

## Teleconference of the working group on euro risk-free rates

Wednesday, 29 September 2021, 16:00-18:00 CET

### Summary

#### **1. Introductory remarks, approval of the agenda and obligations of the working group members under competition law**

Mr James von Moltke (Chair) opened the call. He welcomed all the members of the working group and mentioned that new members had been appointed over the summer, extending to the newcomers his warm welcome. He expressed his appreciation for all the hard work undertaken by the WG and its members, emphasizing the ongoing tenacity in achieving the objectives of the WG and flagged that – with the end of the year approaching, and the well telegraphed cessation dates of the LIBORs – some items would require the WG's members' immediate attention.

Mr von Moltke informed the WG members that the minutes of the previous call (1<sup>st</sup> July 2021) have been approved, asking for any final objection or request for changes, none of which was raised by any of the members.

Mr von Moltke then reminded the WG members about the agenda of the meeting:

- 1. Introductory remarks, approval of the agenda and obligations of the working group members under competition law*
- 2. Presentation of the new WG members on the basis of the call for expression of interest to join the WG*
- 3. Update on status of decision-making process and timelines vis a vis CHF LIBOR and EONIA designation*
- 4. Presentation by the “Tough Legacy” Task Force of the proposals for discussion on GBP LIBOR & JPY LIBOR.*
- 5. Update on €STR first preparation, Cross-Currency Swap switch date on 21st Sep and monitoring process for €STR liquidity.*
- 6. Presentation of the draft 2022/2023 book of work + objectives.*
- 7. AOB*

Finally, Mr von Moltke reminded the members of the WG of their obligations under EU competition law, as described in the guidelines on compliance with EU competition law published on ESMA's website.

## **2. Presentation of the WG new members on the basis of the call for expression of interest to join the WG**

Ms Iliana Lani (ESMA) expressed her congratulations to the newly appointed members of the WG, emphasizing the increased diversity in the members that would without doubt prove beneficial to the work conducted by the group, and welcomed them warmly.

The newly appointed members are:

- Axa IM
- Banco Sabadell;
- BME Clearing;
- Citi;
- Crédit Suisse;
- Eurex Clearing;
- ICE Futures Europe;
- LCH Group.

## **3. Update on status of decision-making process and timelines vis a vis CHF LIBOR and EONIA designation**

Mr Tilman Lueder (Head of the Securities Markets Unit at European Commission) provided the latest updates on the decision-making process and timelines vis à vis CHF LIBOR and EONIA designation.

As regards EONIA, he explained that the process was well on track, flagging that the process of consulting Member States would be closing on Friday 1<sup>st</sup> of October, and that the European Commission (EC) was not expecting any controversy at this level. Mr Lueder explained that the scope of the implementing act will cover any contract, the parties to which are all established in the Union, referencing to EONIA and that is subject to the law of a third country, where that law does not provide for the orderly wind-down of EONIA. Considering that contracts referring to EONIA typically are governed by the law of jurisdictions which are likely to designate a replacement rate the risk of jurisdictional conflict seems limited.

Mr Lueder further flagged that the cases for LIBORs in cessation might prove different since the requirement for the absence of a replacement rate must be assessed against the actions, if any, taken in the third country jurisdiction.

As regards CHF LIBOR, Mr Lueder noted that some responses to the public consultation referred to potential consumer detriment (*i.e; on retail mortgages*) linked to a statutory replacement decision. Mr Lueder explained that the EC was now considering further those aspects.

Mr von Moltke welcomed the update provided by Mr Lueder and encouraged members of the WG to provide any views on the legal consequences of the EONIA current process, as mentioned by Mr Lueder.

One member of the WG shared thoughts on the latter and made the point that the proposed statutory replacement rate is replicating the EONIA calculation as established by the EONIA methodology, which EONIA's administrator consulted upon with no issues raised by market participants. Therefore, he would not see any kind of litigations that could rise in the EONIA case.

Mr von Moltke expressed support for the EC's decision on EONIA, recalling the spirit of the work conducted until now: to encourage an orderly transition in the market.

