

ING response to the EC Consultation on the Regulation of Indices

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About ING

ING is a global financial institution of Dutch origin, offering banking, investments, a variety of life insurance, non-life insurance and retirement services to meet the needs of a broad customer base. Going forward, we will concentrate on our position as an international retail, direct and commercial bank, while creating an optimal base for an independent future for our insurance and investment management operations.

With more than 93,000 employees, we serve over 66 million private, corporate and institutional customers in over 40 countries in Europe, North America and Latin America, Asia and Australia.

We draw on our experience and expertise, our commitment to excellent service and our global scale to meet the needs of a broad customer base, comprising individuals, families, small businesses, large corporations, institutions and governments.

Introduction

ING welcomes the opportunity given by the European Commission to comment on the issues raised in the consultation document. In daily practice, ING Bank Treasury is contributing to multiple benchmarks. Some of them imply solely transaction data input while others only require qualitative input. For the purpose of this exercise, ING has based its responses on its role in the Euribor and Eonia fixings.

Principles

ING is of the opinion that any benchmark should adhere to the following principles:

1. A benchmark should be based on actual trade data to avoid subjectivity. Panel banks should only submit contributions when there is actual data. If insufficient actual trade data is available estimated data or extrapolation could be used. The responsibility of extrapolation should be done by the benchmark governing body. A strong governance framework should be in place to point out what submissions are based on actual trade data and what submissions are based on estimation / extrapolation.
2. A clear and unambiguous code of conduct should be available per benchmark. The code of conduct should contain clear definition of the submission criteria, detailed processes, responsibilities and controls.
3. Benchmarks should be governed and published by public institutions. Statutory regulation of benchmarks should be introduced to assure credible independent supervision, oversight and enforcement.
4. The panel composition is the responsibility of the governing body. The panel should be a true reflection of the underlying market. Clear criteria should be in place on the composition criteria for the panel.
5. Volumes should be taken into account in the individual submission of participants and in the calculation of the overall fixing. Calculations should be made computing contributions as weighted average of the transactions undertaken for the relevant benchmark.
6. The individual contribution (including volume) of participations should not be published to avoid reputational risk and manipulation. This is also the current practice for Eonia. Alternatively the publication of individual contributions should lag by a certain period (i.e. 90 days).
7. Governance for contributing banks needs to include robust processes and effective controls specifying concrete parameters to contribute rates. The controls should be part of internal processes and procedures and will be externally audited.

CHAPTER 1: Indices & Benchmarks

Box 1: different type of indices, producers of indices, methodology and uses of indices

1) Which benchmarks does your organization produce or contribute data to?

Please see below the benchmarks that ING contributes data to globally. Please note that the answers to the questionnaire are based on Eonia and Euribor fixings.

Country	Index Name
Singapore	Swap Offered Rate (SOR) for Singapore Dollar
	Swap Offered Rate (SOR) for Thai Baht
	Singapore Dollar Interest Rate Swap
	Spot rate for Singapore Dollar
	Spot rate for Thai Baht
	Spot rate for Indonesian Rupiah
	Spot rate for Malaysian Ringgit
	Spot rate for Vietnamese Dong
	Spot rate for Indian Rupee
Taiwan	Primary Commercial paper / BA rate
	Secondary Commercial paper / BA rate
Bulgaria	SOFIBOR
Ukraine	KYIVPRIME
Ukraine	EMTA (FX USD/UAH snapshot as of 11.00AM)
Turkey	TRLIBOR
Romania	ROBID/ROBOR
Poland	WIBOR
Philippines	PHIBID/PHIBOR: Implied interest rates from the best live bid/offer rates in the FX swap market, captured at around 11:15AM Manila time
	PDST-F: Best live bid rates of government bonds, captured at around 11:15AM Manila time
Czech Rep.	PRIBOR
Slovakia	Slovak government bond composite page
Hungary	BUBOR
	HUFONIA
Hungary	BIRS
Russia	MOSPRIME
	ROISFIX
Russia	NFEA
Brazil	Govt bonds price pool
	OTC market locally
Netherlands	Euribor
	Eonia
	Eurepo

2) Which benchmarks does your organization use? What do you use each of these benchmarks for? Has your organization adopted different benchmarks recently and if so why?

ING uses all benchmarks mentioned in question 1. They are used to price different financial products. There are no different benchmarks adopted recently.

3) Have you recently launched a new benchmark or discontinued existing ones?

Benchmarks have been discontinued due to branch closure.

4) How many contracts are referenced to benchmarks in your sector? Which persons or entities use these contracts? And for which purposes?

