

Frequently Asked Questions (FAQs) to provide complimentary Guidance
EFET IBOR Change Documentation

THESE FREQUENTLY ASKED QUESTIONS DO NOT PURPORT TO BE AND SHOULD NOT BE CONSIDERED AS LEGAL ADVICE OR AN EXPLANATION OF ALL RELEVANT ISSUES OR CONSIDERATIONS IN CONNECTION WITH THE TRANSITION OF RELEVANT INTERBANK OFFERED RATES («IBOR») AND DOCUMENTATION OFFERED BY EFET TO SUPPORT MARKET PARTICIPANTS. USERS ARE STRONGLY ENCOURAGED TO CONSULT WITH THEIR LEGAL ADVISERS PRIOR TO USING OR ADHERING TO ANY EFET IBOR DOCUMENTATION. ANY USER OF EFET DOCUMENTATION DOES USE THE DOCUMENTATION AS USER SEES FIT. EFET ASSUMES NO LEGAL RESPONSIBILITY FOR ANY USE OF THE DOCUMENTATION OR THESE FAQ.

A. Why is the cessation of IBOR relevant to users of EFET documentation?

Interbank Offered Rates ("IBOR") are used in EFET documentation since the publication of the first EFET General Agreement e.g., as interest rate for default payments or for interest payments for collateral. On 5th March 2021 the UK FCA confirmed that panel bank submissions for all London IBOR settings will cease immediately after

- 31 December 2021 in the case of all sterling, Euro, and the 1-week and 2-month US dollar settings,
- 30 June 2023, in case of the remaining USD settings.

After these dates the representative LIBOR rates will no longer be available. On 3 January 2022 the EONIA (Euro Overnight Index Average) benchmark will cease to exist.

These changes require EFET documentation to be changed by documentation users so that they reference the alternative risk-free rates. Regulators have stressed that this may be a complex and time-consuming process and have encouraged all participants in financial and physical markets of impacted products to take action early in order to enable a smooth transition ahead of the cessation date.

B. Which documents are offered by EFET for the transition of IBOR rates?

EFET in cooperation with its members and external counsel have developed a Ratification Letter for Amendments to Covered Principal Agreements concerning the use of IBORs in floating rates for documents governed by German law and a Ratification Letter for documents governed by English law for adherence at the EFET EDRS Platform and a respective Change Letters (German law and English law) for bilateral use.

Initially the EFET Working Group focused on working for the hard-coded references in EFET templates to IBORs which are ceasing in accordance with the approach and drafting published by ISDA (International Swaps and Derivatives Association). At this point in time EFET did not adopt the more generic solution because the EFET Working

Group did not have confidence that it could be sure that its drafting solution would be appropriate in all circumstances where the discontinued IBOR rate was currently used (above and beyond the hard-coded references in EFET's templates). Based on this limited approach EFET published a first set of the above-named documents in February 2021.

Following discussion with EFET membership over the summer, EFET reopened the discussion in September 2021 in order to allow for a wider usability of the documentation by EFET member companies. During this second consultation members expressed their strong wish and need for more generic references including rates that are not hard-coded references in EFET's templates to the new risk-free rates, to solve entirely or at least to a greater extent the IBOR transition issues of many EFET documentation users.

As a result of this consultation EFET published updated Ratification Letters (October 2021) and a Change Letters (version 4 November 2021) now providing generic references to the new risk-free rates for *Euro* and *pound sterling*, substituting the discontinued IBOR rates wherever those IBOR rates appear in the listed or elected documents.

C. What changes are provided by the document?

a. Definition of EURIBOR

The new EURIBOR definition amends not only the one-month EURIBOR or unspecified EURIBOR (as in the earlier version) but any tenor agreed between users (whatever that might be) is transferred and remains the same but with the advantage that the fallback provisions apply.

Requests by some EFET members to replace the source for EURIBOR from Reuters screen to any other freely available source have been discussed. The EFET Working Group decided to follow the ISDA approach in this respect.

b. Look-back for relevant EURIBOR-rate

The existing EFET documentation does not precisely specify as of which day the interest rate for late payment or collateral payment should be determined. As the EFET Working Group could not identify any prevailing market practice it decided to follow the determination made by ISDA in its IBOR transition documentation, i.e. a look-back period of two TARGET Settlement Days preceding the relevant Reset Date.

Requests by some EFET members to refer to the Due Date as relevant date for determining the applicable EURIBOR rate have been discussed but did not get the necessary support.

c. Reset Date EURIBOR

The new EFET documentation differentiates for this term between its meaning in (i) any credit support annex and (ii) any other documents including General Agreements. Generally, the Reset Date is the date used for assessing and reassessing the relevant EURIBOR rate. For credit support annexes this is each

day in an interest period whereas for other documents it's the day on which a payment becomes overdue and the same date each period of the Designated Maturity thereafter until the date on which payment of the overdue amount and all interest has been received (e.g. Due Date under an EFET Gas is the 20 October 2021 and Designated Maturity is one-month the initial Reset Date is the 21 October 2021 (applicable EURIBOR rate as of 19 October 2021) and the next following Reset Date is the 21 November 2021 (applicable EURIBOR rate as of 18 November 2021).

d. Calculation Agent

The term Calculation Agent is defined in the applicable clause for floating prices and fallback procedures for market disruption event of the relevant general agreement. Only in respect of credit support annexes the term Calculation Agent shall be read as referring to the Valuation Agent, as such term is defined in the relevant credit support annex.

e. Zero flooring

The EFET Working Group decided that floors should be applied to all Covered Principal Agreement/Principal Agreements and should work differently in relation to

(1) interest on collateral balances; and

(2) default interest provisions.

