

Working group on euro risk-free rates

Recommendations on EURIBOR fallback trigger events

31 March 2020

SG3 started working on EURIBOR Fallback provisions in 2018

Previous SG3 deliverables and guidelines on EURIBOR fallback provisions

- 21 January 2019: the working group published a set of guiding principles for fallback provisions in new contracts for euro-denominated cash products referencing EONIA and EURIBOR
- 6 November 2019: the working group published high-level recommendations for fallback provisions in contracts for EURIBOR-referencing cash products and derivatives transactions

Main SG3 milestones developing recommendations on EURIBOR fallback triggers

- January - November 2020: SG3 held five telcos to develop and discuss the public consultation on EURIBOR fallback trigger events.
- 23 November 2020: the working group launched a public consultation on EURIBOR fallback trigger events
- 15 January 2021: the working group published the summary of the feedback received in the public consultation
- 1 March 2021: 1st telco to discuss the feedback received from market participants and the discuss the first draft recommendation paper
- 15 March 2021: 2nd telco to discuss the feedback received from market participants and the discuss the first draft recommendation paper
- ★ 31 March 2021: SG3 present to the working group the proposal for recommendations on EURIBOR trigger events.

EURIBOR Fallback Trigger Events

General Recommendations

1. Contracts and financial instruments referencing EURIBOR should include provisions covering trigger events related to permanent cessation, temporary non-availability and non-representativeness (pre-cessation).
2. Trigger events should be objectively drafted in precise terms and refer to events made publicly available by the regulatory supervisor of the EURIBOR administrator or the EURIBOR administrator.
3. The date from which the fallback rate would apply after one or more of the trigger events has occurred should also be specified clearly in fallback provisions. The replacement date should occur on the date on which the benchmark has effectively ceased to be provided or is no longer representative, or any other point in time to be contractually determined. For such purposes, the relevant announcements from the administrator and/or the regulatory supervisor are expected to include the date of cessation, or, if applicable, the date from which the benchmark will cease to be representative.
4. Market participants should seek consistency and use the same trigger events for all asset classes when developing and introducing fallback provisions in different financial instruments and contracts referencing EURIBOR, to the extent possible and appropriate. Market participants are encouraged to consider the risks derived from using different fallback trigger events.
5. Market participants should consider at least those trigger events included in Article 23b para. 2 of the Benchmarks Regulation (as amended by Regulation (EU) 2021/168 of 10 February 2021) that grant the European Commission the power to designate one or more replacement rates under certain circumstances and upon occurrence of one of four trigger events. These trigger events correspond to those in recommendations #6, #7 and #8

EURIBOR Fallback Trigger Events

Permanent and pre-cessation EURIBOR trigger event recommendations

Market participants are recommended to include as a trigger event...

6. ... an official public statement or publication of information by or on behalf of the regulatory supervisor of the EURIBOR administrator or 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.
7. ... an official public statement by or on behalf of the supervisor of the EURIBOR administrator that, in its view, (i) EURIBOR is no longer representative, or will no longer be representative of the underlying market it purports to measure as of a certain date, and (ii) such representativeness will not be restored (as determined by such supervisor). The announcement made by the supervisor should specify the date at which the rate loses/will lose its representativeness and should be made with the awareness that it could engage certain contractual triggers to fallback provisions included in contracts. The working group acknowledges that, as of today, a EURIBOR non-representativeness trigger event is not part of ISDA's fallback provisions. The working group encourages trade associations (including ISDA) to consider including such an event in their EURIBOR fallback standard documentation, if any, in order to increase global consistency across currencies and products.

EURIBOR Fallback Trigger Events

Permanent and pre-cessation EURIBOR trigger event recommendations

Market participants should consider whether it would be appropriate to include as a trigger an event...

8. ... in which use of EURIBOR has become, for any reason, unlawful for relevant parties to the agreement or in which such parties have otherwise become prohibited from using EURIBOR. The inclusion of such trigger event may be more appropriate where including such trigger is already standard practice in the relevant market, or where it is required by applicable local laws. Whether including such a trigger is appropriate and what legal effects it should have may vary on a product-by-product basis. Particularly, market participants should consider the different legal consequences that such trigger might have among relevant parties in cross-border transactions or financial products where multiple parties may be involved. In these situations, the working group acknowledges that the inclusion of such trigger could be challenging and complex, and encourages market participants to consider potential cross-jurisdictional implications when deciding whether to include it and how to deal with this event. In addition, this trigger event should be analysed in the context of other illegality type provisions that may be included in the contract or financial instrument. Market participants should make their own independent assessment and decision in relation to the compatibility of this trigger event and such illegality provisions.
9. ... in which EURIBOR is permanently no longer published, i.e. without any previous official announcement by the competent authority or the administrator. The working group highlights that this event is highly unlikely to occur and recommends that parties consider the risk and opportunities of including it when entering into the contract. If parties finally agree to include it, given that, contrary to Recommendation 2 above, the trigger will not be objectively verifiable by reference to a public announcement, special attention should be given to the number of days without publication that would trigger the event, as it might set the limits between a temporary non-availability and a permanent cessation event.

EURIBOR Fallback Trigger Events

Permanent and pre-cessation EURIBOR trigger event recommendations

Market participants should not...

10. Material change in the EURIBOR methodology as defined by the EMMI should not result in an automatic trigger event. Nevertheless, the working group underlines the freedom of parties to agree, when entering into the contract, either (1) to acknowledge that references in contracts to EURIBOR are to be understood to be references to EURIBOR calculated as per the methodology approved at every moment, or (2) to provide parties the opportunity to discuss, for certain asset classes, whether (i) to continue the contract with the materially changed EURIBOR or (ii) to fall back to the EURIBOR fallback rates included in the contract.
11. Market participants are recommended not to include as a trigger an event in which EURIBOR is calculated in accordance with its reduced submissions or other contingency measures.

SG3 wrap-up

“Identifying best practices for contract robustness” is a key deliverable included in the Terms of Reference for the Working Group on Euro Risk-Free Rates

Overall, SG3 has achieved the objective set out in 2018.

- March 2018: SG3 was formed under the leadership of BBVA, the secretariat of ESMA and the participation of 41 members.
- In 2018, SG3 was working in two fronts:
 - Develop a set of guiding principles for fallback provisions in new contracts for euro-denominated cash products referencing EONIA and EURIBOR
 - Legal support to the development of the report on the transition from EONIA to the €STR.
- In 2019, SG3 was also working in two fronts:
 - Develop a public consultation on the EONIA to €STR legal Action plan and the final recommendation
 - Develop high-level recommendations for fallback provisions in contracts for EURIBOR-referencing cash products and derivatives transactions
- In 2020, SG3 focused on the development of the public consultation on EURIBOR fallback trigger events.
- In 2021, SG3 has been working on the final recommendations on EURIBOR fallback trigger events.

All of this has been possible thanks to the commitment and active participation of SG3 members, the guidance and assistance of ESMA, and the support of ING, the ECB, and the European Commission.

Questions?