

PUBLIC CONSULTATION  
DRAFT ECB SSM FRAMEWORK REGULATION  
**TEMPLATE FOR COMMENTS**

Mr <input type="checkbox"/> Ms <input type="checkbox"/>	First name  Surname
Institution European Banking Federation	
E-mail address	
Telephone number	
<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.



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Name		Country	
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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
Definition of material draft supervisory decisions	1	Clarification	<p>1.- It is unclear what is meant by the term "material draft supervisory decisions" used in Article 1 (a) (iii), third indent and Article 23 (3) (d). Further details would be helpful.</p> <p>2.- A definition of participating member states and SSM would be advisable. A clear definition will create certainty with regard to the status and relevant procedures to be taken into account for the non-Euro area member states in close cooperation. When does a non-Euro area member state turn into a close-cooperation member state? Immediately after signing of an agreement, after publication of such agreement in a register? And do transitional provisions apply in order to prevent last-minute surprises with respect to the relevant procedures re notifications?</p>

			<p>3.- One of the supervisory decisions that is not detailed in the framework is the approval of internal models or of their related changes. It includes also aspects regarding the role of the Holding Company and the approval of models in subsidiaries located in non-EU Member States (non-close collaboration) and belonging to an EU banking Group. We would deem worthwhile for this topic to be taken into proper account in the context of the Framework to fully complement Article 4 of the Regulation, unless it is going to be dealt with in the forthcoming ECB Supervisory Manual.</p>
<p>Several questions on the supervision of significant entities and the organisation of the JST.</p>	3	Clarification	<p>1.- Banking groups often apply common procedures throughout the group and are often organised with central Finance, Treasury, Risk Control, Compliance and Internal Audit. This is done for efficiency reasons and is a measure for reducing costs and improving the quality of the bank's operations. If the SSM applies a fragmented and uncoordinated approach towards such a group and imposes diverging requirements on the different group entities this will counteract these banks' ambition to apply coordinated and standardized procedures throughout the group. Making one JST responsible for the supervision of all entities within SSM that belong to a significant group will facilitate a coordinated SSM approach to that group, improve the quality of supervision and reduce the volume of resources required both at ECB, NCAs and the supervised group. This is also important for groups, where parent company is located in a non-participating Member State.</p> <p>2.- We would like to know more about the composition of the JST: The number of members, the balance between ECB and NCA members.</p> <p>3.- It is clear that there will be a coordinator from the ECB. However, when there is more than one member from the NCA, one sub-coordinator from the NCA will be appointed. Our question here is how will the relationship between the ECB coordinator and NCA sub-coordinator work and what will be the relationship between the sub-coordinator and the remaining members of the JST (from the NCA or the ECB). We would like more information about the concrete articulation of the relationship between NCA employees and ECB staff at hierarchical and organisational level.</p>

			<p>4.- Will the JST sub-coordinators be appointed by the NCA of the parent company?</p> <p>5.- Regarding the decision making process, we would like to know more about the mechanism to resolve potential disagreements between the members of the JST. Will the last say belong to the Coordinator or will there be a voting rule (e.g. majority)?</p> <p>6.- It should also also be clarified what are the relevant rules to apply co-operation between ECB and NCA in case the group has no cross- border subsidiaries/branches.</p>
Criteria for the appointment of JST members	4	Clarification	We would like to know about the criteria for the appointment of JST members. We are of the view that JST members should have good knowledge of the national economic situation and the business model of the supervised institution.
Supervision of less significant entities: Involvement of staff members from other NCAs in an NCA's supervisory team	7	Clarification	<p>Further details are required in regard to the involvement of staff members from other NCAs in the supervisory team of an NCA.</p> <p>a) It is unclear what powers or legal status "seconded" staff members have.</p> <p>b) As the rules on secrecy are set out in Article 53 of CRD IV and have thus been transposed into national law by Member States, it must be ensured that "seconded" staff members are subject to at least the same secrecy and confidentiality requirements as those applying to staff members of the NCA to which they are seconded.</p>
Organisation of colleges	8	Clarification	We would appreciate more details on the organisation of colleges of supervisors, in particular whether the supervision will be performed at consolidated level or at entity level.
Composition of colleges	9	Clarification	<p>a) Clarification is sought on the composition of the core college and the extended college. Will the institution be consulted about it?</p> <p>b) Clarification is also required on the role of an NCA of a non-participating Member State in the</p>