N/A

5) To what extent are these benchmarks used to price financial instruments? Please provide a list of benchmarks which are used for pricing financial instruments and if possible estimates of the notional value of financial instruments referenced to them.

N/A

6) How are benchmarks in your sector set? Are they based on real transactions, offered rates or quotes, tradable prices, panel submissions, samples? Please provide a description of the benchmark setting methodology.

For the purpose of this questionnaire, answers are limited in scope to the Euribor and Eonia benchmarks.

- Euribor is the money market reference rate for the euro. Euribor is the rate at which euro interbank term deposits are being offered within the EMU zone by one prime bank to another. Euribor is based on on-balance sheet interbank liabilities as specified by the Euribor-EBF Code of Conduct (Article 1).
The setting of the Euribor requires the input of professional judgment where the Code does not provide with verifiable criteria.
- Eonia is based on real transactions and computed as a weighted average of all overnight unsecured lending transactions undertaken in the interbank market. The calculation of Eonia is based on the Code of Conduct (Article 2) taking into account:
 - Volume of all overnight unsecured lending transactions undertaken during the business day in the interbank market without exception.
 - The weighted average lending rate applied.

7) What factors do you consider to be the most important in choosing a reliable benchmark? Could you provide examples of benchmarks which incorporate these factors?

A benchmark should be based on actual trade data to avoid subjectivity. Panel banks should only submit contributions when there is actual data. If insufficient actual trade data is available estimated data or extrapolation could be used. The responsibility of extrapolation should be done by the benchmark governing body. A strong governance framework should be in place to point out what submissions are based on actual trade data and what submissions are based on estimation / extrapolation.

As example of those benchmarks, Eonia uses only transaction data. Euribor uses transaction data and expert knowledge.

CHAPTER 2: Calculation of Benchmarks: Governance and Transparency

Box 2: Refers to the underlying data used and where there is use of only actual transaction data or also expertise judgment in the calculation of benchmarks.

8) What kinds of data are used for the construction of the main indices used in your sector? Which benchmarks use actual data and which use a mixture of actual and estimate data?

The construction of the Euribor is formed by on-balance sheet interbank liabilities and estimate data when required by deduction of the Code of Conduct.

The Eonia is constructed by actual transaction data, based overnight unsecured euro lending transactions in the interbank market.

9) Do you consider that indices that do not use actual data have particular informational or other advantages over indices based on actual data?

ING supports benchmarks based on actual trade data to avoid subjectivity. If insufficient actual trade data is available estimated data or extrapolation should be used. Indices that do not use actual data normally are based on expert judgment. When they have a regulated governance, qualitative data may provide with an insightful view on trends that may be missed by only taking into account actual data. The responsibility of extrapolation should be done by the benchmark governing body This is relevant in illiquid markets where actual data is not available.

10) What do you consider are the advantages and disadvantages of using a mixture of actual transaction data and other data in a tiered approach?

Advantage:

- Using a mixture of quantitative and qualitative data provides with flexibility to make the determination of rates more reliable. Expert knowledge judgment is required where there is not enough underlying data to provide with an appropriate rate. This is the case when a relatively small and illiquid market is used as the basis for determining rates.
ING supports a benchmark based on actual trade data to avoid subjectivity. If insufficient actual trade data is available estimated data or extrapolation could be used. The responsibility of extrapolation should be done by the benchmark governing body.

Disadvantage:

- Using expert knowledge judgment has the inherent risk of being able to influence the submissions and manipulate them for the contributor's interest unless those specific and adequate controls are in place. Those controls must ensure that there are measures in place to deal with potential conflicts of interest between Derivatives and Money markets.
- If there are not clear criteria in place to apply expert judgment, the risk is that each contributing bank sets the rate using different criteria which may result in a rate that is not a reflection of the underlying market.

11) What do you consider are the costs and benefits of using actual transaction data for benchmarks in your sector?

ING contributes to several benchmarks for which actual transactions are used i.e. Eonia. The cost of using this data relates to the storage of massive amounts of data used for audit purposes. The benefit of using actual transaction data is that provides with transparency and fully auditable information.

Box 3: Governance and Transparency of Underlying data

12) What specific transparency and governance arrangements are necessary to ensure the integrity of benchmarks?

