

Luxembourg, le 19 mars 2013

Aux établissements de crédit participant
au panel de détermination de l'Euribor

CIRCULAIRE CSSF 13/562

Concerne : Exigences spécifiques en matière de gouvernance et de contrôle internes pour les établissements de crédit qui participent au panel de détermination de l'Euribor

Mesdames, Messieurs,

Afin de sauvegarder l'intégrité des marchés financiers face aux risques de manipulation d'indices financiers de référence, l'Autorité bancaire européenne (EBA) a émis, en coordination avec l'Autorité européenne des marchés financiers, des recommandations spécifiques pour les établissements de crédit qui participent au panel de détermination de l'Euribor. La présente circulaire transpose ces recommandations¹ dans la réglementation luxembourgeoise.

Les exigences spécifiques formulées par la présente circulaire sont complémentaires des obligations générales en matière de gouvernance interne, d'administration centrale et de gestion des risques énoncées par la circulaire 12/552. Elles représentent une application particulière des principes généraux énoncés dans ladite circulaire aux mécanismes de soumission de taux Euribor à Euribor-EBF, dans le but de renforcer la gouvernance interne des banques participant au panel Euribor par un code de conduite comportant des exigences spécifiques en matière d'identification et de gestion des conflits d'intérêts, par des mécanismes de contrôle interne consacrés (y compris des audits internes et externes), par l'archivage des données communiquées et la comparaison avec les transactions sous-jacentes réellement effectuées.

Chapitre I. Définitions et champ d'application

1. On entend aux fins de la présente circulaire par:
 - « taux » : les taux Euribor pour toutes les échéances définies par Euribor-EBF ;
 - « code de conduite » : les parties du code de conduite général préparé par l'établissement de crédit conformément au point 55 de la circulaire 12/552,

¹ «EBA Recommendations on supervisory oversight of activities related to banks' participation in the Euribor panel» (EBA/REC/2013/01) du 11 janvier 2013

qui tiennent compte des exigences spécifiques énoncées au chapitre II de la présente circulaire, ou bien un document interne spécifique, établi en relation avec la participation de la banque au panel de détermination de l'Euribor et qui tient compte de ces mêmes exigences ;

- « banque participant au panel Euribor » : tout établissement de crédit qui participe à la détermination des taux Euribor à travers des soumissions de taux à Euribor-EBF.

2. La présente circulaire s'applique aux établissements de crédit participant au panel de détermination de l'Euribor.

Chapitre II. Exigences spécifiques applicables au processus de soumission de taux à Euribor-EBF

3. Le processus de soumission des taux à Euribor-EBF doit être couvert par les politiques de l'établissement de crédit en matière de gestion et de contrôle des risques et de mécanismes de contrôle interne. En particulier, les banques en question sont tenues d'appliquer systématiquement le principe des quatre yeux aux soumissions de taux.
4. Les établissements de crédit doivent organiser des formations appropriées pour ceux parmi leurs employés qui interviennent dans le processus de soumission des taux et ceux qui ont recours aux taux.
5. Le code de conduite de l'établissement de crédit participant doit couvrir de façon spécifique le processus de soumission de taux à Euribor-EBF. Les employés chargés de la soumission de taux à Euribor-EBF ainsi que leurs responsables directs doivent confirmer par écrit qu'ils ont lu le code en question et qu'ils s'engagent à le respecter.

Le code de conduite doit inclure une politique de gestion des conflits d'intérêts, prévoyant notamment:

- des procédures efficaces pour prévenir ou contrôler l'échange d'informations entre employés exécutant des tâches pouvant donner lieu à des conflits d'intérêts, partout où un tel échange d'informations peut influencer les taux soumis à Euribor-EBF ;
- des règles permettant d'éviter la collusion entre les banques participant au panel de détermination de l'Euribor et l'administrateur des taux ;
- des mesures qui préviennent ou limitent le risque qu'une personne exerce une influence inappropriée sur la façon dont les employés participant au processus de soumission de taux se déchargent de leurs tâches ;
- l'interdiction de tout lien direct entre la rémunération des employés participant au processus de soumission de taux d'une part et, d'autre part la rémunération ou les revenus générés par d'autres employés principalement engagés dans une autre activité, chaque fois qu'un conflit d'intérêt peut naître par rapport à ces activités.