			<p>college of supervisors e.g. UK PRA. Clarification required on whether a subsidiary located in a non-participating Member State is subject to supervisory powers of ECB as well as their local NCA e.g. a subsidiary based in the UK.</p> <p>c) In the context of the Colleges of Supervisors, we would suggest clarifying the “powers” of observers beforehand in order to have it incorporated. Similarly, we would suggest the same clarification with reference to Crisis management groups.</p>
Coordination between NCA and ECB in the college	10	Clarification	In case of a NCA member attending the college, we would like to know more about the coordination mechanism between the NCA member and the ECB.
Right of establishment	11	Clarification	<p>The current text covers the right of establishment and exercise of freedom to provide services in a non-participating Member State (Art. 17), but it does not include the right of establishment of an EU credit institution in a third country (Art 11) or the provision of services in a third country (Art 12).</p> <p>Furthermore, the CRD IV package does not include the case of establishment of an EU credit institution in a third country (Art. 35 Directive 2013/36/EU) or the provision of services in a third country (Art 39 Directive 2013/36/EU), therefore Member States are supposed to deal with this issue under national law.</p> <p>The Regulation does not clarify which authority should be approached and is responsible for the application of the establishment of a branch outside the EU. As neither art. 4.1 nor 11 contain any provisions in this regard, is our assumption correct that NCA are exclusively responsible, without any ECB interference even in case of significant entities? Or does the ECB exercise the powers of the competent authority of the home Member State in accordance with Article 17 which deals with the right of establishment of a branch within the territory of a non-participating Member State?</p> <p>We would appreciate more clarification in the process taking into account that the ECB is in charge</p>

			<p>of the consolidated supervision.</p> <p>Our understanding is that, as this is not regulated in EU legislation, the NCAs remain competent for these purposes. However, it would seem a little strange to entrust NCAs with this power when the ECB is the institution in charge of the consolidated supervision.</p>
Freedom to provide services	12	Amendment	<p>It seems inconsistent that the freedom to provide services requires notification to the ECB whilst the right to establishment requires notification to the NCA. For the sake of simplification, we would propose that all notifications be sent to the NCA.</p> <p>The same should apply in relation to non-participating Member States (article 17).</p> <p>Should the institution itself not also be notified?</p>
Coordination of financial conglomerates	18	Clarification	<p>Further details are required on the assumption by the ECB of the task of "coordinator" of financial conglomerates, taken into account that financial conglomerates include insurance companies and ECB supervises credit institutions. Content of the coordination should be specified.</p>
Language regime between ECB and NCAs	23	Clarification	<p>It is unclear what is meant by the term "material draft supervisory decisions" used in Article 1 (a) (iii), third indent and Article 23 (3) (d). Further details would be helpful.</p>
Language regime between ECB and NCAs	23	Amendment	<p>As for point 3, indent (ii), we would propose that the NCA provides an English translation in any case and not only in cases (a) to (c).</p>
Language regime between the ECB and legal or natural	24	Clarification	<p>1.- As to the translation of documents to English, we would also need more precision on the additional time required.</p> <p>2.- There is need for a clear specification of the outreach of the provisions in this article 24, especially</p>



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persons, including supervised entities			<p>as regards internal documentation like procedures, policies and acts. In particular, our question is whether an agreement to use English for written communications means that all internal documentation, procedures, policies and acts should be translated into English.</p> <p>3.- We would like to draw the attention of the ECB to the significant difference between written communication and oral communication. If a banking group chooses English, does it mean that anyone in the organisation should express himself/herself in English when talking to ECB supervisors face to face or over the phone?</p>
Interpretation in oral hearings	24	Amendment	<p>In general, we question the need to prescribe the requirement for ECB to seek explicit agreement on the use of the English language. This issue should rather be covered in the ECB internal rules.</p> <p>Regarding point 2, fourth paragraph, we would suggest that the right to have access to interpretation in oral hearings upon participant's request be recognised. The term for the advanced notification should also be specified.</p>
Mandate to representative	27	Amendment	<p>In regard of Article 27(1), under Portuguese law (and possibly, in other EU national legal frameworks), a mandate may be given to a lawyer to represent a party in a proceedings by means of an oral statement by the party, made in the course of the proceedings. A similar possibility should be provided for herein.</p> <p>Who can be appointed as the representative? Who is meant by 'appointed representative' - Is that an employee of the institution itself and/or an external party (a lawyer)?</p> <p>Is it meant that every specific issue / question would require a separate written mandate?</p>
Right to be heard	31	Amendment	<p>1.- Banks would like clarification on what appeals process is available if there is a significant difference of views between the ECB and the supervised institution.</p>



