



Association des Banques et Banquiers, Luxembourg
The Luxembourg Bankers' Association
Luxemburger Bankenvereinigung

**Response from the ABBL to the joint Consultations:
Report on the administration and management of Euribor
Principles for Benchmarks-Setting Processes in the EU
By ESMA-EBA**

Information about the ABBL:	
Identity	Organisation
Capacity	Industry trade body
MS of establishment	Luxembourg
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The ABBL¹ takes note of the different documents published by the EU Authorities. The response will be articulated in 3 parts, a general introduction on both documents, followed by additional comments on each specific consultation.

General remarks

Although experience has shown that some index or benchmark providers need to review their practices and governance structure, it may also be useful to bear in mind the underlying concept behind such an index or benchmark according to their vast diversity. It may be based on a sentiment indicator, or on material facts like closing prices of certain transactions. It is also important to have some view of what this benchmark will be used for and the conditions under

¹ The Luxembourg Bankers' Association (ABBL) is the professional organisation representing the majority of banks and other financial intermediaries established in Luxembourg. Its purpose lies in defending and fostering the professional interests of its members. As such, it acts as the voice of the whole sector on various matters in both national and international organisations.

The ABBL counts amongst its members' universal banks, covered bonds issuing banks, public banks, other professionals of the financial sector (PSF), financial service providers and ancillary service providers to the financial industry.

which it may or may not be produced. The Association accordingly thinks it is not wise to try to produce regulation that will seek to abandon the current major indices/benchmarks in favour of new models. The names, even if tainted by recent events or news releases, are well known and would subject too many contracts to changes, not only in the EU but globally. That is why the Association is, generally speaking, supportive of the fair and smooth ESMA/EBA approaches to propose recommendations to improve current structures instead of throwing the baby out with the bathwater. The Association shares most of the proposals presented at least as principles.

The Association is a bit anxious that beyond compliance to these new rules and the currently discussed preventive measures under the MAD/MAR (Market Abuse regulation) additional and perhaps conflicting rules will be produced at a later stage by other regulatory entities, be they in the EU or at global level. The Association is confident that once introduced the changes proposed to the EURIBOR provider will have positive and desirable effects. This being said, these instruments, be it for EURIBOR or LIBOR, serve probably more as an “informed view” of the market rather than a factual reflection of transactions. The Association considers that this non-transaction based approach has some merits, particularly for markets where there are not enough trades to set another type of benchmark.

The general risk that the Association sees in the process is that of confusing the various producers of benchmarks or indices, considering that all shall be produced according to the same rules. Clarification on the design and purpose may help in avoiding misunderstanding and misuse of a benchmark. Accordingly, more emphasis shall be put on these aspects.

As an industry wide instrument, transparency of the benchmark, rational and extensive documentation of both the process and communication between the different actors involved in the production of the benchmark shall be available and communicated clearly to the users and in details to the authorities.

To conclude, the Association believes that there is a huge need to apply proportionality in the measures envisaged, with the risk of forcing out some contributors. Indeed, there may be in the eye of contributors relatively low direct added value to participate moreover when the cost or structure become excessively burdensome. The risk being that with fewer contributions the benchmark loses its interest and appeal, and the risk envisaged in the consultation will materialise.

Report on the administration and management of EURIBOR

As a member of the European Banking Federation (EBF), the ABBL does not have the feeling that it has influenced or had the possibility to influence directly or indirectly the production of the EURIBOR, as it sees it as a de facto separate entity from EBF. In all circumstances, further measures to completely remove this organisation from the EBF perimeter and make it an independent institution may increase its standing, governance and public perception.

This being said, what can be taken from the report is that, first and foremost, the structure has undertaken many efforts to ensure its independence and reliability of benchmark production. It seems that traceability of communications and exchanges has been taken seriously. Nevertheless, the report points to some evidence of odd practices which need to be taken seriously (constant submissions of the same rates for many days notably). The measures envisaged are all going in the right direction and appear to be appropriate.

Recommendations on EURIBOR

The Association is sympathetic to the proposal regarding the composition of the steering committee. However, it should not be underestimated that this instrument is produced by specialists for professional use. Thus it may be unavoidable that some professionals from submitting institutions are present, although it is understandable/desirable that these are not the same person as the one physical person submitting the rate, whenever possible.

The Association is not fully aligned on the requirement to limit the number of benchmarks. It is of the opinion that, as EURIBOR is not a transactions constructed index, there are some merits of producing less frequently used benchmarks. The favoured route may as a consequence be to clarify that a particular benchmark has been constructed with a non/sub-optimal number of contributions. The Association notes, by the way, that even if the number of contributors is low it was satisfactory until now and this is the norm for some other benchmarks that are as widely used.