Governance arrangements to ensure the integrity of benchmarks can be provided from different perspectives:

- a/ Regulator perspective;
- b/ Governance for contributing bank perspective; and
- c/ System perspective

a/ From a regulatory perspective set up appropriate regulatory body and environment that provides:

- i) Uniformity on the regulation to govern all data and panel bank contributions
- ii) Centralized and robust oversight
- iii) Independence of the governance body of the index

b/ Governance for contributing banks need to have robust processes and effective controls in place specifying concrete measure to contribute rates. The controls will be part of internal process and procedures. Those controls will include:

- iv) Appointment of authorized persons to contribute – The criteria to designate contributors will take into account the appropriate skills and experience as well as independence in order to guarantee that there are no conflict of interest between various departments;
- v) Methodology used for the contribution with clear guidance to exercise the expert knowledge judgment when contributing rates;
- vi) Senior management involvement on the process;
- vii) Roles of 2nd line of defense to monitor 1st line and ensure integrity on the contribution rates;
- viii) Record keeping and audit logs referencing location and duration of records.

c/ Adequate management systems and controls to ensure the integrity and reliability of submissions with fully auditable capabilities.

Several measures could be taken into account to achieve more **transparency** in contributions:

- Regulations that provide clear and transparent specification of what the benchmark measures, how its accuracy can be evaluated, and what its shortcomings are and what it should and not should be used for.
- The benchmark provider should have obligations in respect of ensuring the integrity not just of the calculation and dissemination of the index but also the oversight of the process of submitting the underlying data.
- Assess the inclusion of non-interbank transactions in the benchmark i.e. CD/CP, term deposits with institutional clients and long term issuance.
- A clear and unambiguous code of conduct should be available per benchmark. The code of conduct should contain clear definition of the submission criteria, detailed processes, responsibilities and controls.
- Volumes should be taken into account in the individual submission of participants and in the calculation of the overall fixing. Calculations should be made computing contributions as weighted average of the transactions undertaken for the relevant benchmark.

13) What are the advantages and disadvantages of imposing governance and transparency requirements through regulation or self-regulation?

Advantages:

- Having a governance body will provide with accountability for the sound operation of the benchmark.
- Regulating the governance of the benchmark contributions will increase independence and create a robust environment:
 - Independency – Broadening the membership of the committee not just to contributor members but to other parties i.e. representative from the regulator, etc.
 - Robust environment by establishing a clear code of conduct related to policies and procedures concerning submissions.
- Index setting would become a regulated activity with the oversight and uniformity of rules that it implies. This would allow imposing sanctions and disciplinary actions over contributors that do not adhere to the rules, increasing the reliability of the benchmark.

Disadvantages:

- When self-regulated, banks can have the option to contribute or not. This could impact the composition of the panel, and ultimately the reliability of the benchmark.
- Cost increase on contributing banks to comply with new regulations.

Statutory regulation of benchmarks should be introduced to assure credible independent supervision, oversight and enforcement.

14) What are the advantages and disadvantages of making contributing data or estimates to produce benchmarks a regulated activity? Please provide your arguments.

Advantages:

- When this activity is regulated, contribution is not at the discretion of the panel but will be mandatory once that the panel commits to contribute. As a consequence of this, the number of contributing banks will increase, which will result in a decrease in collusion.
- The regulatory nature of contributions by the panel banks will impact the credibility and importance that firms and individuals attach to the index submissions being accurate and reliable.

Disadvantages:

- If regulation is not developed consistently across jurisdictions, this could lead to inconsistent implementation of rules and therefore non harmonized contributions by various banks.

Box 4: The contributors of data

15) Who in your sector submits data for inclusion in benchmarks? What are the current eligibility requirements for benchmark's contributors?

For both Euribor and Eonia, a criterion to qualify for and stay on the panel is set in the Euribor Code of Conduct, Article 1:

“Banks can qualify for the panel if they are active players in the euro markets in the euro-zone or worldwide and if they are able to handle good volumes in euro-interest rate related instruments, especially in the money market, even in turbulent market conditions.”

16) How should panels be chosen? Should safeguards be provided for the selection of panel members, and if so which safeguards?

The Euribor Code of Conduct Article 1 provides with the following criteria to choose the Euribor panel:

- Banks should be active players in the euro money markets in the euro-zone or worldwide;

- They are able to handle good volumes in euro-interest rate related instruments, especially in the money market, even in turbulent market conditions

To preserve the reputation of the panel, safeguards should include among others:

- Checks on the reputation of each individual panel member;
- Independence with clear Chinese walls between the interest of the prime bank and the institution;
- Transparent systems, procedures and governance, with clear accountability and responsibility at all levels.
- Governance for contributing banks needs to include robust processes and effective controls specifying concrete parameters to contribute rates. The controls should be part of internal processes and procedures and will be externally audited.

