

PUBLIC CONSULTATION
DRAFT ECB SSM FRAMEWORK REGULATION
TEMPLATE FOR COMMENTS

Mr <input type="checkbox"/> Ms <input checked="" type="checkbox"/>	First name Dorte
	Surname Lomholt
Institution Association of Danish Mortgage Banks	
E-mail address dl@rkr.dk	
Telephone number +4533730155	
<input type="checkbox"/>	Please tick here if you do not wish your personal data to be published.

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.



PUBLIC CONSULTATION
DRAFT ECB SSM FRAMEWORK REGULATION
TEMPLATE FOR COMMENTS

Name	Association of Danish Mortgage Banks Interest Representative Registration ID number: 27545731905-17	Country	Denmark
------	--	---------	---------

COMMENTS ON THE DRAFT ECB SSM FRAMEWORK REGULATION

Issue	Article	Comment	Concise statement why your comment should be taken on board
Introductory remarks		Choose one option	<p>The association of Danish Mortgage Banks appreciates this opportunity to comment on the draft framework regulation. We appreciate the daunting task of the ECB to come up with a framework covering such broad topics as administrative law, penal law and the procedural aspects of these, as well as supervisory law and modalities. Our comments should only be seen as an attempt to further contribute to the enormous task resting upon the ECB.</p> <p>We understand that the framework builds upon the <i>acquis</i>, not least inspired by competition law. As</p>

			<p>for administrative and procedural law perspectives, we would suggest that although the ECB is at least bound by the European Convention on Human Rights as pr. art. 6(2) of the Lisbon Treaty, this does not preclude ECB legislation from having a more robust framework ensuring a higher level of legal certainty, as the ECB framework regulation rests upon the own legislative powers of the ECB under art. 132(1) TFEU.</p> <p>We understand that the time limits upon the ECB for enacting the framework regulation makes the current proposal a befitting starting point. We would, in this light, highly recommend the addition of a revision clause, so that after e.g. 5 years, the framework regulation has to be revised taking into account the practical experiences of the ECB, the development of law and perhaps academic work that might naturally be foreseen in time to come.</p> <p>As Danish mortgage banks represent a particular business model, we include an appendix setting out a description of the Danish model of mortgage banking.</p> <p>We remain at your disposition for any clarifications the ECB might want.</p>
Establishment and composition of joint supervisory teams	4	Clarification	<p>Relates not only to article 4, but the cooperation in general between ECB and NCAs.</p> <p>It is essential for the smooth and effective operation of the supervision that national authorities play a crucial role both before, during and after an inspection. National authorities have thorough special knowledge of the credit institutions, market conditions, national framework conditions, regulation etc. This knowledge is important in understanding the different credit institutions business models, fulfillment of regulatory requirements etc. and thereby essential in the planning, execution and evaluation of an inspection and general supervision. And it is particularly important for credit institutions that are unique compared to the "standard" business model for banks in EU. An obvious example of course being the Danish specialized mortgage institutions. The supervisory framework</p>

			<p>and the procedures must take this into consideration, also with a view on the effective use of resources at the supervisory authorities as well as the supervised entities.</p> <p>In this light we are concerned by the prerogative in paragraph 4 of the ECB to modify unilaterally the appointments made by the NCA for the composition of a joint supervisory team.</p>
Evidence in ECB supervisory procedures	29	Clarification	<p>It is stated that ..."shall make use of such evidence as, after due consideration, it deems appropriate." We would suggest that it is added that the ECB in its decisions, should stipulate clearly how they have reached their conclusions as to evidence. We would as reasoning add, that at least in a Danish administrative law tradition, it would be for courts only to deal with decisions on witnesses and evidence. In order to promote legal certainty, not least due process with regard to hearing of parties to a decision - and the possible contest of a decision before a court - it should be clear from a decision how exactly any conclusion has been reached and on what factual and legal basis.</p>
Witnesses and experts	30	Clarification	<p>The distinction between witnesses and experts is not clear. Their different role and responsibilities should be further elaborated on. This goes particularly for witnesses as their participation in the supervision gives rise to questions relating to procedural law in a broader perspective, such as the right against self-incrimination, legal privilege etc.</p>
Right to be heard	31	Amendment	<p>The time limit of two weeks in paragraph 3 appears relatively short taken into the consideration the potential implications of ECB supervisory decisions and consequent need to address the facts and objections. It therefore seems appropriate to allow for a longer deadline - e.g. four weeks - on the outset instead of ECB having to deal with many applications for extension of deadlines.</p>
Supervision of significant supervised entities	89	Clarification	<p>When ECB supervise an entity, it shall take into consideration the business model of the supervised entity as according to article 1 of the SSM.</p> <p>There are credit institutions, which only grants mortgages and do not take deposits - but where the issuance of covered bonds substitutes the deposits in terms of who the entities are subject to the scope</p>



EUROPEAN CENTRAL BANK

EUROSYSTEM

			<p>of the CRDIV/CRR . From the point of view of proportionality, the different business models should be treated according to the nature of their business for instance in relation to liquidity, asset encumbrance and more.</p> <p>If the ECB make their supervision with standard metrixs, specialised mortgage banks, which do not take deposits risk being supervised unappropriate. It is of utmost importance that the current national legislation which allows for different business models continue also in the scope of supervision.</p>
Assessment of suitability...	93	Clarification	The obligations imposed on the supervised entities in this article is not entirely clear. However, the ECB should take into consideration that this obligation adds another reporting obligation for the credit institution, which does not seem reasoned, in view of what is already in place in EU and national legislation.
Close cooperation - supervision of less significant supervised entities	117	Clarification	It should be made clear that the general instructions and guidelines issued by ECB referred to in paragraph 2 will be published as they can contain important supervisory guidance for credit institutions.
		Choose one option	
		Choose one option	
		Choose one option	
		Choose one option	
		Choose one option	
		Choose one option	



EUROPEAN CENTRAL BANK

EUROSYSTEM

		Choose one option	
		Choose one option	
		Choose one option	
		Choose one option	
		Choose one option	
		Choose one option	
		Choose one option	
		Choose one option	
		Choose one option	
		Choose one option	
		Choose one option	
		Choose one option	
		Choose one option	
		Choose one option	
		Choose one option	
		Choose one option	



EUROPEAN CENTRAL BANK

EUROSYSTEM

		Choose one option	
		Choose one option	
		Choose one option	
		Choose one option	
		Choose one option	
		Choose one option	