Interest Oversight Committee ('CIOC') was the enhancement of the Conflicts of Interest Policy and Procedure, and the management of actual or perceived conflicts of interest.

The CIOC also closely monitored the control framework concerning conflicts of interest. In addition, the CIOC continued to promote awareness and best practices at all levels of EMMI.

As Chairman of the CIOC, I thank my colleagues in the CIOC for their active contribution. I also thank the Secretary General, and the members of the EMMI Secretariat for their support and assistance.

The CIOC is committed to continuously support EMMI with its expertise and independent judgement for the consolidation and further enhancement of its conflicts of interest management, in the public interest.

Karel VAN HULLE

Chairman of the Conflicts of Interest Oversight Committee



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1. Role and Responsibilities of the Conflicts of Interest Oversight Committee

The Terms of Reference of the CIOC are included in the Conflicts of Interest Policy and Procedure, whose last revision was approved by the General Assembly on 26th September 2018.

The duties of the CIOC are clearly defined in the Terms of Reference, while the specific activities to be performed in the prevention, identification, and management of conflicts of interest are further detailed in the relevant sections of the Conflicts of Interest Policy and Procedure.

The main areas of activity of the CIOC include:

- a) Monitoring the effectiveness of the Conflicts of Interest Policy, and of the procedure to manage and mitigate conflicts of interest situations;
- b) Monitoring the potential situations of conflicts of interest arising out of the administration of each of the EMMI Benchmarks, the STEP Market Convention, or the functioning of EMMI at association level, and advising the Board of Directors, or the General Assembly where relevant, on how to deal with these situations;
- c) For the purpose of identifying relevant conflicts, considering:
 - communications made by Relevant Persons;
 - representations or complaints made from external parties to EMMI;
 - other internal EMMI documents and information.

The activities carried out by the CIOC for each of the areas described above are detailed in section 3 of this report.

2. Composition of the Conflicts of Interest Oversight Committee

In accordance with the Terms of Reference, the CIOC must be composed of at least 3 members (one Chair and two members) chosen among experts with recognized independence, with standing and experience in financial markets and/or financial services and/or in financial regulations and control systems.

The following persons were members of the CIOC in 2019¹:

- **Mr Karel VAN HULLE (Chairman)**, originally appointed in February 2014, and reappointed in March 2016 and 2018 respectively for two additional two-year terms, previously Head of Unit at the European Commission, currently Emeritus Professor at the KU Leuven, Honorary professor at the Goethe University in Frankfurt, and Member of the Public Interest Oversight Board;
- **Mr Stefano CARCASCIO**, originally appointed in February 2014, and reappointed in March 2016 and 2018 respectively for two additional two-year terms, previously Head of Supervision of Financial Markets, and Representative in the UK for Banca d'Italia, currently member of the Board at the Italian Chamber of Commerce for the UK and member of the OMFIF - Official Monetary and Financial Institutions Forum – Network.
- **Ms Lieve LOWET**, appointed in April 2019, previously Secretary General for the international mutual insurance association AISAM (now AMICE) and European banking and insurance expert, currently owner and director of the consulting company Schuman European Affairs BV, expert member of the Insurance Commission in Belgium and director of Belgium and Luxembourg, Opportunity Network.

The Members are elected by the General Assembly for a two-year renewable mandate.

¹ The mandates of Mr Karel Van Hulle and Mr Stefano Carcascio were renewed by the General Assembly on 28th February 2020 for another two-year term.

3. Activities of the Conflicts of Interest Oversight Committee for the year 2019

The CIOC held two meetings during 2019: on 4th June and 6th November.

During those meetings, the CIOC:

- evaluated the status of implementation of the recommended actions;
- assessed the implementation and effectiveness of the Conflicts of Interest Policy and Procedure;
- reviewed the mapping of potential conflicts of interest situations and associated remedial actions;
- analysed relevant documents for the identification of potential, perceived or actual conflicts of interest, including declarations of interests of Relevant Persons and meeting minutes;
- reviewed the internal audit report on conflicts of interest management; and
- provided additional recommendations to ensure the full and effective implementation of the Conflicts of Interest Policy and Procedure, e.g. content and format of declarations of interests.

During their meetings, the CIOC also received regular updates on benchmarks reforms, and regulatory and supervisory developments.