17) How should surveys of data used in benchmarks be performed? What safeguards are necessary to ensure the representativeness and integrity of data gathered in this way?

Benchmarks based solely in surveys of data are not considered reliable. ING supports benchmarks based on actual trade data to avoid subjectivity. If insufficient actual trade data is available estimated data or extrapolation should be used. A strong governance framework should be in place to point out what submissions are based on actual trade data and what submissions are based on estimation / extrapolation. The responsibility of extrapolation should be done by the benchmark governing body.

18) What are the advantages and disadvantages of large panels? Even in the case of large panels could one panel member influence the benchmark?

Advantages:

- Large panels preclude collision since the influence of one or a small amount of contributors becomes very limited or null.

Disadvantages:

- Large panels could be hurting representativeness of the benchmark quotes.
- If the contributors in a large panel are not best placed to provide the best estimates, the size of the panel will not support by itself the independence of the panel.
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19) What would be the main advantages and disadvantages of auditing of panels? Please provide examples.

Advantages:

- Auditing of panels will contribute to create more transparency and credibility of the benchmark.

Disadvantages:

- Increase of cost for performing the auditing and record keeping.

20) Where indices rely on voluntary contributions, do you consider that there are factors which may discourage the making of these contributions and if so why?

Voluntary contributions may give place to discretion to submit a contribution or not. This will impact the continuity of the benchmark, which may potentially encounter the situation where there are no contributions. This has a consequence on the end users of the benchmark and the perception of the benchmarks being reliable.

21) What do you consider to be advantages and disadvantages of mandatory reporting of data? Please provide examples.

Advantages:

- Provides with a good representation of the market through a stable panel of contributors.
- By having a fixed panel of contributors, the integrity of the data is improved because it precludes collision.

Disadvantages:

- Adequate safeguards and independent review should be in place to ensure that panels are representative.

22) For entities contributing to benchmarks which are regulated by financial regulation, what would be the advantages and disadvantages of bringing their benchmark submissions under the scope of this framework?

Advantages:

- Financial regulation provides with a robust control oversight over the benchmark submissions and also provides with standardization over the benchmark.
- Clarifies and standardizes the role of industry guidance

Disadvantages:

- Financial regulation modifications follow strict procedures and approval processes which may amplify the amount required to perform those amendments. As a consequence, benchmarks updates may happen at a different rhythm than evolution in the market that they represent.

Box 5: Index calculations referring to the availability of underlying data

23) Do you consider that responsibility for making adjustments if inadequate data is available should rest with the contributor of the data, the index provider or the user of the index?

It should be sole responsibility of the index provider to provide with clear parameters for the contributors and then check that contributed data adjusts to those parameters.

The index provider, having access to the data provided by all contributors, will be best placed to determine the adequacy of the data submitted and therefore, should have checks in place to validate that the data conform to the rules of the index. The index provider should perform scrutiny of submissions as benchmark administrator. This should include pre-publication verification checks, as well as post-publication scrutiny against a set of verifiable statistics.

24) What is the formal process that you use to audit the submissions and calculations?

Internal procedures are in place that follows the four eyes principles in all the stages from selection of data to the submission phase. Additionally, strong monitoring measures and controls from the 2nd (Compliance and Market risk) and 3rd (Audit) line of defense are in place.

25) If there are any weaknesses identified in the audit, who are they reported to and how are they addressed? Is there a follow up in place?

ING follows an internal procedure when weaknesses are identified by audit. Audit creates an open point that is presented to senior management. Senior management ensures that remediation actions are in place following the audit process.

26) How often are submissions audited, internally or externally and by what means? Do you consider the current audit controls are sufficient? What additional validation procedures would you suggest?

Submissions are audited at least once a year. Risk performs random checks several times per month.

27) What are the advantages and disadvantages of a validation procedure? Please provide examples.

Advantages:

- A validation procedure provides clear and transparent rules regarding the submission which does not lead to interpretation by submitters, and contributes to the robustness of the index resulting in a more credible index.
- All lines of defense play a role providing with a robust control mechanism i.e. four eyes principle, reduce risk of manipulation and misconduct.

Disadvantages:

- Operational burden and cost increase.

28) Who should have the responsibility for auditing contributing data, the index provider or an independent auditor or supervisor?

Benchmarks should be governed and published by public institutions. Statutory regulation of benchmarks should be introduced to assure credible independent supervision, oversight and enforcement.