6. Les mécanismes de contrôle interne de l'établissement de crédit doivent être de nature à garantir, en continu, le respect du code de conduite visé au point 5. Les contrôles exercés sur les taux soumis à Euribor-EBF doivent inclure des comparaisons avec des données vérifiables relatives à des transactions réelles. Ces contrôles doivent également permettre de détecter toute transaction inverse (transaction réalisée après soumission des taux et annulant une transaction réalisée avant ladite soumission des taux).

La fonction compliance doit rapporter le résultat de tels contrôles effectués par ses soins, y compris sur les transactions inverses, de façon régulière à la direction autorisée, voire au conseil d'administration.

7. Le processus de soumission et les procédures y relatives doivent faire l'objet de revues périodiques indépendantes de l'audit interne et du réviseur d'entreprises agréé, documentées dans leurs rapports respectifs transmis à la CSSF.
8. Les établissements de crédit doivent garder des enregistrements de toutes leurs soumissions de taux, couvrant tous les aspects de ces soumissions et permettant d'identifier les employés ayant pris part au processus. Ces enregistrements doivent se faire sous une forme qui permet leur consultation ultérieure avec une piste d'audit documentée.

Chapitre III. Entrée en vigueur

9. La présente circulaire entre en vigueur avec effet immédiat.

Veillez recevoir, Mesdames, Messieurs, l'assurance de nos sentiments très distingués.



Claude SIMON
Directeur



Simone DELCOURT
Directeur



Jean GUILL
Directeur général

Annexe: EBA recommendations on supervisory oversight of activities related to banks' participation in the Euribor panel ([EBA/REC/2013/01](#)) (www.eba.europa.eu)

EBA Recommendations

on supervisory oversight of activities related to banks' participation in the Euribor panel



Recommendations on supervisory oversight of activities related to banks' Euribor panel participation

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1. Executive Summary

In the context of recent public attention to financial market reference rates, their calculation procedures and governance arrangements, the Boards of Supervisors of the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA) agreed, in September 2012, to enhance the cooperation among competent authorities on the investigation and enforcement regarding the Euribor panel banks. They also agreed on a joint review of the Euribor-EBF process in order to fully understand the Euribor rate setting process and its susceptibility to the risk of manipulation.

In the current institutional setting, benchmark rate-setting is not a regulated activity in the EU and Euribor-EBF as benchmark administrator of Euribor is not covered by any specific legislation related to the financial sector. Given the systemic importance of Euribor and the insufficiencies revealed by the review (Report on administration and management of Euribor) it was considered necessary to recommend immediate measures to increase the reliability and credibility of Euribor.

The Recommendations identify harmonised supervisory practices for the oversight of the Euribor submission process. Harmonised supervisory oversight of all panel banks will increase the reliability of Euribor by setting standards for supervision of submission processes. The Recommendations complement the EBA Guidelines on Internal Governance, published on 27 September 2011, which already set out in more detail the requirements for institutions' internal organisation, management body, risk management and control procedures, including the new product approval process, IT-systems and business continuity management and transparency. In addition to the Recommendations, the EBA and ESMA are providing feedback to Euribor-EBF based on the findings of the review.

The Recommendations focus on requests to strengthen Euribor panel banks' internal governance arrangements including a code of conduct with emphasis on identifying and managing internal conflicts, internal control arrangements (including audits), record keeping and comparison with actual transactions. To ensure a representative panel, competent authorities are recommended to encourage all banks active in Euro money markets to participate in the Euribor panel.

2. Background and rationale

Financial market reference rates, their calculation procedures and governance arrangements have come under close public scrutiny in recent years. A need for reform of reference rate-setting mechanisms has been expressed across the regulatory and supervisory communities as well as the financial markets.

The European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA) have taken a joint initiative, considering (i) potential serious flaws in the way inter-bank and related interest rate benchmarks are being set in the EU, (ii) the widespread use of inter-bank benchmarks and the implications that a loss in confidence in these rates may have for financial markets, (iii) the distrust that the potential manipulation or improper setting of inter-bank reference rates may raise for other benchmarks or indices in the financial markets.