3.1 Monitoring the effectiveness of the Conflicts of Interest Policy and of the procedure to manage and mitigate conflicts of interest situations

3.1.1 *Conflicts of Interest Policy and Procedure*

The CIOC developed and approved a revised Conflicts of Interest Policy and Procedure on 9th October 2018.

The revised Conflicts of Interest Policy and Procedure contributes to enhancing the effectiveness of the practices in place to prevent, identify and manage conflicts of interest by providing clear operational guidelines to the relevant persons within EMMI².

The CIOC reviews the implementation and effectiveness of the Policy and Procedure at each meeting.

3.1.2 *Declarations of Interests*

The CIOC reviewed and discussed all signed declarations of interests received for the year 2019 from all Relevant Persons (*see section 3.3.1 below for further details*).

As, following the advice of the internal auditor, the members of the Conflicts of Interest Oversight Committee were included in the list of relevant persons at the occasion of the revision of the Conflicts

² According to the Conflicts of Interest Policy and Procedure, relevant persons include members of the EMMI General Assembly (Banking Associations), members of the Board of Directors, members of the Audit and Risk Committee, the Secretary General, members of the Secretariat, members of the EURIBOR Steering Committee, members of the STEP Market Committee, and members of the Conflicts of Interest Oversight Committee.

of Interest Policy and Procedure on 9th October 2018, members of the CIOC were required to prepare a declaration of interests that was collected in 2019.

The CIOC also recommended to collect the declarations of interests on an annual basis at the occasion of the first meeting of the relevant governing body.

3.2 Monitoring potential situations of conflicts of interest

In 2019, the mapping of conflicts of interest carried out during the previous year was implemented and closely monitored.

3.3 Identifying relevant conflicts

For the purpose of identifying actual or perceived conflicts of interest, the CIOC analysed the following documents:

3.3.1 *Communications made by relevant persons*

According to the Conflicts of Interest Policy and Procedure, the CIOC expects that relevant persons communicate their interests through an annual declaration. An exception applies to the members of the General Assembly. In fact, since the members are sitting in the Assembly as representatives of national banking associations, the respective association is responsible for ensuring that conflicts of interest are managed by its representatives in General Assembly meetings.

In order to increase individual awareness and responsibility in managing potential conflicts within the General Assembly, the CIOC recommended to ask the national banking associations to appoint one delegate (and one alternate) as a permanent participant in the meetings of the EMMI General Assembly. This recommendation was first implemented in 2017, and applied throughout 2018 and 2019. In order to avoid potential conflicts of interest, the CIOC recommended in November 2019 that EMMI Board members would not be appointed as association representatives at the General Assembly meetings.

This recommendation will be implemented from 2020 onwards.

For the year 2019, the CIOC analysed the following (new/updated) declarations:

- Declarations of interests of the Members of the Board of Directors;
- Declarations of interests of the Members of the EURIBOR Steering Committee;
- Declarations of interests of the Members of the EMMI Secretariat;
- Declarations of interests of the Members of the Conflicts of Interest Oversight Committee;
- Declarations of adherence of the Members of the STEP Market Committee.

The declarations were examined, taking into consideration the biographies of each of the signatories and their respective roles and responsibilities. The CIOC concluded that the interests disclosed in the declarations did not show any emerging actual or potential conflict.

In order to further increase the level of awareness and the quality of the disclosure in declarations of interests, the CIOC agreed to provide training sessions to the relevant persons. The training sessions were carried out in November 2019 by the Chairman of the CIOC for the members of the EMMI Secretariat and by the Legal and Corporate Governance Officer for the members of the EURIBOR Steering Committee.

3.3.2 Representations or complaints made from external parties to EMMI

In 2019, EMMI did not receive any representation or complaint on conflict of interests related matters from external parties.

3.3.3 Other internal EMMI documents and information

The CIOC analysed a report from the Secretariat on the following internal documents:

- Agenda and Minutes of General Assembly meetings;
- Agenda and Minutes of Board of Directors meetings;
- Agenda and Minutes of EURIBOR Steering Committee meetings;
- Agenda and Minutes of Audit and Risk Committee meetings;

Following an analysis, the CIOC concluded that during the meetings under review, the issue of potential conflicts of interest was regularly discussed and treated with appropriate attention. The preventive measures and the controls of potential conflicts of interest at the level of EMMI's governing bodies were effective during the period under review.

