

# Indices used as benchmarks in financial instruments and financial contracts

2013/0314(COD) - 07/01/2014 - European Central Bank: opinion, guideline, report

## **Opinion of the European Central Bank on a proposal for a regulation on indices used as benchmarks in financial instruments and financial contracts.**

The ECB, consulted by the European Council and the European Parliament, **supports the proposed regulation's objective** of establishing a common set of rules at Union level for the benchmark-setting process for financial instruments and financial contracts in the interest of integrity and reliability of the financial benchmarks and the wider concern of protection of investors and consumers.

The restoring of integrity and public confidence in financial benchmarks is all the more important in the wake of recent alleged manipulation of the key interbank interest rate benchmarks Libor and Euribor, which have led in a number of instances to significant fines and allegations of misuse of other indices.

The ECB stressed the **systemic importance of the Euribor benchmark** for financial stability and made specific recommendations on both short and medium to longer term measures for improving the integrity and reliability of Euribor and other such benchmarks.

The ECB also makes a few **forward looking remarks** on the reform of critical interest rate benchmarks. The ECB:

- **supports market initiatives** that aim at identifying transaction-based reference rates that could constitute viable complements or substitutes to Euribor and support facilitating market choices in a changing financial system so that users can choose reference rates which better match their needs;
- encourages **market participants** to be actively involved in the rate design process, in order to ensure that the resulting rate meets the market's needs;
- stresses that this transitional phase to new reference rates that any **Union framework** is workable for market participants.

Lastly, the ECB also makes specific remarks on the reform of critical interest rate benchmarks. These remarks concern the following issues:

**Scope, exclusion of indices and benchmarks provided by central banks and definition:** the ECB supports the wide scope of application of the proposed regulation. It welcomes the express exclusion from the scope of the proposed regulation of central banks that are members of the European System of Central Banks (ESCB). However, it suggests extending the exemption to all central banks as the benchmarks and indices provided by them are already subject to control by public authorities.

Furthermore, as regards the **definition of 'interbank interest rate benchmark'**, the ECB notes that the special regime laid down in Annex II covers only such benchmarks which are based on interest rates at which banks may lend to or borrow from each other. In the ECB's view the regime should be less restrictive and also include benchmarks where the underlying asset is the rate at which a bank may lend to or borrow from the wholesale market.

**Benchmark integrity and reliability and the authorisation and supervision of administrators:** the Union legislative bodies should take particular care to ensure that, in pursuing the justified goals of the proposal, the toughening of the regulatory requirements on administrators does not inadvertently dissuade

new entrants to such a critical function nor discourage too strongly current administrators from this function, especially during the current period of transition to possible new reference rates. Given the systemic importance of Euribor for the Union financial markets and its role in monetary policy transmission, the **European Supervisory Authorities** (ESAs) should be involved in the supervision of the Euribor rate-setting process. The ECB also welcomes the fact that competent authorities may delegate some of their tasks under the proposed regulation to ESMA, subject to the latter's agreement.

**Sectoral requirements, critical benchmarks and mandatory contribution:** the ECB is concerned that the current definition of a 'critical benchmark' may not provide a secure enough basis for the emergence of new critical benchmarks, such as for interbank interest rates. For this reason, the ECB sees merit in **retaining a more flexible definition based on financial stability considerations**.

The ECB has serious concerns about the proposed wording of the **threshold for triggering the power to require mandatory contribution**. It strongly recommends not to rely on a numerical test, which may be easily circumvented and whose trigger may never be reached, but to replace it with **qualitative criteria** related to financial stability considerations. The ECB also recommends that the administrator be required to evaluate at regular intervals and whenever the panel size decreases whether the panel remains representative.

**Supervisory cooperation:** in relation to each critical benchmark, the proposed regulation provides for the establishment of a **college of competent authorities**. The ECB has concerns however about the workability of such a procedure in the case of critical financial benchmarks, particularly in the case of an emergency such as a market failure.

To remove any possible doubt that the responsibility for the supervision of the financial conduct of institutions which come under the single supervisory mechanism (SSM) remains with the national competent authorities, the regulation should specify that the competent authority to be designated by Member States must be a **national competent authority**.

**Transparency and consumer protection:** the proposed regulation should ensure instead that users can be confident about the **reliability** of the data by the proper oversight, supervision, archiving and auditing thereof.

In addition, in relation to transaction-based benchmarks, situations may arise where the input data to be published includes data which is **commercially sensitive or subject to business confidentiality**, for example, if volume data for transactions is included in the input data. Therefore, the administrator should not be required to publish the data even with a delay, unless the relevant contributor has given its prior approval, but it would be sufficient for the **administrator to be required to store the data for a certain period during which the competent authority would upon request have access** thereto.

The ECB recommends, therefore, that the proposed regulation includes a requirement for the benchmark administrator to develop its **own contingency procedures**, with full transparency towards the end users of the indices.

**Use of benchmarks provided by third country administrators:** the ECB is concerned about the workability of the proposed equivalence regime, particularly if it were to be introduced concurrently with the other provisions of the proposed regulation. For these reasons, rather than leaving the use of non-Union benchmarks in limbo, the ECB invites the Union legislative bodies to consider introducing as a minimum a **longer implementation period** for the equivalence regime under which selected widely-used benchmarks administered in third countries, in particular G20 countries, could continue to be used in the Union until the end of a longer transitional period of three years.

For such benchmarks, the third country administrator would be required to demonstrate compliance with the IOSCO Principles in the context of its domestic legal framework. As a result, the benchmark would be temporarily exempted from the equivalence requirements provided for in the proposed regulation.