



EUROPEAN COMMISSION

MEMO

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Libor scandal: Amendments to proposed Market Abuse legislation to fight rate-fixing – frequently asked questions

The European Commission has today presented amendments to its October 2011 Proposals for a Regulation on Market Abuse and for a Directive on Criminal Sanctions for Market Abuse (see [IP/12/846](#)). For more information on the October 2011 proposals, see [IP/11/1217](#), [IP/11/1218](#) and [MEMO/11/715](#).

Amended proposal for a Regulation on market abuse

1. Why has the Commission adopted an amended proposal for a Regulation following the LIBOR/EURIBOR investigations?

Since March 2011, investigations have been taking place in relation to possible manipulation of the EURIBOR and LIBOR benchmarks for interbank lending rates by a number of banks. The suspicion was that banks had provided estimates of the interest rate at which they would accept offers of funding which were different from the rate they would have accepted in practice. As a result, the integrity of the rates has been called into question – rates which are used as benchmarks for borrowing and as references for the pricing of many financial instruments such as interest rate swaps and consumer contracts such as mortgages, loans and credit cards. Furthermore, the individual contributor banks' estimates provided misleading information to the market about their likely costs of funding.

The Commission has assessed whether possible manipulations of benchmarks including LIBOR and EURIBOR are covered by its proposals for a Regulation on insider dealing and market manipulation and the related proposal for a Directive on criminal sanctions for insider dealing and market manipulation. Given that benchmarks are not currently explicitly covered by these proposals, the Commission has concluded that direct manipulation of benchmarks does not fall within the scope of either proposal.

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Therefore, in order to capture the direct manipulation of benchmarks and in order to ensure that such manipulation of benchmarks is a criminal offence, the Commission has proposed to amend its proposals for a Regulation and for a Directive. The Commission has exercised its right of initiative in this area to clarify the changes which the Commission considers are essential so that its proposals adequately address the issues highlighted by the LIBOR scandal. The Commission's amended proposals are timely as the European Parliament and the Council will be able to consider them before adopting in the autumn a Committee Report (as regards the European Parliament) and a general approach (as regards the Council) regarding the Commission's original proposals for a Regulation and a Directive.

2. Why is the manipulation of benchmarks a cause for concern?

Many financial instruments are priced by reference to benchmarks. While it may be difficult or impossible for a competent authority to prove that manipulation of a benchmark had an effect on the price of related financial instruments, any actual or attempted manipulation of important benchmarks can however have a serious impact on market confidence and could result in significant losses to investors or distort the real economy. It is therefore essential to prohibit manipulation of benchmarks unequivocally, and to clarify that competent authorities could impose administrative sanctions for the offence of market manipulation in these cases, without the need to prove or demonstrate incidental issues such as price effects. It is also essential that all necessary steps are taken to prevent such manipulation and enable and facilitate the work of competent authorities in imposing sanctions. A stringent legal framework will act as a credible deterrent to such behaviour, thereby protecting investors and restoring market confidence. These regulatory steps should include criminal sanctions.

3. What are benchmarks and what types of benchmarks and manipulation will be prohibited by the amended proposal for a Regulation?

A benchmark is any commercial index or published figure calculated by the application of a formula to the value of one or more underlying assets or prices, including estimated prices, interest rates or other values, or surveys by reference to which the amount payable under a financial instrument is determined. Underlying assets or prices referenced in benchmarks can include equities (e.g. the FTSE 100 index), bonds (e.g. NASDAQ OMX fixed income), interest rates (e.g. LIBOR or EURIBOR), or commodities such as agricultural products (e.g. cocoa LIFFE London), metals (e.g. Gold COMEX) or oil (e.g. Brent oil ICE). All benchmarks are included in the amended proposal, provided that these determine the amount payable under a financial instrument. The amended proposal for a Regulation would prohibit natural or legal persons from transmitting false or misleading information, providing false or misleading inputs, or any action which manipulated the calculation of a benchmark, including the manipulation of benchmarks' methodologies.

Amended proposal for a Directive on criminal sanctions for market abuse

4. Why has the Commission adopted an amended proposal for a Directive following the LIBOR scandal?

The Commission considers it essential that manipulation of benchmarks is subject to criminal sanctions in order to ensure the effective enforcement of EU policy on market integrity.

5. Which offences in relation to benchmarks will be subject to criminal sanctions?

The amended proposal for a Directive would extend the scope of the criminal offence of market manipulation in the proposal for a Directive to cover the direct manipulation of benchmarks, if committed intentionally. The amended proposal would also require Member States to criminalise inciting, aiding and abetting the manipulation of benchmarks, as well as attempts at such manipulation.

Wider issues

6. Is self-regulation of benchmarks sufficient? Is further regulation necessary?

At the moment, all options are on the table. The Commission, the European Central Bank (ECB), central banks, the Financial Stability Board (FSB) and the [International Organization of Securities Commissions](#) (IOSCO) are examining how benchmarks are currently established in order to identify weaknesses and shortcomings and suggest possible ways of addressing the problems at hand. In this context, not only interest rate benchmarks need to be examined. Benchmarks also serve as the basis for many commodity contracts. Recently, IOSCO has called into question the way in which price reporting agencies establish oil prices. Key issues to be examined are how to ensure the integrity and transparency of the methodologies used when setting benchmarks, including the issue of adequate public oversight.

7. What might alternatives to benchmarks be? And should they be based on transactions or estimates?

Benchmarks offer standardised ways of agreeing on prices. A benchmark is a statistical measure, typically a price or quantity calculated from a representative group of underlying data. However, benchmarks and indices normally also include some element of discretion, judgement or subjectivity. What that standard should look like varies from one market to the next, depending on the needs of that market and the availability of data. This is the reason why today some benchmarks are based on estimates and others on actual transactions.

Any alternative to benchmarks needs to be reliable, transparent, credible and readily available. The Commission is considering all alternatives that best meet the needs of the economy and that could restore trust in benchmarks.

8. Who should determine indices – the banks themselves, or a supervising body?

The starting point should be that an index is reliable, and that it is produced in an honest way, ensuring the integrity and the transparency of the benchmark decision-making process. It should be based on accurate information, and calculations should be done in an unbiased way.

The objective of benchmarks is to offer a standard which is often used globally. It is therefore necessary to pursue work on this matter in cooperation with our international partners. The Commission stands ready to work together with the ECB and other central banks as well as with global fora such as the G20, the FSB and IOSCO to consider alternatives that best meet the needs of the economy and investors.

More information:

Market Abuse: http://ec.europa.eu/internal_market/securities/abuse/index_en.htm

Criminal law policy: <http://ec.europa.eu/justice/criminal/criminal-law-policy>