

Public consultation by the working group on euro risk-free rates on EURIBOR fallback trigger events

Response form

Please enter all your feedback in the grey coloured cells of this form using the drop-down menus where appropriate (i.e. where choices are provided and highlighted in the question in bold).

Please send your response to EuroRFR@ecb.europa.eu by 17:00 CET on 15 January 2021.

Institution/Company name:	Loan Market Association (LMA)
Type of respondent:	Market association
Country code:	UK

Please note that the European Central Bank (ECB) and the European Securities and Markets Authority (ESMA) will evaluate all the responses and prepare an anonymised summary of the feedback. Individual feedback will not be published, and will only be shared between the ECB, as secretariat of the working group on euro risk-free rates, and ESMA, as secretariat of the subgroup on contractual robustness.

Question number	Question	Reply
1	Do you agree with the inclusion of "Event 1" as a trigger event in EURIBOR fallback provisions? (yes / no / no opinion) Event 1: A public statement or publication of information by or on behalf of the regulatory supervisor of the EURIBOR administrator stating that said administrator has ceased or will cease to provide EURIBOR permanently or indefinitely provided that, at the time of the statement or publication, there is no successor administrator that will continue to provide EURIBOR.	Yes
	Please elaborate.	This trigger event is broadly consistent with trigger events for LIBOR fallbacks (e.g. the ARRC, ISDA fallback triggers and LMA rate switch triggers), as well as the amendments to the EU BMR and is well understood by the market. Given that the ISDA, LMA and EU BMR wording contemplates such an announcement being made by other authorities, including an insolvency official with jurisdiction over the administrator, this should be considered for inclusion within the trigger events for consistency.
2	Do you agree with the inclusion of "Event 2" as a trigger event in EURIBOR fallback provisions? (yes / no / no opinion) Event 2: A public statement or publication of information by or on behalf of the EURIBOR administrator stating that said administrator has ceased or will cease to provide EURIBOR permanently or indefinitely provided that, at the time of the statement or publication, there is no successor administrator that will continue to provide EURIBOR.	Yes
	Please elaborate.	This trigger event is broadly consistent with trigger events for LIBOR fallbacks (e.g. the ARRC, ISDA fallback triggers and LMA rate switch triggers), as well as the amendments to the EU BMR and is well understood by the market.
3	Do you agree with the inclusion of "Event 3" as a trigger event in EURIBOR fallback provisions? (yes / no / no opinion) Event 3: An official public statement by or on behalf of the supervisor of the EURIBOR administrator that, in its view, EURIBOR is no longer representative, or will no longer be representative, of the underlying market it purports to measure and no action to remediate such a situation is taken or expected to be taken as required by the supervisor of the EURIBOR administrator.	Yes

	Please elaborate.	This trigger event is broadly consistent with trigger events for LIBOR fallbacks (e.g. the ARRC, ISDA fallback triggers and LMA rate switch triggers), as well as the amendments to the EU BMR and is well understood by the market. The trigger should take effect from the point at which EURIBOR is no longer representative (not the date of an announcement of future non-representativeness). We note that ISDA and LMA triggers refer to a statement being made in the awareness that it would engage fallbacks (to reflect statements made by the FCA). A similar qualification may be considered or the supervisor requested to state this in respect of such announcements.
4	Do you agree with the proposal of <u>not</u> including the "Event 4" as a trigger event in EURIBOR fallback provisions? (yes / no / no opinion) Event 4: The EURIBOR administrator determines that EURIBOR should be calculated in accordance with its reduced submissions or other contingency or fallback policies.	Yes
	Please elaborate.	Whilst this might be an appropriate trigger to an amendment process, it is less appropriate to trigger hardwired fallbacks. It is also inconsistent with trigger events for LIBOR fallbacks (e.g. the ARRC, ISDA fallback triggers and LMA rate switch triggers), as well as the amendments to the EU BMR.
5	Do you agree with the inclusion of "Event 5" as a trigger event in EURIBOR fallback provisions? (yes / no / no opinion) Event 5: It has become, for any reason, unlawful under any law or regulation applicable to relevant parties to the agreement to use EURIBOR.	No
	Please elaborate.	The application of an unlawfulness trigger poses several challenges, particularly given the international use of EURIBOR and the inconsistency of this trigger with ARRC, ISDA IBOR Fallbacks Protocol and LMA rate switch triggers. In a syndicated loan context, which are often multicurrency and involve numerous international counterparties, it is not clear how this trigger would apply. Loans already contain illegality provisions and such a trigger could cut across the operation of those provisions which are well understood.
6	Do you agree with the inclusion of "Event 6" as a trigger event in EURIBOR fallback provisions? (yes / no / no opinion) Event 6: EURIBOR is permanently no longer published without a previous official announcement by the competent authority or the administrator.	No
	Please elaborate.	Whilst we understand the attraction of having a "catch-all" provision, we do not think this is sufficiently precise and objective to be included given the need to try and define when non-publication becomes "permanent" for these purposes. It is also inconsistent with ARRC, ISDA fallback and LMA rate switch triggers, as well as the amendments to the EU BMR. Given the various policies of EMMI and the FSMA, a permanent cessation without any announcement (whether prior to or very shortly thereafter) would seem to us to be highly unlikely.
7	Do you agree that the inclusion of a material change in EURIBOR methodology (as defined by the EMMI) should <u>not</u> result in an automatic trigger event and parties are free to agree when entering into the contract that either (i) references in contracts to EURIBOR shall be understood to be references to EURIBOR as changed, or (ii) discuss between parties to continue the contract with the materially changed EURIBOR or to fall back to the EURIBOR fallback rates included in the contract? (yes / no / no opinion) Event 7: Material change is made to EURIBOR methodology.	Yes
	Please elaborate.	We agree that a material change should not automatically trigger EURIBOR fallbacks. It is more appropriate to trigger an amendment process. We would caution against the inclusion of wording that EURIBOR shall be understood to be EURIBOR as changed as this wording is not strictly necessary and could cast doubt on legacy documents not containing this language.
	Should all asset classes have the same fallback trigger events, to the extent possible? (yes / no / no opinion)	Yes

8	Please elaborate.	<p>This should be to the extent possible and appropriate. Ideally there should be consistency across related asset classes. There may, however, be product specific reasons why trigger events may differ (for example, complications in including an unlawfulness trigger as noted above). As is currently the case with existing fallbacks, there is also an onus on parties themselves to ensure, when entering into new contracts, that related contracts have matching fallback triggers. Consistency of fallback triggers between jurisdictions should also be considered, especially for multicurrency products.</p>
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