3.4 Managing/resolving actual or perceived conflicts of interest

January 2019

In January 2019, the Secretariat identified two perceived conflicts of interest situations that were escalated to the CIOC.

1) The first perceived conflict of interest related to an external mandate of a member of the Board of Directors, who accepted to join an independent subsidiary of a Panel Bank, as a non-executive Board member. This issue was escalated to the CIOC and settled as follows: (i) attendance of the Board of Directors' meetings was suspended until the due diligence procedure performed by the CIOC (done to verify that there was no conflict of interest for the member to maintain the position of Board member at EMMI) was concluded (ii) a request for an advice was addressed to the FSMA, (iii) the CIOC assessed the issue in a meeting that took place on 24th January 2019.

The FSMA did not raise any point or question. They underlined that they did not have strong objections about the maintenance of the position of the Board member within EMMI's Board of Directors, as long as a proper identification and disclosure of any conflicts of interest, and remedial preventive, actions were put in place.

Identification and disclosure were implemented by requiring the member to provide a duly completed declaration of interest and by updating the conflicts of interest log/register, which identifies the type of conflicts of interest and the remedial actions needed.

According to EMMI's Conflicts of Interest Policy, and the mapping of conflicts of interest, remedial preventive action could be, in the extreme, the permanent withdrawal of the member from the Board of Directors. Other actions could be opting for full disclosure of the conflict, and recusal from certain discussions and decisions during meetings of the Board of Directors.

Full transparency is also achieved through this CIOC report, and by recording the disclosure of any perceived conflict of interest before discussion and decision relating to the independent subsidiary of the Panel Bank in the minutes of EMMI's Board of Directors' meetings.

In addition, it is important to remember that any decision that is made towards a Panel Bank (either inclusion or exclusion or possible sanctions) is made independently by the Steering Committee and that the Board member in question is not a member of the Steering Committee.

The final conclusion of the CIOC was that nothing would prevent the member from continuing its role in the Board of Directors. If any issue would arise that would be directly relevant for any entity belonging to the Panel Bank, the member would refrain from participating in the discussion, in order to avoid the perception of conflict of interest.

Therefore, the conflict of interest was assessed as Tier 1 (i.e. the person must recuse itself from ad hoc discussions), and the CIOC decided not to recommend the removal of the member from the Board of Directors.

2) The second perceived conflict of interest concerned the independent expert of EMMI's Audit and Risk Committee, who had accepted an external mandate as Chairman of the Board of Directors of a listed bank.

The CIOC addressed the issue during its meeting on 24th January 2019.

The point was made that the expert in question was not a member of the Audit and risk Committee and therefore had no voting right. His role consisted in providing independent expert advice.

In addition, the matters that are discussed in the Audit and Risk Committee are purely linked to internal audit and risk management and have nothing to do with strategy nor with the banking sector as such.

In terms of transparency, it was decided to request the expert to provide a declaration of interests, despite not being a member of the Audit and Risk Committee.

In conclusion, the CIOC decided not to oppose the continuation of the independent expert's role in the Audit and Risk Committee.

June 2019

In June 2019, EMMI and two members of the EURIBOR Steering Committee asked for a specific advice from the CIOC regarding their participation, respectively as non-voting members, representing EMMI, and as voting members (as EURIBOR Steering Committee members) representing their banking institutions, at subgroup 2 of the Euro Risk-Free Rates Working Group ('RFR WG'). The role of this subgroup is to "identify and recommend term structures on Risk Free Rates ('RFRs')".

The CIOC took into consideration that: (i) the RFR WG subgroup 2 was tasked with "engaging with potential administrators of this new benchmark", that subgroup 2B was tasked with "identifying requirements for an administrator of a benchmark based on the working group's recommended forward-looking term structure methodology, and proposing a process to facilitate that a benchmark administrator effectively produce these rates", and (ii) EMMI had been informed that it could not continue to be a member of subgroup 2, due to a perceived conflict of interest between the task of subgroup 2, and the potential interest of EMMI in administrating such a benchmark.