One member of the WG expressed concerns on the conflicts of law issue which, while unlikely in the EONIA case, could exist for other IBOR currencies, flagging that the topic is very difficult and sensitive and that it might be unwise to rely on the EC's designation of a statutory fallback rate for contracts outside of the scope

of EU law. The member flagged the contractual mechanism available (*i.e. the ISDA protocol*), to which Mr Lueder recalled that the EONIA case was exceptional in that other jurisdictions have clearly indicated they are not taking any action to address the cessation of EONIA, whereas the case could be different for other benchmarks.

One member of the WG asked Mr Lueder about the timeline as regards the CHF LIBOR case, to which Mr Lueder responded that no timeline was agreed upon at the moment, as it would also depend on the political views on the possible risk of consumer detriment or litigation. Mr Lueder explained that progressing on the CHF LIBOR would also depend on receiving additional assurance and evidence on the systemic risk to the EU financial system posed by the CHF LIBOR cessation, e.g. : clear evidence on how issues related to contracts linked to CHF LIBOR raises stability concerns at individual Member State level would also be helpful. As regards the EONIA timeline, Mr Lueder flagged that the ongoing consultation would be ending on Friday, 1<sup>st</sup> of October, making it possible to launch the formal adoption process and that the matter could be resolved in a couple of weeks.

Another member of the WG inquired about the assessment performed by the EC on the possible litigation issues related to the CHF LIBOR case, to which Mr Lueder explained that the responses to the consultation pointed to a significant number of litigations in member states concerning loans and mortgages referencing CHF LIBOR. In light of the fact that this litigation would continue beyond the designation of a statutory replacement rate, Mr Lueder argued that it was paramount that any statutory replacement decision taken by the Commission needs robust evidence that the cessation of CHF LIBOR significantly disrupts the functioning of the EU financial market or pose systemic risks to financial stability.

Further to this discussion, another member flagged that the timing might be tight to consider the adoption of any statutory fallback rate for CHF LIBOR, and asked Mr Lueder whether firms would better engage and prepare in case the EC is unable to act on a political level. Mr Lueder explained that it would be helpful if firms could provide potential consequences of current standstill from their perspective, recalling that the threshold to allow for EC's intervention would be financial stability risks, arguing that based on the existing evidence, such a case was not so obvious yet. Mr Lueder explained that market participants are welcome to send bilaterally to the EC any relevant information to potentially make the case for such designation.

Mr von Moltke thanked Mr Lueder for the update and discussions, as well as the WG members who shared views or asked for clarifications.

#### **4. Presentation by the “Tough Legacy” Task Force of the proposals for discussion on GBP LIBOR + JPY LIBOR**

Mr Grégory Albertini (Société Générale) presented the results of the work conducted by the “Tough Legacy” Task Force that was set up after the last WG meeting, on the 1<sup>st</sup> of July, following a presentation of Mr Stéphane Cuny (Société Générale). He recalled the rationale for setting up such a Task Force (*i.e. a number of tough legacy transactions referencing LIBOR within the EU may not be amended before the end of 2021 to reference an alternative rate while these LIBORs will either be declared non-representative or cease, which would create a risk for these transactions that could lead to numerous litigations*).

Mr Albertini recalled the scope of the work conducted by the Task Force & explained that the Task Force had met five times to discuss and settle on a unique proposal to be submitted to the WG and had conducted a first data gathering exercise to assess an order of magnitude for such contracts. Mr Albertini further explained that no consensus was reached and went on to detail the two possible approaches the Task Force would like to seek views of the WG upon, namely:

Option 1: Recommending a legislative process to designate a statutory replacement rate for JPY and GBP LIBOR using the underlying formula of the synthetic LIBOR (and / or the ISDA fallback formula),

or

Option 2: Not recommending any legislative process to designate statutory replacement rate for JPY and GBP LIBOR

Mr Albertini further mentioned that the UK FCA had published that morning some statements and consultations on the use of synthetic methodology for GBP and JPY LIBORs which might be highly relevant to the WG members should they like to consider the two options put forward by the Task Force.

Mr Albertini explained that no consensus could be reached because of two main concerns put forward by members of the Task Force, namely (a) the operational implementation of Option 1 within the remaining months of 2021, and (b) the risk of contract frustration and litigation in the absence of a Safe Harbour mechanism in the EU for the use of synthetic Libor.