Some back testing of benchmark rates and rates submissions may indeed be a good indicator of individual production by submitting entities and continuous alignment with the market.

The reliance on code of conducts and audits is probably a good way to increase awareness of the importance of producing a fair and professional rate. At some stage, however, the daily requirements should not trump the principles so that, given the burden of contributing to the process, some institutions drop out of the scheme. This would lead to the direct consequence that the benchmark will be less reliable as fewer counterparties contribute; which would risk further reinforcing the issue identified by the report of having maturities with suboptimal contributions.

The Association supports or shares the remaining recommendations. It questions the focus on EURIBOR and wonders if this exercise should be done with other equivalent benchmark producers.

Principles for benchmarks-setting processes in the EU

Question 1: Definition of the activities of benchmark setting

Do you agree with the definitions provided in this section? Is this list of activities complete and accurate?

Partially. The definition, because it is a bit too open, may also cover “statistics” that may be produced by - Member States – Authorities. These would meet at least the criteria of “certain other data” that may then also be used to determine amounts payable. Ideally, more precision as to the scope is required. Furthermore, the Association notes that this is not aligned with the proposed EU Commission definition (in the document footnote) that makes a reference to a “commercial” aspect of a benchmark. The Association tends to think that all benchmarks should be treated in the same transparent and professional manner.

Question 2: Principles for benchmarks

Would you consider a set of principles a useful framework for guiding benchmark setting activities until a possible formal regulatory and supervisory framework has been established in the EU?

Although these principles may be welcomed in light of recent experience, it should always be kept in mind that excessively detailed regulation is not a cure to everything. There may be a need for a proportionality approach and to ensure that in the EU hierarchy of laws these EBA/ESMA guidelines or recommendations will not be contradicted at a later stage by an EU Commission super-equivalent proposal.

Question 3: General principles for benchmarks

Do you agree with the principles cited in this section? Would you add or change any of the principles?

The principles are agreeable. The Association will, however, stress that proportionality should take place with the objective that contributions to a benchmark do not become too costly or complex so that smaller contributors stop participating; the consequence of this being a less reliable benchmark because of a reduced number of contributors.

The Association further notes the remarks regarding the appropriate balance between transparency and protecting confidentiality. Benchmark owners/contributors may stop contributions if trademark or proprietary rules are completely ignored

Question 4: Principles for firms involved in benchmark data submissions

Do you agree with the principles cited in this section? Would you add or change any of the principles?

The principles seem to be acceptable. Each benchmark administrator will have to design appropriate rules tailored to its approach to ensure a fair level of contributions/submissions.

Question 5: Principles for benchmark administrators

Do you agree with the principles cited in this section? Would you add or change any of the principles?

The Association agrees with the principles that documenting the process, communication, governance... are of utmost importance. This is of course equally true for the methodology; the issue may be to determine what can concretely be done. For example, defining a computation methodology is one thing, ensuring that it is efficient today and in the long run may require some research and adaptations or amendments. Do these principles require administrators to run such regular research on an ongoing basis, and at what cost?

Question 6: Principles for benchmark calculation agents

Do you agree with the principles cited in this section? Would you add or change any of the principles?

As for benchmark administrators, beyond the robust methodology for computation, the processes and interactions with both the submitting parties (if any) and the administrator shall be duly documented and recorded so as to easily identify anomalies if required or needed by authorities.

Question 7: Principles for benchmark publishers

Do you agree with the principles cited in this section? Would you add or change any of the principles?

Yes, according to the principle that a benchmark is published by an entity, not in the name of a single employee of that structure.

Question 8: Principles for users of benchmarks

Do you agree with the principles cited in this section? Would you add or change any of the principles?

The principles of mutual and multilateral scrutiny, although conceptually appealing, may in practice be difficult to implement. Users may not always be aware of problems, the level of which may sometimes be debatable (given the marginal impact). Then there may be a question-mark regarding the concept “assess the benchmark they use”. Taken to the extreme this may imply that individual organisations will have to run their own computation to check if the public benchmark is sound; this is perhaps a step too far and certainly an exercise difficult to perform for smaller organisations.

Question 9: Practical application of the principles

Are there any areas of benchmarks for which the above principles would be inadequate? If so, please provide details on the relevant benchmarks and the reasons of inadequacy.

As mentioned above, depending on the type of benchmark, its users community and the cost of having none, measures should above all be subject to a proportionality test. In the end, it may be preferable to have a common standard that is highly reliable rather than a certain figure that never produced.

Question 10: Continuity of benchmarks

Which principles/criteria would you consider necessary to be established for the continuity of benchmarks in case of a change to the framework?

One key element is certainly how widespread the use of the benchmark is, whether many contractual relations are dependent of it. It is advisable that legal aspects are to be addressed with extreme caution, and, above all, when changes are relatively minor both at a general economic level and individual user level.