



European Money Markets Institute

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EMMI Position on the EC's Proposal for a Regulation on Indices used as Benchmarks in financial instruments and financial contracts

Introduction:

The European Money Markets Institute (EMMI, formerly known as 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.

EMMI currently provides the following three indexes: Euribor®, the money market reference rate for the euro; Eonia®, the effective overnight reference rate for the euro; and Eurepo®, the benchmark rate of the large Euro repo market.

As a critical benchmark, Euribor is of systemic importance for financial stability. The notional volume of outstanding financial contracts indexed to Euribor is estimated to be greater than €180 trillion. Euribor is used notably as an index for Over-The-Counter (OTC) and exchange trade derivative contracts, corporate loans, retail mortgages, floating rate bonds and securitized debt products. In particular, approximately 28% of the retail mortgages in the Euro Area (\$1.4 trillion) are indexed to Euribor.

EMMI is continuously working to enhance its governance framework and to improve the quality, integrity and the transparency of its benchmarks. Moreover, EMMI strives to develop new suitable benchmarks adapted to the latest regulatory requirements context.

In addition, to its activities of benchmarks' administration, it also plays a key role in the management of the STEP label, an initiative aimed to foster the integration of the European markets for short-term paper through the convergence of market standards and practices.



Key Points:

- EMMI 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.
 - EMMI welcomes the introduction of public supervision on benchmarks. Nevertheless, EMMI is concerned that the complexity of the proposed supervisory mechanism may be counterproductive, in particular in situations where quick decisions involving different national authorities are required. A compromise solution could be that a single European Supervisor (e.g. ESMA) is appointed for critical benchmarks, unless a critical benchmarks administrator is located in a Member State where sufficient national regulation and supervision is in place, in which case the national competent authority of the member state should continue to provide for the supervision.
 - 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. EMMI considers that quality and integrity of a benchmark is the result of a partnership between the contributors, the administrator, the calculation agent, if any, and the supervisory authorities.
 - The responsibility to control that the 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 control and whistleblowing mechanisms to detect inappropriate submissions and report any irregularity to the relevant authorities.
- EMMI 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 restrictive requirements to impose mandatory contributions and the enforcement of such decisions under the proposed supervisory mechanism by competent authorities of the several contributors' countries.
 - EMMI is very much concerned about legal issues arising from the transition from a critical benchmark such as Euribor to a new transactions-based index. Given the complexity and variety of contracts based on Euribor under different national legislations, EMMI calls for a European legislative act or guidelines issued by public authorities to ensure consumer protection, preserve the functioning and integrity of financial markets and avoid severe market disruptions.



General remarks:

EMMI 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. EMMI wishes to underline the importance to coordinate benchmarks' reforms at European and global level to ensure consistency and a level-playing field.

EMMI also supports the introduction of **public supervision** on benchmarks. Nevertheless, EMMI 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, EMMI 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 critical benchmarks, unless a critical benchmarks administrator is located in a Member State where sufficient national retgulation and supervision is in place, in which case the national competent authority of the member state should continue to provide for the supervision.

Finally, EMMI believes that the Regulation should be operational as soon as possible.

EMMI 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:

Scope of Regulation (Recital 8)

EMMI believes that the Regulation should continue to focus on benchmarks whilst at the same time defining the responsibilities and duties of the administrators. Should it focus only on the role of the benchmark's administrators, there would be a risk to undermine the responsibilities of other stakeholders in the benchmark production (e.g. the contributors and the calculation agent).

Supervision and authorization procedure for administrators (Recital 35, articles 12 to 14 and 22 to 37)

EMMI 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.

Certain critical interbank benchmarks may have effects in and involve contributors, administrators and users in more than one Member State meaning that the supervision of such a benchmark by the competent authority of the Member State in which it is located may not be efficient in terms of addressing the risks that the critical benchmark poses.

For critical benchmarks, it is therefore necessary that ESMA is empowered to supervise such benchmarks. Nevertheless, when a critical benchmark administrator is located in a Member State where sufficient national regulation and supervision on critical benchmarks is already applicable, the national competent authority of the member state should continue to provide for the supervision.

Outsourcing (Article 6)

EMMI 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.

Input data and methodology (Article 7 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"*.

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, where the number of interbank lending transactions is particularly limited for medium and longer dated maturities, EMMI 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.

However, EMMI would like to point out that, when a market becomes illiquid (or even none transactions for some maturities), it might be difficult to verify the experts' estimations based on actual transactions or other verifiable data in the market that the benchmark seeks to represent. In events like this, contributors should be allowed to justify the expert judgement on the basis of other relevant market data.

Reporting of breaches (Article 8)

While EMMI 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.**

EMMI believes that an appropriate control and 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 reporting 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 relevant parties – amongst which the national regulatory authority through a procedure defined by the authority supervising the benchmark. . In addition to this, the administrator will also take appropriate sanctions towards the contributing entity under its governance framework (Code of Conduct).

To conclude, EMMI believes that the administrator should monitor the input data and notify the relevant parties of breaches of the Market Abuse Regulation or any conduct that may involve manipulation or attempted manipulation. However, it should not be the primary responsibility of the administrator to investigate such potential breaches or misconduct. Any investigations into the breaches and misconduct should be the responsibility of the benchmark supervisory authorities.

Governance and controls (Article 11)

EMMI considers that quality and integrity of a benchmark is the result of a partnership between the contributors, the administrator, the calculation agent, if any, and the supervisory authorities.

While EMMI agrees that the benchmark's administrator has an overall responsibility to ensure a robust governance and control framework for establishing a benchmark, 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.



Consequently, EMMI would welcome a clarification that the contributor is responsible for ensuring the integrity, accuracy and reliability of the input data in accordance with the Code of Conduct, this Regulation and the Market Abuse Regulation.

We do acknowledge, however that , 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.

Transparency of input data (Article 16)

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 [...]”*.

EMMI is not in favor of the immediate publication of input data at a contributor level. . For transactions-based benchmarks (e.g. 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 and might therefore discourage participation in the panel. 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. EMMI is therefore in favor of keeping individual input data (at contributor level) confidential while aggregated volumes, when available, and rates will be published.

Mandatory contribution (Article 14)

“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.”

Even though EMMI welcomes the possibility for supervisors to impose mandatory contributions, it considers that the situations where mandatory submissions would be required are too restrictive.

EMMI believes that, given the potential impact of panel composition on quality and continuity of critical benchmarks, **the possibility to impose mandatory submission should not be limited to situations where a portion of 20% contributors cease contributing. It should also cover the possibility to enlarge a panel in order to reinforce a benchmark’ s representativeness and robustness as well as situations where a new benchmark aimed at replacing a critical benchmark should be foreseen.**



In addition, EMMI 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.

In the case of critical benchmarks with a European and/or International dimension, it is important to ensure that the panel is large enough to reflect faithfully the geographic diversity of the money market. 19 banks withdrew from the Euribor panel during the last two years. 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.

EMMI 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 this context, EMMI 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.

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