

PUBLIC CONSULTATION
DRAFT ECB SSM FRAMEWORK REGULATION
TEMPLATE FOR COMMENTS

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Please separate your comments per issue, citing the relevant article of the draft Framework Regulation where appropriate and indicating whether you are proposing an amendment, clarification or a deletion. If you require more space for your comments, please copy page 2.

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Name	French Banking Federation	Country	France
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COMMENTS ON THE DRAFT ECB SSM FRAMEWORK REGULATION

Issue	Article	Comment	Concise statement why your comment should be taken on board
Joint supervisory teams	3	Clarification	What is the concrete articulation between employees of the national competent authority and the ECB staff, at both hierarchical and organizational level? When will the coordinators of the JST be appointed?
Composition of joint supervisory teams	4	Amendment	<p>First of all, it could be useful to know the appointment criteria for members of the joint supervisory teams.</p> <p>Members of the JST should obviously have good knowledge of the national economy, business models and, if any, special characteristic of organization and structure of the supervised institutions and the Group they are attached to. The chosen appointment criteria should therefore take this</p>

			requirement into consideration.
Supervision on a consolidated basis and participation of the ECB and NCAs in college of supervisors	8	Clarification	We need to have more details on the organization of the colleges (i.e. core college, extended college) including co-decisions, exchanges of information and the supervised institutions 'right to be heard.
Composition of the college of supervisors	9	Clarification	Clarify the composition of the different colleges i.e. narrow and large ones
Right of establishment of credit institutions within the SSM/Exercise of freedom to provide services by credit institutions	12.1 and 17	Amendment	<p>For the exercise of freedom to provide services by credit institutions, we would like both significant and less significant institutions notify their intention directly to their national competent authority, as it provided for in Article 11 for the right of establishment. French banks see no reason to distinguish the notification procedure for the right of establishment and the freedom to provide services. They are in favor of a uniform approach for both provisions. For simplification reasons, they propose that all the notifications be addressed to the NCA.</p> <p>Therefore Articles 12 and 17 should be amended as follows :</p> <p>Article 12</p> <p>"1. Any significant supervised entity wishing to exercise the freedom to provide services by carrying on its activities within the territory of another participating Member State for the first time shall notify the NCA in accordance with the requirements laid down in Directive 2013/36/EU. The NCA shall immediately inform the ECB on the receipt of this notification.</p>

			<p>[...]"</p> <p>Article 17</p> <p>“1. A significant supervised entity wishing to establish a branch or to exercise the freedom to provide services within the territory of a non-participating Member State shall notify the NCA of its intention in accordance with the applicable Union law provisions. The ECB shall exercise the powers of the competent authority of the home Member State. The NCA shall immediately inform the ECB on the receipt of this notification. [...]"</p>
Language regime	24	Clarification	<p>First, regarding the language, it should be ensured that credit institution can not be required to translate all their internal procedure in English.</p> <p>Besides, It seems particularly important that the exchanges between the ECB and the legal or natural persons take place in the national language, especially for retail banks. It is the key to effective supervision.</p>
Right to be heard	31	Amendment	<p>Regarding the stage before the supervisory decision:</p> <p>A code of conduct of on-site and off-site supervision should be established as it is the case in France. We should emphasize that the NCA has a duty of loyalty. The inspection and control stage should also be subject to the right to be heard. The bank should have the right to a written reply, accompanied by a sufficient delay to do so. Its comments could be inserted in the inspection report (as an annex, for instance). There should be a “supervision guideline”. The industry must be consulted on it.</p>

Right to be heard	31.1	Clarification	<p>Article 31.1 provides that: "If the ECB deems it appropriate it may give the parties the opportunity to comment on the facts and objections relevant to the ECB supervisory decision in a meeting."</p> <p>Banks will have a right to be heard with respect to ECB decisions and will have access to the ECB files. However, this would be after decision only and for a limited number of cases.</p> <p>We recommend :</p> <ul style="list-style-type: none"> - Applying the right to be heard before and after the adoption of a supervisory decision. The scope of the supervisory decision should include all the supervisory cases. - Giving access to the ECB file for each individual decision. <p>The right to be heard therefore depends only on the ECB's will. This is not satisfactory regarding legal certainty. Therefore we suggest that the terms "if the ECB deems it appropriate" be deleted.</p>
Right to be heard	31.3	Amendment	<p>In terms of legal certainty, the French translation of "in principle" should be "par principe" instead of "en principe". Indeed, the French "en principe" is contradictory to "shall" because it allows exceptions.</p> <p>Moreover, following a supervisory decision of the ECB, the text provides a time limit of two weeks for the institution to provide its comments on the decision. 2 weeks to react to a decision is too short, a longer delay is required.</p> <p>Finally, the terms "in particular circumstances" seem too vague and therefore should be clarified, specified and the delay of "three working days" seems also to short.</p>

Definition of confidential information	32	Amendment	<p>The definition of confidential information is already very broad.</p> <p>Besides, in the paragraph 32.3, the expression "in particular" suggests that the definition could be broader which is likely to prevent credit institutions from using their right to access the ECB documents. This term should be deleted.</p>
Reporting of breaches	36	Deletion	<p>Whistle-blowing is already provided for by CRDIV. Member States are now responsible for implementing these provisions.</p> <p>Therefore this article should be deleted.</p>
Pending procedures	48/149	Clarification	<p>§ 1 : "The authority whose competence is to end must make every effort to complete all procedures before November 2014. If the procedure cannot be completed before the transfer date, it will remain relevant until it is concluded. The ECB may nevertheless decide to take over the procedure."</p> <p>Does this mean that the authorizations to use an internal model, for example, must be given by the competent authority before November 2014?</p> <p>Institutions should receive, before November 2014, from their Competent Authorities a status report of the pending files (transferred to the ECB, still followed at the NAC level) and a timeframe. Assessment of the suitability of members of the management bodies of significant supervised entities</p>
Assessment of the suitability of members of the management bodies of significant supervised entities	93	Amendment	<p>In terms of legal certainty, the French translation of "managers" should be in line with the CRD4, so we should have "dirigeants" instead of "directeurs".</p>

Requests for information at recurring intervals under Article 10 of the SSM Regulation	141	Amendment	New demands of reporting should be justified and supported by a consultative process with the supervised institutions. The timeframe of the consultative process and the implementation of new demands of report should be any shorter than twelve month.
General remarks		Amendment	<p>*No timeframes foreseen for decisions to be taken by the Supervisor: Maximum timeframes should be set, as it is the case within the CRD: 3 or 6 months elapse time for decisions, e.g. submission of internal models for approval. Moreover, a backstop should be put in place: if the supervisor does not react within timeframe set, the request is supposed to be accepted.</p> <p>* The regulation should specify the procedure applicable for the right of appeal against a ECB decision.</p> <p>* The confidentiality of the information provided by banks to the ECB should be strictly preserved and safeguarded.</p> <p>*As general remark, it is absolutely necessary that a list of all texts and manuals of internal procedures that the ECB intends to publish in the next few months be provided to credit institutions. Indeed the banking industry should be consulted on these texts.</p>
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