Mr von Moltke thanked Mr Albertini on behalf of the WG for all the work conducted by the Task Force and gave the floor to Mr Lueder who recalled the argument he voiced earlier (*i.e.*: *under Item 3*) on the interplay between statutory replacement rate designation powers held by the EC & any action undertaken by third countries. Mr Lueder explained that – should the third country take any step forward on the designation of a replacement rate, be it under a new methodology for LIBOR (as it is the case with the FCA’s approach on synthetic LIBOR) – the EC would have a strong preference to rely on this decision. Mr Lueder mentioned a possible complication stemming from uncertainties related to the decisions taken by the third country and the use of “synthetic rate”, for instance it could be argued whether the “synthetic LIBOR” should be deemed as a statutory replacement rate or instead as a continuation of the existing rate under a different methodology (to be noted that the synthetic LIBOR would be accessible by users in the same fashion and through the same platform as original LIBOR). In the latter case, a statutory replacement decision by the EC might create unnecessary confusion.

One member of the WG flagged that although the new rate would indeed still be LIBOR, it seems likely at this stage that the UK would provide additional legal certainty via a specific legislation to avoid litigation and ensure contract continuity. The member further explained that – should no similar action be undertaken in the EU – all the contracts not covered by UK law might face a risk of non-representativeness and that a risk of legal uncertainty and contract frustration might arise in the EU.

Another member of the WG took the floor and explained that – according to his understanding – LIBOR would not be deemed a representative benchmark and therefore could not be used anymore except for tough legacy transactions, where one would need to ensure that the exceptions and amendments written down by the UK FCA will be taken onboard in EU law as well.

Mr Lueder answered that the EC will pay attention to such a possible development, nonetheless recalling the spirit of the statutory replacement power and explaining that any statutory replacement rate would only apply to legacy contracts but should not be used as a reference for new transactions.

Mr Von Moltke wrapped up the discussion, encouraging WG members to respond to the FCA’s latest consultation to emphasize the points discussed today with the UK authority. Mr von Moltke also invited members to share any feedback or written comments to Mr Albertini in order to finalize the proposal to the EC.

## **5. Update on €STR first preparation, Cross-Currency Swap switch date on 21st Sep and monitoring process for €STR liquidity.**

Mr Simon Goodwin (Deutsche Bank) updated members of the WG on the €STR first preparation, the Cross-Currency Swaps switch date on the 21<sup>st</sup> of September and on the monitoring process for €STR liquidity.

Mr Goodwin recalled that the €STR First Initiative is planned for the 18<sup>th</sup> of October, so as to coincide with the EONIA CCP switch set to happen on the weekend of 16<sup>th</sup>/17<sup>th</sup> October, recalling also that EONIA contracts will not be considered for clearing after this date, urging members to make every possible effort on their end to use €STR first – from the 18<sup>th</sup> of October onwards – in contracts where they would historically have used EONIA, and encouraged members to reach out to various brokers in their usual channels to spread the word to maximise a successful outcome.

Mr Goodwin further explained that the RFR First initiative for cross currency swaps went live on the 21<sup>st</sup> of September and shared feedback received on the success of the switch of the in-scope currencies, GBP, CHF, JPY, & USD, and a less successful switch for EUR as one of the currency pairs, emphasizing that EUR/USD had initially started well with €STR/SOFR but soon switched back to EURIBOR/USD LIBOR. Mr Goodwin then opened the floor to WG members so that they could provide feedback.

One member highlighted that the market seemed to have already switched to €STR, flagging that he was witnessing transactions on both EURIBOR & €STR, making the argument that it would probably prove more efficient to have only one market, notably ensuring a more liquid market.

Another member flagged that EURIBOR was not meant to be discontinued, therefore raising doubts on the urgency for traders & market participants to switch to €STR and that two markets should co-exist for the time being, arguing that much was still to be done with the other transitioning benchmarks.

Another member commented on the need to have a very active swap basis market on €STR as one of the main usages is to hedge balance sheet deals. However, this member flagged that he wouldn't expect soon €STR to become the reference rate for loans and echoed the rationale that probably the transition will not happen that soon.