In relation to the first, the floor was to be applied to the sum of (a) the rate, and (b) the margin (the idea being that the floor should have a minimal effect on the economics, whilst not giving rise to negative payments); whereas in respect of the latter the floor was to be applied to the rate only, so as to preserve the full value of the margin as a disincentive to a failure to pay.

The EFET Working Group members declined the option to negative payments in credit support annexes.

f. No spread adjustment for transition from EONIA to €STR

Concerning the replacement of EONIA references, EFET members opted for a generic replacement of all EONIA references including in relation to credit support annexes. EFET members decided that the transition from EONIA to €STR should be applied without adding 8.5bps (the spread calculated by the European Central Bank on the basis of daily EONIA and pre-€STR data from 17 April 2018 to 16 April 2019) to any ESTR payment flow or any lump sum compensation payment.

This approach is simplifying the operational handling of the transition as it avoids a different handling of legacy credit support annexes and credit support annexes to be concluded after the transition to €STR.

D. EFET-EDRS Platform

a. Who can adhere via the EFET-EDRS Platform?

The EFET EDRS Platform is to be used by all users having previously signed an EFET document to which an amendment will be required. An EFET membership is no precondition. For further information please refer to <https://www.efet.org/home/documents?id=48>

b. Is there a cut-off date for adherence via the EFET-EDRS Platform?

Yes. EFET has set the cut-off date for the updated Ratification Letters for Amendments to Covered Principal Agreements concerning the use of IBORs in floating rates for German law and for English law (October 2021) for **31 December 2021**.

E. Change Letter

Companies that do not wish to update its Covered Principal Agreements via the EFET-EDRS Platform or need to update additional IBOR reference rates e.g., US LIBOR are supported in this exercise by EFET's Change Letters. For further information please refer to (<https://www.efet.org/home/documents?id=40>).

F. Which new documents are offered by EFET?

EFET has decided to update several documents implementing the new risk-free rates for the *hard-coded references* in EFET templates. A list of available IBOR change documents all dating November 2021, including version numbers can be found on the EFET-webpage (<https://www.efet.org/home/documents?id=40>).

The next higher sub-version number has been assigned to these new documents to avoid confusion with the documents published in February 2021 as the result of the initial IBOR transition consultation (e.g., CSA: previous version: v2, version following initial IBOR consultation: v3 (withdrawn), current version: v3.1, 4th November 2021).

In line with its previous practice EFET did *not* update the following documents:

- European Federation of Energy Traders General Agreement Concerning the Delivery and Acceptance of Natural Gas Version 2.0(a)(May 11, 2007) (“EFET Gas V2.0(a)”);
- European Federation of Energy Traders General Agreement Concerning the Delivery and Acceptance of Electricity Version 2.1(a)(September 21, 2007) (“EFET Power V2.1(a)”);
- European Federation of Energy Traders GTMA Appendix Version 1.0 (September 11, 2009) to the General Agreement Power Version 2.1 (December 20, 2000) and Version 2.1(a) (September 21, 2007) (“EFET GTMA Appendix”);
- Individual Power Purchase Agreement Version 1.0 (June 2019); (“EFET Power Purchase Full Version 2019”);

Respective amendments for implementation by users of the new risk free rates for the *hard-coded references* in these documents are published in the document: “IBOR

Transition Wording for EFET General Agreements, Cross Product Payment Netting and CPPA" (<https://www.efet.org/home/documents?id=40>).

a. NBP Appendix

As the result of the initial IBOR transition consultation in February 2021 EFET published version 3 of the NBP Appendix. This version 3 NBP Appendix has been withdrawn and version 2, as of September 7, 2015, has been reactivated and republished.

Reason for this decision was that the NBP Appendix, version 2 does not incorporate clause 6 (*Billing and Payment*) and in particular clause 6.6.1 of the *Short Term Flat NBP Trading Terms & Conditions* ("NBP Terms") into the Appendix. This is a material difference to the NBP Appendix, version 1, which provided for the option to follow the payment process of the NBP Terms.

This causes that §13 of the EFET General Agreement Concerning the Delivers and Acceptance of Natural Gas ("EFET Gas") (*Invoicing and Payment*) governs payments in relation to the Individual NBP Contract(s) except for the currency of such payments which is amended in clause 9 of the NBP Appendix to pound sterling. Users wishing to align the default interest rate to the currency of payments would have to make respective amendments in §13.5 of the EFET Gas.

b. UK 5:5 Beach Appendix and UK 6:6 Beach Appendix

As the result of the initial IBOR transition consultation in February 2021 EFET published a new version 2 of the UK 5:5 Beach Appendix and of the UK 6:6 Beach Appendix. These version 2 UK Beach Appendices have been withdrawn and version 1, as of September 7, 2015, of the UK 5:5 Beach Appendix and version 1 of the UK 6:6 Beach Appendix have been reactivated and republished.

Reason for this decision was that neither the UK 5:5 Beach Appendix v1 nor the UK 6:6 Beach Appendix v1 incorporate clause 8 (*Price and Payment*) and in particular clause 8.6 of the Beach 2015 (5:5) or the Beach 2015 (6:6) Terms, as applicable, into the respective UK Beach Appendix.

This causes that §13 of the EFET Gas (*Invoicing and Payment*) governs payments in relation to the Individual Beach Contract(s) except for the currency of such payments which is amended in clause 9 of the respective Beach Appendix to pound sterling. Users wishing to align the default interest rate to the currency of payments would have to make respective amendments in §13.5 of the EFET Gas.