



EUROPEAN CENTRAL BANK

EUROSYSTEM

QUESTIONS & ANSWERS FOR THE PUBLIC CONSULTATION ON THE DRAFT ECB SSM FRAMEWORK REGULATION

1 WHEN WILL THE ECB START SUPERVISING BANKS?

The ECB will assume responsibility for supervision on 4 November 2014. Under the [SSM Regulation](#)¹, the EU confers specific tasks on the ECB concerning policies relating to the prudential supervision of credit institutions and establishes the Single Supervisory Mechanism (SSM). The SSM is a system for banking supervision composed of the ECB and the national competent authorities (NCAs), responsible for prudential supervision in the participating countries. While the ECB will exercise supervision on significant banks and the NCAs on less significant banks, the ECB will be responsible for the effective and consistent functioning of the SSM. The SSM Regulation entered into force on 3 November 2013.

2 WHAT IS THE DRAFT FRAMEWORK REGULATION AND WHY IS IT NECESSARY? TO WHOM WILL IT APPLY?

The SSM Regulation expressly requires the ECB to adopt and publish a framework setting out how it will cooperate with the NCAs within the SSM. The ECB, in consultation with the NCAs, has hence prepared this draft Framework Regulation, which defines the procedures governing relations between the ECB and NCAs and includes provisions that apply directly to banks. Under the SSM Regulation, the draft Framework Regulation must be submitted to public consultation before publication of the final version by 4 May 2014.

3 WILL THERE BE OTHER RULES ON THE FUNCTIONING OF THE SSM?

The draft Framework Regulation contains rules on the functioning of the SSM which relate, among other things, to the principles and organisation of the SSM, the method for deciding whether a bank is significant, the separate procedures for the supervision of significant and of less significant banks and the common procedures applying to both, the procedures applying to

¹ Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions. OJ L 287, 29.10.2013, p.63.

close cooperation with non-euro area Member States that decide to join the SSM, administrative penalties and transitional provisions.

Other important rules will be included in separate legal acts (i.e. the draft ECB Regulation on supervisory fees, the Rules of Procedure of the Supervisory Board, the amendments to the Rules of Procedure of the ECB, the internal rules on professional secrecy and the information exchange between monetary policy and supervisory tasks).

4 WHICH BANKS WILL BE SUPERVISED BY THE ECB?

The ECB will directly supervise the significant banks in the participating countries. The distinction between significant and less significant banks follows from the European Council's decision that the ECB will supervise the banking sector in cooperation with the NCAs.

The significant banks will comprise around 130 banking groups, representing almost 85% of total banking assets in the euro area. The criteria for determining their significance are explained below.

While the NCAs will exercise direct supervision on all other banks in the participating countries, the ECB will be responsible for the effective and consistent functioning of the SSM. The ECB may also decide to directly supervise less significant banks, when deemed necessary to ensure the consistent application of high supervisory standards.

5 WHAT MAKES A BANK SIGNIFICANT?

The ECB will assess all banks in the participating countries in cooperation with the NCAs in line with the methodology set out in the draft Framework Regulation. Whether a bank is significant will depend on: (i) the total value of its assets, (ii) its importance for the economy of the country in which it is located or of the EU as a whole, (iii) the significance of its cross-border activities, (iv) whether it has requested or received public financial assistance from the European Financial Stability Facility (EFSF) or the European Stability Mechanism (ESM), and (v) whether it is one of the three most significant banks in the respective country. A bank meeting any one these five criteria will be identified as significant.

6 WHEN WILL BANKS BE INFORMED OF THEIR STATUS? WHAT HAPPENS IF THEIR STATUS CHANGES?

The ECB will decide which banks are significant and will inform the banks concerned at least two months before fully assuming its prudential supervisory tasks (see Question 1 above). Banks will have the opportunity to make submissions before the ECB makes its decision.

The significant banks falling under the ECB's direct supervision will be listed on the ECB's website. The ECB will also publish a list of less significant banks, specifying which NCA will supervise them. Both lists will be updated regularly and at least every quarter.

The decisions classifying a bank as significant or less significant are subject to an annual review. If a significant bank has not fulfilled any of the significance criteria for three consecutive calendar years, responsibility for its direct supervision will be handed over to the relevant NCA; if a less significant bank fulfils any one significance criterion, it will be considered as significant. The shift of supervision may be initiated at an earlier stage in exceptional circumstances, i.e. if the bank will clearly not meet any of the significance criteria (for example, if the volume of its total assets falls below the threshold owing to the sale of a large business unit).

7 HOW WILL THE ECB AND THE NCAS COOPERATE WHEN THEY PERFORM THEIR TASKS?

The SSM is an integrated system composed of the ECB and NCAs. For certain tasks, the ECB has a role in the supervision of less significant banks and the NCAs have a role in the supervision of significant banks (see Question 8 below). Smooth cooperation between the ECB and the NCAs is hence of paramount importance for the effective functioning of the SSM. The draft Framework Regulation refers to “a duty to cooperate in good faith” and obliges the ECB and NCAs to exchange the information necessary for carrying out their respective tasks. One way of fostering the cooperation in supervising significant banks is by establishing joint supervisory teams (see Question 10 below). In carrying out its prudential tasks, the ECB also has the right to instruct NCAs to use their powers (as provided by relevant national law) and to take action if the ECB has a supervisory task but no related power. Another form of cooperation will be staff exchanges and secondments between the ECB and NCAs and among NCAs.

