

**By e-mail**

**Circulation: Euribor Panel Banks**

**Subject: Call for nominations for the Legal Working Group – Panel Bank Membership**

Brussels, 22 February 2016

Dear Panel Banks,

EMMI is well aware of the legal concerns linked to the transition of the current quote based Euribor methodology to a transaction-based methodology. To this end, EMMI decided to create a Legal Working Group to support the Steering Committee and the EMMI Secretariat in assessing legal aspects derived from this transition.

As part of their mandate Members of this Working Group will assess jointly the legal aspects in the context of a Seamless Transition or of another transition path should it be deemed necessary.

The Legal Working Group shall be composed of a maximum of 13 representatives from Legal Departments of Panel Banks or National Banking Associations, Allen&Overy, 2 Members from the European Financial Marke Lawyers' Group (EFMLG) and representatives from the EMMI Secretariat.

In order to assess the legal consequences for users of Euribor in as many jurisdictions as possible, it is important to ensure the geographic representativeness within this Working Group. Therefore, it is suggested that Panel Banks within the same country, in collaboration with their respective National Banking Associations, coordinate and designate one representative per country.

**It must be highlighted that the Working Group has an advisory role to the Steering Committee, but has no decision-making power.** Furthermore, EMMI will organize Legal Workshops where the conclusions of the Working Group will be presented to all Panel Banks.

Members of the Working Group will be appointed by the Steering Committee. Panel Banks will find hereby the Terms of Reference of the Legal Working Group (enclosure 1) detailing the Working Group's main responsibilities.

**To this end, I would like to invite you to nominate a candidate within your country who would be willing or available to join the Legal Working Group.**

All nominations, including a short CV/biography, should be sent to the EMMI Secretariat ([info@emmi-benchmarks.eu](mailto:info@emmi-benchmarks.eu)) **by Friday, 4 March 2016 c.o.b.** A kick-off conference call will be scheduled shortly after the composition of the Working Group has been defined.

Thank you in advance for the due consideration that you will give to the invitation to join the Legal Working Group.

Yours faithfully,



Guido RAVOET  
Secretary General

Enclosure: 1- D0105B-2016- Terms of Reference Legal Working Group



EURIBOR  
LEGAL WORKING GROUP  
TERMS OF REFERENCE

Version	Approval date	Approval Body	Reference
Version 1		Steering Committee	D0105C-2016

## 1. Introduction

The Euribor-Eonia Steering Committee (the “**Steering Committee**”) commissioned the establishment of a Legal Working Group (the “**Working Group**”) to support the Steering Committee and EMMI Secretariat in addressing the legal aspects arising from the transition from the current Euribor quote-based methodology to a transaction-based methodology for Euribor (the “**Purpose**”).

The Legal Working Group is convened and chaired by the European Money Markets Institute (“**EMMI**”) in its capacity as administrator of the Euribor benchmark. It reports to the Steering Committee and has an advisory role, but does not have decision-making power.

## 2. Mandate

The Working Group will conduct analysis, develop and recommend, where required, to the Steering Committee any advice or opinion regarding legal aspects derived from the transition to a transaction-based methodology.

Consistent with the Purpose, discussions in the Working Group will focus on legal matters related to the Euribor transition including but not limited to:

- Legal risks in the context of a Seamless Transition<sup>1</sup>
- Assess legal risks of other transition paths, should this be deemed appropriate
- Assess the legal consequences for users of Euribor of the proposed methodological changes in the respective jurisdictions
- Legal implications for Panel Banks in the context of the two proposed reporting methods (i.e. reporting all their transactions “raw data” as in the MMSR vs reporting a volume weighted average and an aggregate volume)
- Liabilities of Panel Banks for contributing to Euribor

## 3. Membership

The Working Group will be composed of a maximum of 13 members coming from the Legal Departments of Panel Banks or National Banking Associations, members of the EMMI Secretariat, representatives from Allen&Overy Belgium and 2 representatives from the European Financial Markets Lawyers Group (EFMLG). The Belgian

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<sup>1</sup> The Market Participants Group (MPG) Report on “Reforming Interest Rate Benchmarks” dated March 2014, refers to four different types of transitions. While under the “Seamless Transition” the benchmark is retained by merely adapting the underlying methodology, the other transition paths imply the launch of a new benchmark which then replaces the legacy IBOR.

