



EUROPEAN PARLIAMENT
COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

- PUBLIC CONSULTATION -

Questionnaire for the public consultation on

**MARKET MANIPULATION: LESSONS AND REFORM
POST LIBOR/EURIBOR**

by ECON Vice President and Rapporteur – Arlene McCarthy MEP

This public consultation is organised in the context of the preparation of the ECON Committee reports by Arlene McCarthy MEP based on the Commission amended proposals of 25 July 2012 for a Regulation on insider dealing and market manipulation (market abuse) (COM(2012)421) and for a Directive on criminal sanctions for insider dealing and market manipulation (COM(2012)420).

Interested stakeholders are invited to respond to the questionnaire below. To facilitate the evaluation process, concise and informative responses are welcome.

Received contributions, together with the identity of the contributor, may be published on the European Parliament's website, unless contributors object to publication of their identity or parts of their responses. If contributors do not wish their identity or parts of their responses to be divulged, this should be clearly indicated and a non-confidential version should be submitted at the same time. In the absence of any indication of confidential elements, the ECON Secretariat will assume that the response contains none and that it can be published in its entirety.

Please send your answer to econ-secretariat@europarl.europa.eu by 17 September 2012 at 12.00.

IDENTITY OF THE CONTRIBUTOR

- **Name of the person and/or organisation responding to the questionnaire:** The European Federation of Financial Services Users (EuroFinuse)

Description of the main activities of the organisation: The European Federation of Financial Services Users (“EuroFinuse”) (formerly European Federation of Investors, in short EuroInvestors) counts more than fifty national and international member and sub-member organizations. In turn those count about four million individual members. EuroFinuse acts as an independent financial expertise center to the direct benefit of the European financial services users (shareholders, other investors, savers, pension fund participants, life insurance policy holders, borrowers, etc.) and other stakeholders of the European financial services who are independent from the financial industry.

EuroFinuse has experts participating in the Securities & Markets, the Banking and the Pensions Stakeholder Groups of the European Supervisory Authorities, and the EC Financial Services User Group. Its national members also participate in the national financial regulators and supervisors

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yes, I object

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If you object, an anonymous contribution may be published.

TOPIC 1: TACKLING THE CULTURE OF MANIPULATION

Q1: How widespread is the problem? Are there other financial instruments, markets and/or benchmarks vulnerable to potential manipulation?

The European Federation of Financial Services Users welcomes this public consultation from the ECON Committee to address, in our opinion, a very severe malfunctioning of the European financial markets which would potentially affect all EU citizens, as financial consumers. The interests of end-users of financial services are harmed as they could face higher interest rates than would have for their loan and mortgage contracts than if the market worked appropriately. Same could apply by setting an artificially low benchmark rate for retail savings accounts. For example, the biggest savings account in France (“Livret A”) is pegged to the EURIBOR. EuroFinuse believes that, in general, those markets which are based on non-attested, voluntary submission of data from agents whose benefits depend on such benchmarks are especially vulnerable of market abuse and distortion. In addition of this, financial markets have proved to be probably, of all the markets, those who need a higher level of public intervention because of the high degree of existing market failures such as agency problems and conflicts of interest.

Regarding other markets which are vulnerable to manipulation, we would like to draw the attention into the World spot currency market; i.e. by very far the biggest financial market in the world dwarfing global equity market. Financial institutions account for the vast majority of transactions. No European Supervisory Authority is in charge of supervising this “market”. Retail users typically do not have access directly to this market and their intermediaries (typically banks) charge very high commissions, and extremely obscure as referred to the “spot” market price. The implications of market abuse in the foreign exchanges markets would affect the global economy as a whole. The effectiveness of market mechanisms that make it possible to economies to adjust to inflation and productivity shocks and react to monetary policy is threatened by the existence of such types of market abuse.

What action should be taken to ensure these forms of market abuse are tackled?

We believe that the European Supervisory Agencies, more concretely the EBA and the ESMA, should control the construction of reference benchmarks, which should not be left to private entities as this proved to not to be effective. The participation of external agents, such as the organizations representing the interests of financial services users could contribute to the integrity and objectiveness of the benchmarks’ settlement. So-called financial “markets” have to be supervised by Public Authorities: the LIBOR “market” was uncontrolled and we see today the results. This is why we believe that the foreign currency market, the biggest of all financial markets, should receive proper supervision from public authorities.