The Boards of Supervisors of the EBA and ESMA agreed in September 2012 to work on benchmark related issues and more specifically:

- to enhance the cooperation among competent authorities in their investigation and enforcement activities. To that end, a network of experts for exchanging information on investigations by competent authorities and for cooperating in specific cases, particularly in Euribor cases, was established in October 2012;
- to review the Euribor-EBF process in order to fully understand the Euribor rate setting process and its susceptibility to the risk of manipulation; and
- to develop principles focused on the benchmark setting processes in Europe (including but not limited to Euribor and other comparable interest rate processes) in order to have a sound framework in the short term.

In the current institutional setting, benchmark rate setting is not a regulated activity in the EU and Euribor-EBF as benchmark administrator of Euribor is not covered by any specific legislation related to the financial sector. Given the systemic importance of Euribor and the insufficiencies revealed by the review, it was considered necessary to recommend immediate measures to increase the reliability and credibility of Euribor.

The regulatory framework already contains requirements for institutions regarding their internal governance, which are also relevant for the rate setting process and the use of benchmarks. Article 22 of Directive 2006/48/EC provides that competent authorities shall require every credit institution to have robust governance arrangements in place. According to Article 16 of its founding Regulation, the EBA shall issue guidelines addressed to competent authorities and financial institutions to establish consistent, efficient and effective supervisory practices and to ensure common, uniform and consistent application of Union law, including Directive 2006/48/EC. The present Recommendations aim to establish harmonised requirements for internal governance arrangements of banks participating in the Euribor price setting process in addition to the EBA Guidelines on Internal Governance, published on 27 September 2011 which already set out in more detail the requirements for institutions' internal organisation, management body, risk

management and control procedures including the new product approval process, IT-systems and business continuity management and transparency.

The EBA and ESMA have also worked on principles for benchmark rate setting processes in Europe which cover all types of benchmarks and also benchmark administrators.

3. EBA Recommendations on supervisory oversight of activities related to banks' participation in the Euribor panel

Status of these Recommendations

1. This document contains Recommendations issued pursuant to Article 16 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (*the EBA Regulation*). In accordance with Article 16(3) of the EBA Regulation, competent authorities and financial institutions must make every effort to comply with the Recommendations.
2. Recommendations set out the EBA's view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. The EBA, therefore, expects all competent authorities to whom these Recommendations are addressed to comply with them. Competent authorities to whom Recommendations apply should comply by incorporating them into their supervisory practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where Recommendations are directed primarily at institutions.

Reporting Requirements

3. According to Article 16(3) of the EBA Regulation, competent authorities shall notify the EBA as to whether they comply or intend to comply with these Recommendations, or otherwise state the reasons for non-compliance, by 11.03.2013. In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form provided at Section 5 to compliance@eba.europa.eu with the reference 'EBA/Rec/2013/01'. Notifications should be submitted by persons with appropriate authority to report on compliance on behalf of their competent authorities.
4. Notifications will be published on the EBA website, in line with Article 16(3).

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EBA Recommendations on supervisory oversight of activities related to banks' participation in the Euribor panel

Title I - Subject matter, scope and definitions

Subject matter

1. These Recommendations complement the EBA guidelines on internal governance (GL 44 of 27 September 2011) by setting out expectations on supervisory oversight of credit institutions' internal governance arrangements in relation to their participation in the panel providing Euribor rates.

Definitions

2. For the purpose of these Recommendations, the following definitions apply:
 - (a) 'Euribor' means Euribor rates for all available tenors as defined by Euribor-EBF;
 - (b) 'Euribor panel bank' means credit institutions as defined in art. 4(1) of Directive 2006/48/EC participating in the panel providing Euribor rates as defined by Euribor-EBF;
 - (c) 'submitter' means a person in the Euribor panel bank participating in the Euribor rate submission process;
 - (d) 'code of conduct' means internal documentation describing the rate submission process, and the roles and responsibilities of the different actors;
 - (e) 'management body' means the governing body (or bodies) of a credit institution, comprising the supervisory and the management function, which has ultimate decision-making authority and is empowered to set the credit institution's strategy, objectives and overall direction

Scope and level of application

3. These Recommendations apply to all competent authorities supervising Euribor panel banks.

Title II- Requirements regarding supervisory oversight of activities related to banks' Euribor panel participation

4. Competent authorities are recommended to include Euribor submissions in the processes of credit institutions that are subject to their supervisory review.
5. Competent authorities are recommended to ensure that the rate-submission process is covered by panel banks' risk management and risk control policies. More specifically, the

panel banks should apply the four-eye principle to Euribor submissions at all times. Training should be organized within panel banks for both submitters and users of Euribor rate.