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			<p>2.- The notification referred to in point 1 should also mention the legal reasons on which the ECB intends to base its decision.</p> <p>3.- As regards the definition of Article 2, point 26 ("ECB supervisory decision"), apparently, the project does not envisage the right to be heard for the bank in case of an ECB supervisory decision. The text is too vague ("if ECB deems it appropriate") and organizes exceptions to the right to be heard, that are not sufficiently restricted. Delays do not seem to be sufficient justification.</p> <p>4.- Regarding the stage before the supervisory decision:</p> <p>A code of conduct of the inspection and control stage, or supervision guidelines, should be established as is the case in some Member States, and the industry should be consulted on it. NCA has a duty of loyalty.</p> <p>The inspection and control stage should also be subject to the right to be heard. Transparency of the supervisory decision process is needed. The bank should have the right to a written reply, accompanied by a sufficient delay to do so. Two weeks to react to a decision seems too short considering that the ECB decision has to be analysed, external lawyers may have to be consulted and the response has to be agreed internally. Comments could be inserted in the inspection report (as an annex, for instance).</p> <p>5.- The term "in particular circumstances" should be specified.</p>
Right to be heard	31	Amendment	<p>In line with our third comment in the previous box for clarification, we propose to delete the text "if ECB deems it appropriate".</p> <p>Paragraph 3 prescribes that the party, in principle, shall be given the opportunity to provide its comments in writing within a time limit of two weeks following receipt of a statement mentioning the fact and the objections. We believe that a time frame of two weeks is limited, in particular if the</p>



			response requires the assistance of external services or the approval of the management board. We propose to extend it to 4 weeks.
Definition of confidentiality	32	Amendment	The definition of confidential information is too broad. The term "in particular" suggests that the definition could be even broader which is likely to prevent credit institutions from using their right to access the ECB documents. This term should be deleted.
Access to files in an ECB supervisory procedure	32	Clarification	<p>a) Determination of a deadline by which a decision on the request for access to files connected to an ECB supervisory procedure must be made and access to the files must be granted would be advisable, as the supervisory authorities may otherwise delay such entitlement.</p> <p>b) One of the key principles of future oversight by the ECB is close cooperation with the NCAs, which will continue to perform a large part of actual supervision (e.g. drafting decisions). In this respect, the exclusion of correspondence between an NCA and the ECB as confidential under Article 32 (3) (b) is an unacceptable restriction of the right to access files.</p> <p>This applies equally to internal documents of the ECB or an NCA (Article 32 (3) (a)). An internal legal memo, for example, provides information on the basis for a particular decision or on whether unlawful or wrongly discretionary considerations played a role. If such memos are meant by "internal documents", this raises the question of what files there are left to access.</p> <p>c) We would welcome clarification to the effect that access to files may be requested without stating any specific reasons and that legitimate interests of third parties can only affect access to the extent that the relevant passages of files are blacked out.</p>
Notification of ECB supervisory decisions	35	Amendment	a) We welcome stipulation that notification of an ECB supervisory decision is deemed to have been received by a certain date. However, this arrangement should logically only apply unless it is shown that notification was received on a later (and not just a "different") date.

			<p>b) With regard to notification of ECB supervisory decisions, clarification is required on what procedure and time limits apply to all ECB actions not just notice of decisions. As to the notification to representatives, the ECB should send its supervisory decision to the representative and the institution itself.</p> <p>c) Oral notifications of supervisory decisions: we would prefer to see the notification of supervisory decisions to be made only in a written form (as provided for in Art. 35 b) -f). This would bring certainty as to its effect.</p> <p>d) The regulation should require both in Art.35 and 88 the ECB and the NCA to notify the parent company of copies of the supervisory decisions related to each supervised entity belonging to the group (even when it is not part of the group according to art.26). This will enable the parent company to exercise - according to national law - the responsibilities of group coordination in case the subsidiary has not duly informed it of the supervisory decision.</p> <p>e) We would like to suggest the ECB to publish the anonymous supervisory decisions that are relevant with regards to interpretation of the prudential regulatory framework. This would have the benefit of increasing understanding and information among supervised entities. Alternatively, we would suggest providing for a FAQs website, where requests of clarifications could be sought.</p>
Reporting of breaches	36	Deletion	<p>Whistle-blowing is already provided for by CRDIV. Member States are now responsible for implementing these provisions into their national law. Duplicate regulation should be avoided. Articles 37 and 38 should be deleted accordingly.</p> <p>If the articles are not deleted, reporting in mala fide should be punishable, since false reporting causes unnecessary administrative costs and possible reputational risk to banks. Article 23 of SSM regulation states that the appropriate protection for accused person should be ensured in the process. Likewise that protection should be recognised in articles 36 to 38 of the SSM Framework Regulation.</p>