[http://www.fsb.org/wp-content/uploads/r\\_140722b.pdf](http://www.fsb.org/wp-content/uploads/r_140722b.pdf)



Financial Services and Markets Authority (FSMA) may be invited to participate as an observer. The Members of this Working Group shall be appointed by the Steering Committee on a personal basis.

In order to assess the legal consequences for users of Euribor in as many jurisdictions as possible, it is important to ensure the geographic representativeness within this Working Group. Therefore, it is suggested that Panel Banks within the same country, in collaboration with their respective National Baking Associations, coordinate and designate one representative per country.

#### **4. Frequency of Meetings**

The frequency of meetings shall be adjusted by the EMMI Secretariat, as appropriate on *ad hoc* basis.

Meetings may be held by conference call or in person. Legal Workshops on the Euribor transition may be convened in order to present the conclusions of the Working Group.

#### **5. Guidelines for information-sharing**

Consistent with the Purpose, Working Group discussions of matters described in section 2 ('mandate') shall not involve the disclosure by participants of commercially-sensitive information.

For these purposes "commercially-sensitive" information includes but is not limited to:

- Transaction- or client-level data of any kind;
- Information about a participant's or its clients' or counterparties' trading strategies;
- Current or recent information on participants' margins and profitability, funding costs, capital requirements or allocations, risk appetite, internal organisation or policies;
- Views on likely developments in the market where those views are based on insights from commercially sensitive information such as a participant's or its clients' or counterparties' trading strategies;
- Any current or recent pricing information, or future pricing intentions, including pricing policies and price related terms, whether generally or in respect of specific trades/ specific clients e.g. bid-offer spread, discounts, commissions, fees;
- Any other terms and conditions of arrangements with clients or counterparties;
- Prices or any other terms and conditions of arrangements with suppliers or intermediaries e.g. brokers' fees;
- Current, recent or future strategic plans, including market or product strategy, e.g. intentions to focus on particular businesses, customers or geographic areas;
- Information relating to current or recent antitrust or regulatory investigations or litigation.

Discussions about common problems and challenges of a general, administrative or logistical nature are permissible as long as they are not based on insights from commercially-sensitive information such as the internal submissions processes of individual banks, strategies for implementing EMMI's proposed methodology or any commercial responses to the proposals e.g. whether, how and on what price/ terms to transact, where/ in what instruments to put liquidity, how to fund etc. For example, the expression of an opinion regarding a change to EMMI's proposed methodology will generally be consistent with the Purpose. However, participants should not

go on to explain the rationale for this opinion if to do so would reveal commercially-sensitive information. Such an explanation should only be expressed in a bilateral discussion with EMMI.

If there is a need for participants to exchange commercially-sensitive information to further the proper aims of the Working Group, then competition legal advice must be sought prior to any disclosure taking place on whether it is possible to structure the exchange in a way that desensitises it to mitigate any competition/ antitrust law risk. For example, commercially-sensitive information collected from participants should be aggregated and anonymised before dissemination, and all recipients should sign a Non-Disclosure Agreement.

## 6. Basis of participation

- All participants in the Working Group shall at all times comply with and be mindful of their responsibilities under competition/antitrust law.
- It is the responsibility of each attendee at Working Group meetings to ensure that they understand and comply fully with their legal responsibilities and these guidelines at all times and to seek guidance from in-house legal counsel if in doubt about what those responsibilities require.
- Working Group discussions are to be confined to matters necessary and proportionate to the Purpose.
- Under no circumstances are Working Group meetings or discussions to be used as a conduit for participants to facilitate or engage in any form of anti-competitive behaviour.
  - **Do not** discuss or agree on joint or linked actions on issues such as (without limitation):
    - Prices, or any other terms and conditions of business,
    - The allocation of markets/customers/territories,
    - The exclusion of actual or potential competitors, or
    - Other potential limitations of competition.
  - **Do not** discuss or disclose commercially-sensitive information (as detailed in section 5).