Mr Goodwin acknowledged the different inputs shared by the members. Mr Goodwin raised the point of possible recommendations and milestones being made by the WG encouraging the switch to €STR

Two members of the WG shared their views and flagged that the market will naturally move towards either to SOFR/EURIBOR or SOFR/€STR and that there was no reason at the moment to urge any recommendation. Another member echoed this argument and flagged that it might be too early to nudge/push the market in any direction also considering some market participants could be willing to replace USD LIBOR with another rate.

Conversely, another member expressed an opposite view, flagging that the market would need encouragement to accelerate the transition and increase liquidity in RFR products and that related recommendations from the WG could be useful. The ECB supported that stance to provide clarity to the market and to support consistency with other currency areas. Other members of the WG were also supportive of possible recommendations issued by the WG.

Mr von Moltke suggested to conduct a survey within the WG, emphasizing that Chair's office & ESMA would stand ready to receive views.

## **6. Presentation of the draft 2022/2023 book of work + objectives.**

Mr Alex Wilson (Deutsche Bank) presented the draft 2022/2023 book of work for the WG as well as the underlying objectives. Mr Wilson flagged that in terms of timing, publishing the updated Terms of Reference incorporating the future book of work by the end of the year would be highly appreciated and allow for a high-level view of the current & upcoming workstreams. Mr Wilson referred to the circulated document and encouraged members to share additional thoughts & comments with the Chair's office & ESMA secretariat in the coming next weeks to achieve the timeline.

One member flagged that it would be good to provide indications on the timing for the different items mentioned in the current proposal, as the temporality might differ depending on the item considered and further argued that a brief description on the plan of work would be highly appreciated as well.

Another member expressed concerns on the appropriateness of some the objectives put forward under a mandate of the WG (and flagged that it will revert to ESMA/Chair's office in writing).

Mr von Moltke acknowledged the feedback received & invited every member to provide written comments or suggestions in the coming weeks.

## **7. AOB**

Mr von Moltke informed the WG that a new request for data might be launched regarding the statutory replacement rates for GBP & JPY LIBOR in the EU, following the latest updates shared by the Tough Legacy Task Force.

Mr von Moltke mentioned that the next meeting is scheduled for the 3<sup>rd</sup> of December, details to be circulated by ESMA's Secretariat.

Lastly, one member of the WG inquired about the status of the newly appointed WG members, asking if they had been appointed with voting rights, on which ESMA clarified that they indeed had been appointed as such. One member of the WG mentioned it will revert to ESMA and Chair's office regarding that last point.



## List of participants

### Participant's organisation

### Name of participant

#### **Chairperson**

Deutsche Bank

Mr James von Moltke

#### **Voting members**

AXA Investment Managers

Mr Alexandre Papadacci

Banco Sabadell

Mrs Marta Riveira Cazorla

Banco Sabadell

Mrs Laura Caballero Fernandez

Bank of Ireland

Mr Barry Moran

Barclays

Mr Joseph McQuade

BBVA

Ms Ana Rubio

BBVA

Mr Ignacio Ollero

BME Clearing

Mr Emilio Gamarra Mompeán

BME Clearing

Mrs Monica Blanco Vieito

BNP Paribas

Ms Dominique Le Masson

BNP Paribas

Mr David Gorans

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Mrs Isabelle Paresys

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Mr Volker Wellmann

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Mr Olivier Hubert

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Mr Grégoire de Clarens

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Mr Francesc Xavier Combis

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Mr Dan Gottlander

Crédit Agricole

Ms Florence Mariotti

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Mr Yann Marhic

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Mr Alex Wilson (Chairs Office)

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Mr Simon Goodwin (Chairs Office)

Deutsche Bank

Mr Juergen Sklarczyk

DZ Bank

Mr Christoph Block

Erste Group

Mr Rene Brunner

Eurex Clearing

Mr Andreas Franke

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Mr Markus Schmidtchen  
Mr Jan Misch  
Mr Philip Whitehurst  
Mr Davide Tortora  
Mr Javier Pareja  
Ms Monica Lopez-Monis Gallego  
Mr Grégory Albertini  
Mr Stephane Cuny  
Mr Mathieu Casadevall  
Mrs Diane Sebeyran  
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#### **Non-voting members**

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European Money Markets Institute  
International Capital Market Association  
International Swaps and Derivatives Association  
Loan Market Association

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Mr Vladimir Tsonchev  
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Mr Thomas Vlassopoulos  
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