8 WHAT ROLE WILL NCAS PLAY IN THE SUPERVISION OF SIGNIFICANT BANKS? WHAT ARE THE ECB'S TASKS AND POWERS REGARDING LESS SIGNIFICANT BANKS?

The ECB will directly supervise significant banks, but the NCAs will still be involved. Given their broad experience in supervision and their local proximity to the banks, the NCAs will assist the ECB in performing its supervisory tasks. They will provide draft decisions in the ECB's fields of supervisory competence, help carry out additional supervisory tasks (such as the day-to-day supervision of the banks' risk situation, the fit and proper testing of management board members and other verification activities), actively participate in the joint supervisory teams and assist the ECB in enforcement procedures.

The ECB will oversee the functioning of the system and will perform some supervisory tasks regarding less significant banks (see Question 9). The ECB may also exercise its supervisory powers over less significant banks (i.e. request information and conduct investigations and on-site inspections). In addition, the NCAs will keep the ECB informed with regard to their supervision of less significant banks (in line with general criteria determined by the ECB, which will take into account the bank's risk situation and its impact on the domestic financial system) especially regarding material supervisory procedures and draft supervisory decisions. The NCAs are also obliged to inform the ECB of any rapid and significant deterioration in the financial situation of a less significant bank. Furthermore, the ECB will have the right to issue regulations, guidelines or general instructions to NCAs and may take over direct supervision over one or more less significant banks, if it deems this necessary to ensure the consistent application of high supervisory standards.

The SSM Regulation and the draft Framework Regulation do not affect the supervisory tasks that are outside the scope of the SSM Regulation. Tasks such as consumer protection and the fight against money laundering therefore remain with national authorities.

9 WHICH AUTHORITY WILL AUTHORISE NEW BANKS?

The ECB is the competent authority for the authorisation, the withdrawal of authorisation and the assessment of the acquisition of qualifying holdings (common procedures) for all credit institutions. The NCAs will also assist the ECB in the common procedures by receiving the applications for authorisation and acquisition of qualifying holdings, and preparing draft decisions or proposals respectively, based on their own initial assessment of the application under national law. If an NCA finds that an application does not comply with national law, it

rejects the application and informs the ECB. The ECB is not bound to the NCAs' proposals, but will base its decision on its own assessment of the application under EU law.

10 WHAT ARE THE JOINT SUPERVISORY TEAMS?

The joint supervisory teams (JSTs) are the operational units within the SSM that will be in charge of the day-to-day supervision of significant banks and will be one of the main forms of cooperation between the NCAs and the ECB. For each significant bank, a team will be formed of staff members of the NCAs involved in supervising that bank and staff members of the ECB; the team will be coordinated by the ECB with the assistance of a sub-coordinator from each NCA. The main tasks of the JSTs will be to perform the risk analysis of the supervised entity or group and propose the supervisory programme and the appropriate supervisory actions.

The JSTs will also look after the coordination of the teams carrying out on-site inspections.

11 WHAT ARE THE ECB'S MACRO-PRUDENTIAL TASKS?

The ECB may apply higher requirements for capital buffers than applied by national authorities and apply more stringent measures aimed at addressing systemic or macro-prudential risks at bank level, insofar as compatible with EU law, taking into account the domestic financial system, economic situation and business cycle conditions.

If the ECB deems it necessary to apply higher requirements for buffers or take more stringent measures aimed at addressing systemic or macro-prudential risks, it will act in close cooperation with the NCAs in the countries concerned and will notify its intended measures to the relevant NCAs before taking a decision.

Likewise, NCAs that take macro-prudential measures under EU law will notify the ECB in advance.

12 HOW WILL SUPERVISORY DECISIONS BE TAKEN?

The ECB will comply with the principles of due process and transparency, in particular regarding micro-prudential supervisory decisions. Any bank subject to a supervisory procedure will have the specific procedural rights that apply in administrative proceedings. A bank may request that an ECB supervisory procedure be initiated and may appoint a representative for that procedure. The draft Framework Regulation provides detailed rules on the use of evidence, the

hearing of witnesses and experts and especially the bank's right to be heard before the ECB adopts a supervisory decision which would directly and adversely affect the bank's rights.

In order to respect the bank's right of defence, the bank will have access to the ECB's file after the opening of a supervisory procedure (limited by confidentiality obligations). The supervisory decisions will be clearly explained.

A bank may ask the ECB Administrative Board of Review to review any supervisory decision adopted by the ECB in a supervisory procedure. The bank may also decide to appeal the decision before the Court of Justice of the European Union.

13 IN WHICH LANGUAGE WILL THE ECB COMMUNICATE WITH THE BANKS AND WITH THE NCAS?

Banks have the right to use the official languages of the European Union in communications and procedures with the ECB. Given the time required for translation and to ensure direct communications, credit institutions may also agree to communicate with the ECB in English.