29) What are the advantages and disadvantages of making benchmarks a regulated activity? Please provide arguments.

Advantages:

- Financial regulation provides with a robust control oversight over the benchmark submissions and also provides with standardization over the benchmark.
- Increases reliability of the benchmark

Disadvantages:

- Regulation updates are subject to strict procedures and timelines. By regulating the benchmarks, it makes their evolution subject to the speed in which regulation evolves, which may be different to the speed of the market represented.

CHAPTER 3: THE PURPOSE AND USE OF BENCHMARKS

Box 6: The purpose, use and controlling the use of benchmarks

30) Is it possible and desirable to restrict the use of benchmarks? If so, how, and what are the associated costs and benefits? Please provide estimates.

For purpose of answering this question we refer to “The Wheatley Review of LIBOR: final report”¹

31) Should specific benchmarks be used for particular activities? By whom? Please provide examples.

For purpose of answering this question we refer to “The Wheatley Review of LIBOR: final report”¹

32) Should benchmarks developed for wholesale purpose be used in retail contracts such as mortgages? How should non-financial benchmarks used in financial contracts be controlled?

For purpose of answering this question we refer to “The Wheatley Review of LIBOR: final report”¹

33) Who should have the responsibility for ensuring that indices used as benchmarks are fit for purpose, the providers, the user (firms issuing contracts referenced to benchmarks), the trading venues or regulators?

For purpose of answering this question we refer to “The Wheatley Review of LIBOR: final report”¹

CHAPTER 4: PROVISION OF BENCHMARKS BY PRIVATE OR PUBLIC BODIES

Box 7: Provision of benchmarks by private or public bodies

34) Do you consider some or all indices to be public goods? Please state your reason.

All indices are considered public goods. By statutory regulation of benchmarks there is assurance on independent supervision, oversight and enforcement.

35) Which role do you think public institutions should play in governance and provision of benchmarks?

- Public institutions should set out written policies that establish clear requirements and governance of surrounding provisions of benchmarks, i.e. sanctions, compliance resolutions, segregation of duties. could impose sanctions on benchmark manipulation.
- Public institutions should provide with clear methodology to make submissions, including having a clear set of criteria to perform contributions

36) What do you consider to be the advantages and disadvantages of the provision of indices by public bodies?

¹ Please see chapter 7, http://cdn.hm-treasury.gov.uk/wheatley_review_libor_finalreport_280912.pdf

Advantages

- Public bodies should be able to provide with appropriate regulation that imposes governance and able to enforce the principles that ING endorse and detailed in the introduction.
- Ability to establish an independent and credible governance with adequate oversight

37) Which indices, if any, would be best provided by public bodies? As a principle, all indices would be best provided by public bodies

NA

38) What conflicts of interest would arise in the provision of indices by public bodies? What would be the best way of avoiding these conflicts of interest?

A conflict of interest would arise if interests of all parties are not taken into account properly.

CHAPTER 5: IMPACT OF POTENTIAL REGULATION: TRANSITION, CONTINUITY AND INTERNATIONAL ISSUES

Box 8: Transition and continuity

39) What are the likely transition challenges, costs and timelines for relevant benchmarks? Please provide examples.

- Litigation costs
- Phasing out the current benchmarks

40) How do you consider that the adoption of new benchmarks could be ensured? Is this best framed in terms of encouraging or mandating the use of particular benchmarks?

The adoption of a new benchmark should be encouraged and not mandated. This will enable an organic development of the transition if it adapts to the need of users.

41) How can reforms of the regulation of benchmarks be most easily implemented?

Having harmonized legislation across jurisdictions. This will provide with a standardized approach to the contribution and submission to benchmarks.

42) What positive or negative impacts, if any, do you see on small and medium-sized enterprises of the possible regulation of indices, and how could any negative impacts be mitigated?

Regulation of indices provides transparency for benchmark users. Benchmarks should be governed and published by public institutions. Statutory regulation of benchmarks should be introduced to assure credible independent supervision, oversight and enforcement.

Regulation of indices may imply an additional reporting requirement burden.

43) Are there other impacts which should be considered? If so please specify the nature of the impacts and provide evidence.

N/A

Box 9: International aspects

44) In which countries are benchmarks used in your sector produced? From which countries are data used for the production of benchmarks in your sector? In which countries are benchmarks used in your sector?

N/A

45) Are there non-EU benchmarks which could serve as substitutes? Are there non-EU benchmark providers which could produce similar benchmarks?

N/A

46) Are there international benchmarks which could serve as substitutes for national benchmarks?

N/A

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