Q2: What action should be taken to ensure the integrity and quality of all benchmarks, financial instruments and markets?

- a. Do both benchmarks and those entities that input into the setting of the benchmark need to be regulated?

We definitely believe that there is no doubt on the necessity of a public intervention on the benchmark

construction, especially for those entities who submit the data but also for the resulting benchmarks as well.

- b. Are traded rates as opposed to offered rates a better basis for input? Or should a 'hybrid' approach be adopted?

Traded rates seem a more reasonable source of information, and they better reflect the real “willingness to pay” of financial institutions for money. Using offered rates, not based on any actual transaction, has been proved to be a joke, as seen in the LIBOR case.

- c. Should the posters of rates be granted anonymity? What would be the potential downside to such an approach? Would such a status add or diminish the integrity of prices?

Anonymity could only come with the prerequisite of an additional system that would ensure integrity and authenticity of the submitted data, such as tight supervision of the ESAs or criminal sanctions against those responsible of submitting the data for the benchmark construction. There should be no more, no less anonymity than for any other markets, such as equity markets.

- d. What kind of powers should regulators of the financial sector be given to set and introduce criminal sanctions for attempted or actual manipulation of benchmarks?

Only criminal sanctions can effectively address the agency problem we find in benchmark determination: the attractiveness of possible gains of providing false reports on benchmarks would be removed by the existence of credible threats through not economic sanctions to the financial institutions, but of penal sanctions to those holding the responsibility of data submission for benchmark construction. But this deterrent will only work if it is real in the EU: since the 2008 financial crisis, we have seen no financial executive going to jail on this side of the Atlantic Ocean.

TOPIC 2: ESTABLISHING INTEGRITY AND TRUST POST LIBOR/EURIBOR

Q3: What specific measures should be taken at European/Global level to improve investor confidence? How can cooperation between global regulators be improved?

The best way to improve investor confidence would be to ensure that the public intervention is sufficient and adequate to avoid the same problems in the future. Regulators and supervisors should ensure a balanced representation of investors interests vis-à-vis intermediaries, which is not the case today despite it being a legal requirement for the ESAs (see cases pending with the European Ombudsman from EuroFinuse and from BEUC).

Regarding cooperation between regulators, we believe that according to the subsidiarity test action should be better taken at EU level than national level, although the ESAs should count with the cooperation of National Central Banks.

How can legislators ensure continuity between existing contracts which rely on Libor/Euribor (some \$500 trillion of contracts) and future contracts?

Most contracts (for instance, mortgage credit) refer to substitutive benchmarks if for any reasons the primary reference benchmark could not be applied. However, if the regulatory response was to create brand new benchmarks to substitute LIBOR and EURIBOR, contractual uncertainty would appear in many of those contracts. This is why we believe that the best way to look into this question is to maintain those benchmarks such as Libor and EURIBOR and to focus the public intervention on acting on the way such benchmarks are constructed.

Q4: What specific measures could be taken to enhance transparency and information quality in the financial sector?

The key approach to increase transparency would be the involvement of actors different to financial institutions and private entities whose interests are vested (their benefits depend on benchmarks whose settlement is partially dependent on them). More concretely, public agencies should be awarded a capital role on the determination of benchmarks. We certainly believe that certain kinds of non-profit organizations such as financial users' associations should participate as well.

Q5: What future action could be taken to achieve better governance in order to prevent future manipulation and establish integrity, trust and fairness in the financial services industry?

As referred above, we believe that in addition of the assignment of a new role to the ESAs, the organizations representing the interests of financial services users could contribute not only to the oversight of the whole process but contribute to the elaboration of the benchmarks that will be used as a reference of retail financial services (mortgages, retail investment, etc.) contracts.

Also, as previously mentioned, Public Authorities should not leave any financial "market" uncontrolled.

THANK YOU FOR RESPONDING TO THIS QUESTIONNAIRE.