The ECB and the NCAs will communicate in English.

14 WHAT SANCTIONING POWERS DOES THE ECB HAVE? DO THEY ALSO COVER THE LESS SIGNIFICANT SUPERVISED BANKS?

Both the ECB and the NCAs will have the power to impose administrative penalties on credit institutions. If the infringement relates to directly applicable EU law (e.g. the Capital Requirements Regulation/[CRR](#))², the ECB may open an infringement procedure against significant banks, while NCAs may initiate such a procedure against less significant banks. If the infringement relates to national law (e.g. a law transposing the Capital Requirements Directive/CRD IV), only NCAs can impose administrative penalties on banks (both significant and less significant). With respect to significant supervised entities however, for the tasks conferred upon the ECB, the NCAs can only open a sanctioning procedure upon the ECB's instructions. NCAs are also exclusively competent to impose non-pecuniary administrative penalties or to subject a natural person (e.g. member of the board of a bank) to an infringement procedure. If the infringement relates to an ECB regulation or decision, the ECB is exclusively competent to initiate an infringement procedure, in respect of both significant and less

² Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

significant banks (in the latter case to the extent that an ECB regulation or decision applies to them and imposes obligations vis-à-vis the ECB, e.g. the draft Regulation on supervisory fees).

Within the ECB, an independent investigating unit will conduct investigations and, if appropriate, propose to the Supervisory Board that a penalty is imposed on the bank concerned. The Supervisory Board will take the final decision to accept or reject the proposal put forward by the investigating unit.

15 IN WHAT WAY WILL THE NCAS SERVE AS “ENTRY POINTS” FOR SOME NOTIFICATIONS FROM BANKS?

Relevant EU law, and especially the Capital Requirements Directive/[CRD IV](#)³, provides for some notifications from banks to the competent authority (e.g. right of establishment or freedom to provide services, assessment of the suitability of members of the management bodies).

Any supervised bank wishing to establish a branch or provide services in another participating country must inform its home authority of its intention. Within the SSM, both significant and less significant banks intending to exercise their activities in another participating country will send such notifications to the NCA. If a significant bank intends to exercise its activities outside the SSM, it will send the notifications to the ECB, whereas less significant banks will inform the relevant NCA.

For the bank to exercise the right of establishment or freedom to provide services, its home authority must forward the notification and some additional information to the host authority. European authorities outside the SSM should forward the notification to the host NCA, which has a duty to inform the ECB immediately upon receipt.

This question of the entry point does not affect the allocation of tasks within the SSM between the ECB and the NCAs, as further specified in the draft Framework Regulation.

16 HOW WILL THE SSM DEAL WITH ANY PENDING SUPERVISORY PROCEDURES BEFORE NCAS AND WITH THE SUPERVISORY DECISIONS TAKEN BY THE NCAS?

The shift of supervisory powers from NCAs to the ECB can generally be anticipated. The authority whose competence ends must therefore make every effort to complete all the

³ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

procedures prior to the date of the change. That authority is also obliged to inform the authority assuming supervision of these procedures. If a procedure has been initiated and cannot be completed prior to that change, the authority that initiates that procedure will remain competent until the procedure has been completed. If the authority whose competence ends is an NCA, the ECB may also decide to take over the procedure concerned.

Without prejudice to the ECB's exercise of the powers conferred on it by the SSM Regulation, supervisory decisions taken by the NCAs before 4 November 2014 (e.g. an authorisation to use an internal model or a decision imposing a higher capital requirement) remain unaffected.

17 HOW WILL THE SSM OPERATE IN THOSE MEMBER STATES THAT ENTER INTO A CLOSE COOPERATION?

Non-euro area Member States may join the SSM by establishing a close cooperation between their competent authorities and the ECB. The draft Framework Regulation establishes the way in which the close cooperation will operate and how banking supervision will be conducted in those countries. The general principle is that the provisions of the draft Framework Regulation will also apply in respect of supervised entities in close cooperation countries, taking into account that the ECB may not act directly vis-à-vis the entities established in a country in close cooperation as the ECB cannot exercise binding powers outside the euro area. In particular, NCAs should ensure that the ECB receives all the information and reporting from and in respect of significant supervised entities. NCAs will also be obliged to follow the instructions given by the ECB regarding significant credit institutions.

18 HOW WILL THE ECB COOPERATE WITH THE EUROPEAN BANKING AUTHORITY (EBA)? IS THIS ADDRESSED IN THE DRAFT FRAMEWORK?

The ECB will carry out its tasks subject to and in compliance with relevant EU law including the single rulebook for financial services applying to all Member States. It will also be subject to the provisions of Regulation (EU) No 1093/2010 establishing the EBA on the European supervisory handbook drawn up by the EBA.

The EBA is entrusted with developing draft technical standards and guidelines and recommendations ensuring supervisory convergence and consistency of supervisory outcomes within the Union. The ECB will contribute to the EBA's development of draft regulatory technical standards or implementing technical standards.

The draft Framework Regulation does not address these material rules and only addresses the procedural rules relating to the cooperation between ECB and NCAs of participating countries within the SSM.