

Allen & Overy LLP

MEMORANDUM

To EMMI

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Subject **Advice on the responsibility of panel banks under the two different contribution models**

1. BACKGROUND: TWO DIFFERENT CONTRIBUTION MODELS

1. This advice is based on the confidential EMMI document “*Contribution Models Comparison for the Transaction-based Euribor*” dated 18 March 2016 (“**Contribution Model Document**”). It should be read together with the Contribution Model Document and any capitalised terms not defined in this advice shall have the meaning set out in that document. The Contribution Model Document sets out two different contribution models: 1) the Traditional Model (or Decentralised Model) and 2) Transactional Data Model (or Centralised Model).

2. In the Traditional Model, each Panel Bank is expected to calculate internally its volume-weighted average rate (“**VWAR**”) and total volume for each tenor, as per the new transaction-based methodology, and transmit the final submissions to the Calculation Agent for inclusion in the calculation of the Euribor benchmark. In case no transactions are available on a particular day and for a particular tenor, a Panel Bank is expected to send a “No Transaction” indicator to the Calculation Agent. Under this approach each panel bank is responsible for deriving its own submitted rates. Panel Banks can either use an EMMI-provided application or develop their own internal application to contribute the data.

3. In the Transactional Data Model, each Panel Bank is expected to send its raw transaction data files (in the MMSR XML format) to a centralised Euribor Data Warehouse/Application which will calculate each Panel Bank submission individually before submitting each of them to the Calculation Agent for inclusion in the calculation of the Euribor benchmark.

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While Panel Banks subject to the ECB MMSR can provide an exact copy of their MMSR unsecured segment file, those not subject to the MMSR are required to transmit all their eligible transactions in the same ECB MMSR XML format. As for the protocol for transmitting the transaction files from the Panel Bank IT systems to the centralised Euribor Submission Application, it would be a replication of the MMSR Webservice protocol as specified by ECB/NCBs.

Once captured by the centralised application, transaction file(s) would be processed Panel Bank by Panel Bank in order to filter the Euribor eligible transactions, group them into tenors, calculate a VWAR and total volume (or a “no transaction” indicator) for each tenor, and transmit each tenor submission to the Euribor Calculation Agent system via a dedicated Webservice.

2. ANALYSIS OF THE DIFFERENCE BETWEEN THE TWO CONTRIBUTION MODELS WITH RESPECT TO THE RESPONSIBILITY OF THE PANEL BANKS

4. This advice will analyse whether there is a difference between the two contribution models with respect to the responsibility of the Panel Banks. It will only analyse the specific differences in responsibility, it does not give an overview of all the responsibilities of a Panel Bank.

5. The legal regime applicable to both submission models is identical. It is clear from the upcoming EU Benchmark Regulation¹ that under both models, panel banks will be considered contributors to the Euribor benchmark.

Article 2 of the Benchmark Regulation determines the scope of the Benchmark Regulation and reads “*This Regulation applies to the provision of benchmarks, the contribution of input data to a benchmark and the use of a benchmark within the Union.*”

- ‘Input data’ is defined as “*the data in respect of the value of one or more underlying assets, or prices, including estimated prices, quotes, committed quotes or other values, used by the administrator to determine the benchmark*”.
- ‘Contribution of input data’ is defined as “*providing any input data not readily available to an administrator, or to another person for the purposes of passing to an administrator, that is required in connection with the determination of a benchmark, and is provided for that purpose*”.
- ‘Contributor’ is defined as “*a natural or legal person contributing input data*”.

Given the broad nature of the definition of ‘input data’, it is clear that both the submission of the VWAR and the total volume for each tenor under the Traditional Model as well as the submission of raw transaction data files under the Transactional Data Model will fall under this definition.

Neither the VWAR and the total volume for each tenor nor the raw transaction data files are data that is readily available to EMMI. Therefore the act of passing this data to EMMI will in both cases be an act of contributing to a Benchmark.

In conclusion, under both the Traditional Model and the Transactional Data Model, the Panel Banks will be considered contributors to the Euribor benchmark. The same legal rules will be applicable

¹ The proposal for a regulation of the European Parliament and of the Council on indices used as benchmarks in financial instruments and financial contracts, www.eur-lex.europa.eu, DOC ST 14985 2015 INIT

to the Panel Banks under both models. We are not aware of any rules in the Benchmark Regulation that differentiate between the responsibilities of contributors depending on whether their input consists of VWAR/total volume data or of raw transaction data files.

6. As the applicable legal rules are the same, there is principle no difference in responsibility between both models because a Panel Bank will have the same legal obligations under both models.

In practice the responsibility of a Panel Bank may be more limited under the Transactional Data Model. Under that model a Panel Bank only has to collect the eligible transactional data and no longer needs to (i) determine/filter which transactions specifically qualify for Euribor and (ii) calculate the VWAR and total volume for each tenor (both tasks will be handled by EMMI). Given that the number of practical tasks for the Panel Bank is lower under the Transactional Data Model, the overall risks associated with contributing input data will also be lower. However, a Panel Bank will still need to select which transactions are included in the raw transaction data files, so the selection obligation will not completely disappear.