

Update on Euribor

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EFMLG LETTER AND THE FSB REPORT (July 2014)

Transition to a new benchmark should be carried out by the private sector

- Authorities should work with and guide the private sector
- A “regulatory solution” to redenominate benchmarks in private contracts would go beyond FSB recommendations

Transition from Euribor to Euribor + should be by way of a “paralell run” transitional period rather than a big bang approach. Difficulties with a big bang transition accompanied by regulatory redomination are:

- Authorities would assume responsibility for and liabilities; it is not apparent that such a “bailout” could be justified;
- This approach would represent an unwarranted, and potentially unlawful, interference with private property rights;
- The Regulation on benchmarks is under negotiation

The idea of supporting legislation in the FSB report

Transition plan and timeline (Pages 24 and 25)

“Besides a detailed roadmap for the implementation of EURIBOR+, also a transition plan between EURIBOR and EURIBOR+ should be devised. This would need to ensure that the eventual discontinuation of EURIBOR and its replacement in contracts with EURIBOR+ is done in a way that minimises risks arising from legal provisions on unforeseeability or changed circumstances (*rebus sic stantibus*) and related litigation risks, providing (i) certainty to contracts’ parties on the continuity of existing contracts (e.g. by the design of protocols by industry associations **and/or preferably by legislation¹** and (ii) tools to agree on the conversion from old references to new ones. The plan should also ensure that, during the transition period, banks remain in the existing EURIBOR panel to avoid a disorderly transition”.

1.- Such legislation would expressly provide that any reference to EURIBOR in an existing contract shall be deemed to mean EURIBOR + and that parties may not rely upon any change to EURIBOR as grounds for terminating, or as a default event under, the contract. See further the mitigation of legal risk mechanisms described in section 4.3 (ii) below.

The idea of a paralell run/ big bang scenario in the FSB report (page 26)

- “The paralell run period should be as short as possible, but as long as necessary. A critical changeover should also be considered; i.e. a paralell run of zero”.
- The idea of “seamless transition”.