For these reasons, the CIOC:

- confirmed that it was appropriate that EMMI abstain from participating in the work of Subgroup 2;
- assessed that this perceived conflict of interest applied to EMMI as a whole, i.e. not only to staff members of EMMI's Secretariat, but to any member being part of an EMMI body;
- recommended that therefore members of the EURIBOR Steering Committee should also abstain from participating in the work of Subgroup 2 related to: the identification of requirements for an administrator of the new benchmark, the process to facilitate that a benchmark administrator effectively produce these rates, and the engagement with potential administrators;
- confirmed the 2018 CIOC recommendation that Steering Committee members' participation in the RFR WG was not considered as a conflicting situation, given the larger scope of the RFR WG, and taking into account that EMMI also remains in the WG as a non-voting member.

July 2019

On the basis of a recommendation of the RFR WG (in which EMMI participates as a non-voting member) the euro short-term rate (€STR) has been created to gradually replace EONIA. The ECB will first publish the €STR on 2 October 2019, reflecting the trading activity of 1 October 2019. €STR has been designed to reflect the wholesale euro unsecured overnight borrowing costs of euro area banks and will complement existing benchmark rates produced by the private sector, serving as a backstop reference rate.

Another recommendation of this RFR Working group was the creation of a EURIBOR fall back rate as a back-up in case EURIBOR for any reason will not be available. For this fall back rate, the RFR WG created a call for interest focusing on a €STR-based forward-looking term structure that could be used as a fall back in EURIBOR-linked contracts. EMMI amongst other parties, may be interested in providing this fall back rate and is therefore currently considering its options.

On the basis of the information mentioned above, EMMI, as part of the internal assessment on a possible future administration of such a fall back rate, asked the CIOC members the following questions:

- 1) If EMMI were to provide this new fall back rate, would EMMI need to adapt the composition of the Steering Committee to avoid any internal conflict of interest?
- 2) If so, could EMMI still have an overlap of Steering Committee members, or should there be two separate Steering Committees for both EURIBOR and the fall back rate to avoid any conflict of interest?

The CIOC decided as follows:

- developing a rate that would function as a fall back when EURIBOR is not available, does not seem at first sight to constitute a conflict between both rates as there is - by definition - no competition between the rates. The solution based on €-STR forward term structure appears to be straightforward and easy to administer; above all, it is very objective, thus avoiding any ambiguity in case of mismatch between EURIBOR time series and the fall-back rate. Since calculation is based on a completely different methodology (ESTER) administered by the ECB a conflict of interest is not likely;
- it would also appear that there is no conflict of interest for the same Steering Committee to oversee both rates. This is more a question of availability of the Steering Committee members and of the required expertise.

November 2019

In November 2019, EMMI's Board asked for specific advice on a) the possibility to extend the compensation for membership in the Board to all members of the Board of Directors, as, at that time, only the independent members were compensated, and b) whether a member of the Board of EMMI, who was also a non-executive Board member of a credit institution, was entitled to receive compensation. Considering the time and effort involved in performing the role of a Board member and potentially that of member of the Audit and Risk Committee (4 to 6 additional meetings per annum), the CIOC was asked to assess whether such a Board member was entitled to receive compensation.

The CIOC took into consideration that: (i) according to corporate governance best practice, the principle is that Board members should be remunerated in order to attract, reward and retain the necessary talents and to guarantee an independence of mind, (ii) the role of a Board member requires time and effort to be devoted to the performance of the mandate. This time and effort comes in addition to that devoted to the normal professional activity of a Board member, and (iii) the rules for compensating members of EMMI's governing bodies should be defined, taking into account the membership on a personal basis, as well as the level of responsibility and liability within the EMMI governing bodies to whom they belong.

On these grounds, the CIOC recommended:

- to develop a separate compensation policy for membership of the Board of Directors and membership of Board subcommittees (e.g. Audit and Risk Committee, Nomination Committee). Rules remain unchanged for other governing bodies composed of external stakeholders (Steering Committee, STEP Market Committee, and Conflicts of Interest Oversight Committee);
- to provide for a separate compensation for membership of Board subcommittees;
- to ensure that the level of compensation of Board members, Board subcommittee members, and of members of external committees reflects the time commitment and responsibilities. In this context, it is important to underline that Board members are legally responsible and accountable for EMMI's decisions, which is not the case for the members of external committees, or for Board members who are members of Board subcommittees;
- to avoid potential conflicts of interest, by not appointing Board members as representatives of an associations at General Assembly meetings.
- to compensate the Board member in question for its current mandate.