

**Questionnaire for the public consultation on  
MARKET MANIPULATION: LESSONS AND REFORM  
POST LIBOR/EURIBOR**

**by ECON Vice President and Rapporteur  
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**AMAFI's response**

**IDENTITY OF THE CONTRIBUTOR**

- **Name of the person and/or organisation responding to the questionnaire:**

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- **Description of the main activities of the organisation:**

**The *Association française des marchés financiers (AMAFI)* has more than 120 members employing over 10,000 people which operate in equity and debt securities markets, equity and debt derivatives markets and commodity derivatives markets. Nearly one-third of the members are subsidiaries or branches of non-French institutions.**

Please indicate whether you object to the publication of the identity of the contributor:

yes, I object       no, I do not object

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**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?**

AMAFI is not aware of other such manipulations.

As a preamble, AMAFI would like to stress that, like everyone else, it has been taken aback by the revelation of the LIBOR manipulation, as known through publically available information. It sees such manipulative behaviour as entirely unacceptable considering the importance of LIBOR in the economy (see Q2 a. below) and it considers that being able to sanction it severely is of the utmost importance. The wave of emotion created by the LIBOR case in the public is well-justified and shared. However, AMAFI also believes that this emotion should not lead to adopt measures that are not necessary if other means (i.e. existing regulation) are already available to punish and deter such behaviour and are general enough to tackle a wider scope of abuses.

In addition, although AMAFI is aware that the LIBOR case straddles banking and investment activities, as it has implications and roots in both activities, the Association considers only, in its answers below, investment activities, as banking is outside of its expertise area. Finally, as all facts still remain to be established, AMAFI's answer is based on publically available information only.

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

As far as AMAFI can judge, there seems to be two distinct forms of manipulation in the LIBOR case: the first one is manipulation by traders themselves, benefiting among other things from inadequate organisational separation with the treasury desk; the second one is contributions to a benchmark based on estimates or judgements rather than actual data, made by a firm at the height of the financial crisis in a context where no or few inter-bank transactions were taking place. AMAFI will only comment on the first type of behaviour on the face of the gross manipulation that it involved.

AMAFI agrees that legislators should ensure such manipulations can be sanctioned. The overarching principle to act honestly, fairly and professionally and in a manner which promotes the integrity of the market, as enshrined in MiFID (*Directive 2004/39/EC, art. 25*), should in theory be sufficient to do so. Before establishing specific rules to sanction manipulations of benchmarks, it should be assessed if and why this general principle is not effective to this end. One should be wary that the market abuse legislation be modified in a way so specific to the case at hand that it will prove lagging behind new types of misbehaviour in a few years time.

On another note, imposing rules on benchmarks is wider in scope than what is aimed at by the Market Abuse legislation. Being able to impose sanctions for manipulations of benchmarks is necessary but, as shown by the questions below re contributions, calculation, transparency etc., issues go beyond the ability to sanction misbehaviour: a separate legislation is certainly more suited for the purpose of setting a regulatory framework applicable to benchmarks and we respectfully suggest that it should be considered.

**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?

Rules re input into a benchmark and calculation/dissemination of a benchmark can be set up without a need to create a new regulated activity. Similarly, non compliance with these rules can be sanctioned without it being a regulated activity. The advantage of a specific regulated activity is not clear as such, whereas it would create administrative burden both for firms and regulators and could spur the use of benchmarks contributed and managed outside of the EU if such initiative is not coordinated globally.

Importantly as well, not all indices are global benchmarks or even national benchmarks used as references for a large number of contracts or financial instruments. Some indices are set up by investment firms on an ad-hoc basis to suit the needs of specific clients. These indices are not set up irrespective of any regulation since the rules governing conflicts of interest apply and result in organisational barriers, independent valuations, etc. There is no doubt that manipulation of such indices used to price financial instruments can be sanctioned in the current regulatory environment.

One should remember that part of the emotion created by the manipulation of LIBOR is due to the nature of the benchmark itself, being such a reference that it was seen as a public utility that no-one would have suspected could be manipulated. Customised indices do not benefit from such an assumption and as a matter of fact are quite rightly not operated outside a regulatory framework.

Such index being proprietary, management of the firm's own position in the financial instruments constituting the index can in some instances trigger price variations having an impact on the price of the index without it constituting manipulation (other safeguards ensure independence between management of the firm's own position and the promotion, if any, and calculation of the index). The scope of the regulation re benchmarks therefore needs to distinguish between different types of benchmarks.

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

When actual data is a credible alternative, it should be favoured but benchmarks can be so different in nature that actual data may not be available for all (for example some benchmarks are based on a measure of business sentiment).

The more a benchmark plays a pivotal role in the market and is seen as a public utility, the more the data from which it is calculated should be actual rather than estimated. If this cannot be the case, the regulator should be particularly involved in monitoring the benchmark.

However, actual data may not always be available (e.g. LIBOR when the inter-bank lending market is frozen). Hence, for benchmarks based on actual data, a mechanism should exist and be transparent to deal with those situations where actual data become unavailable. As a matter of principle, the calculation method of a benchmark should be totally transparent.

- 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?

The participants to a benchmark should be known but the data they contribute to the benchmark may need to remain confidential or their publication delayed, since they may carry some strategic value or confidential information. This depends on the type of data involved and the economic circumstances (e.g. LIBOR during the financial crisis being seen by the media, certainly wrongly, as conveying a sense of the creditworthiness of the contributing institutions).

Total transparency could discourage contributors and hurt the relevance of the benchmark.

Incomplete or no transparency can be overcome by clear rules of conduct and proper controls both from firms and regulators.

- 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?

Considering its limited knowledge of the regulatory shortcomings being experienced in the UK and its understanding that current general rules of conduct could be a basis for sanction, AMAFI is not best placed to answer this question. However, it should be stressed again that if such specific powers were to be introduced, their scope should be precisely set (see a. above).

**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?**

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

Considering its expertise area limited to investment activities, AMAFI is not best placed to answer this question.

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

A lot has been done and is still being done re transparency and information quality in the financial sector (Prospectus, MiFID, PRIPs, etc.). The issue at hand with Libor does not hinge around transparency and information quality but rather around inadmissible behaviour (manipulations), poor governance and set up of the benchmark and inadequate or even inexistent controls by regulators of an industry-managed process.

**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?**

The European Union is not lacking rules, new rules being constantly developed and implemented. New specific regulation to deal with manipulation of benchmarks is not necessarily appropriate considering that a general principle may be more effective in tackling a wider scope of manipulations, include those that may develop in the future.

However, a greater focus on enforcement and regulators' resources would certainly be useful: regulators need to have adequate resources to be ahead of the curve, be cognizant of new forms of misbehaviours in a global environment totally inter-connected and develop expertise in less-known or less-controlled activities.