6. Competent authorities are recommended to request Euribor panel banks to draft, if not available, or to review, where they already exist, internal codes of conduct for Euribor submissions. Within each Euribor panel bank, the respective submitters and their direct managers should be expected to acknowledge in writing that they have read the code of conduct and that they commit to abide by it.
7. The code of conduct should include a conflicts of interest policy covering:
 - (a) effective procedures to prevent or control the exchange of information between staff engaged in activities involving a risk of conflict of interests where the exchange of that information may affect the benchmark data submitted;
 - (b) rules to avoid collusion among contributing firms and between contributing firms and benchmark administrators;
 - (c) measures to prevent or limit any person from exercising inappropriate influence over the way in which staff involved in benchmark data submission carries out activities;
 - (d) the removal of any direct link between the remuneration of staff involved in benchmark data submissions and the remuneration of, or revenues generated by, different staff principally engaged in another activity, where a conflict of interest may arise in relation to those activities.
8. Competent authorities are recommended to request panel banks to establish, implement and maintain adequate internal control mechanisms designed to secure compliance with the code of conduct. Controls performed on the data submitted should include comparisons with actual, transaction-based, verifiable data. Controls should also aim to identify any reverse transaction subsequent to a submission. The compliance function should report its findings, including reverse transactions to senior management on a regular basis. Submissions and procedures should be subject to periodic independent internal and external reviews.
9. Competent authorities are recommended to request panel banks to keep appropriate records of all relevant aspects of submissions, including the staff members involved in single submissions. Records should be kept in a medium that allows the storage of information to be accessible for future reference with a documented audit trail.
10. Competent authorities are recommended to encourage banks to be part of the Euribor panel due to the importance of this reference rate in their own markets.

Title III- Final Provisions and Implementation

11. Competent authorities should implement these Recommendations into their supervisory practices as appropriate by 11.03.2013.

4. Consultation and Impact Assessment

Given the systemic importance of Euribor and the insufficiencies revealed by the review work it was deemed necessary to recommend immediate measures to be taken to increase the reliability and credibility of Euribor. The EBA is not launching a public consultation due to the urgency of the matter and also due to the nature of these supervisory measures which provide specifications in the application of the EBA's existing Guidelines on Internal Governance. The EBA decided to consult on these Recommendations via its Banking Stakeholder Group.

Due to the urgency of the matter, the EBA conducted only a high level impact assessment. The Recommendations proposed in this paper will generate minimal additional compliance costs to the credit institutions that will be included in the panel of the Euribor and to their national supervisory authorities as they further specify the EBA Guidelines on internal governance.

The EBA believes that this burden is outweighed by the benefits for credit institutions, consumers, investors and financial markets of having a reliable Euribor benchmark. ESMA, with which the EBA carried out the background work related to these Recommendations, has also provided the same feedback.

5. Confirmation of compliance with the Recommendations

Date:

Member/EEA State:

Competent authority:

Recommendations: On supervisory oversight of the Euribor Panel banks

Name:

Position:

Telephone number:

E-mail address:

I am authorised to confirm compliance with the Recommendations on behalf of my competent authority: **Yes**

The competent authority complies or intends to comply with the Recommendations:

Yes **No** **Partial compliance**

My competent authority does not, and does not intend to, comply with the Recommendations for the following **reasons**¹:

Details of the partial compliance and reasoning:

Please send this notification to compliance@eba.europa.eu².

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- 1 In cases of partial compliance, please include the extent of compliance and of non-compliance and provide the reasons for non-compliance for the respective subject matter areas.
 - 2 Please note that other methods of communication of this confirmation of compliance, such as communication to a different e-mail address from the above, or by e-mail that does not contain the required form, shall not be accepted as valid.