			In addition, we would like to know what is the the procedure that allows a supervised entity to self-report a breach that it has discovered itself.
Procedures for the follow-up of reports	38	Clarification	The wording of paragraph 5 is too vague to justify the far-reaching information requirements.
Classifying a supervised entity on an individual basis as significant	39	Clarification	Contrary to Article 6 (4), subparagraph 4 of the ECB Regulation, possible cases of financial assistance from the EFSF are not listed here. To ensure alignment with the ECB Regulation, these should be included (In contrast, Article 67 (2) (f) expressly mentions the EFSF).
Review of the status of a supervised entity	43	Clarification	Contrary to Article 6 (4), subparagraph 4 of the ECB Regulation, possible cases of financial assistance from the EFSF are not listed here. To ensure alignment with the ECB Regulation, these should be included (In contrast, Article 67 (2) (f) expressly mentions the EFSF).
Beginning of direct supervision by the ECB	45	Clarification	Contrary to Article 6 (4), subparagraph 4 of the ECB Regulation, possible cases of financial assistance from the EFSF are not listed here. To ensure alignment with the ECB Regulation, these should be included (In contrast, Article 67 (2) (f) expressly mentions the EFSF).
Reasons for ending direct supervision by the ECB	47	Clarification	Contrary to Article 6 (4), subparagraph 4 of the ECB Regulation, possible cases of financial assistance from the EFSF are not listed here. To ensure alignment with the ECB Regulation, these should be included (In contrast, Article 67 (2) (f) expressly mentions the EFSF).
Pending procedures	48	Clarification	Regarding paragraph 1, does it mean that the authorizations to use an internal model, for example, must be given by the competent authority before November 2014?  Moreover it could be very helpful for us, that national competent authorities make an inventory of all pending general and individual national procedures before November 2014.

			Each institution should receive a precise list, in order to know which procedure will be handled by the ECB and which one by the NCA. Moreover, what does happen if a supervisory procedure is transferred from the NCA to the ECB, in terms of delay? We assume this transfer should be smooth and not create any additional supervisory delay in the approval / response process.
List of supervised entities and supervised groups	49	Amendment	The list of supervised entities and supervised groups referred to in Article 49(4) should be kept updated at all times, and not only each quarter. In large and complex organisations, an entity being subject to the supervision of the ECB may not be a fact known to all. People inside the concerned organisation and third parties should be able to know at all times who is the relevant supervisor.
Method of consolidation	54	Clarification	Method of consolidation for prudential purposes: link to relevant Union law may be useful.
Criteria for determining significance on the basis of importance for the economy of the Union or any participating Member State	57	Clarification	The term "specific economic sectors" referred to in paragraph 1 (a) should be explained further so that it is clear in advance when the criterion in question is met.
Request for or receipt of direct public financial assistance from the ESM	61	Clarification	Contrary to Article 6 (4), subparagraph 4 of the ECB Regulation, possible cases of financial assistance from the EFSF are not listed in the heading of Title 6 or the heading of Article 61. To ensure alignment with the ECB Regulation, these should be included (In contrast, Article 67 (2) (f) expressly mentions the EFSF).
Three credit	66	Amendment	Regarding Article 66(1), although we understand that the date of 1 October is consistent with the



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institutions or supervised groups - date			commencement of the supervisory tasks of the ECB - 4 November 2014 -, the internal organisation and procedures of credit institutions are usually aligned with their financial year, which as a general rule starts at 1 January. Therefore, the decision by the ECB should result in its supervision of these three institutions or supervised groups commencing on 1 January each year, to allow the latter to organise and prepare procedures (e.g., with regard to the drafting, preparation and sending of communications in English, if the supervised entity and the ECB so agree) in advance.
Notification of the ECB of an application for an authorisation to take up the business of a credit institution	73	Clarification	<p>a) Does "notification" of the receipt of an application for an authorisation in Article 73 (1) mean just notice that the application has been received or that all the relevant documents have been submitted? The latter should actually be the case, since on what factual basis could the ECB otherwise ask the the NCA to request additional information if an application is incomplete (Article 73 (3))? We request clarification.</p> <p>b) With this in mind, and to provide planning certainty for applicants, a definite deadline for examining formal completeness of an application should be introduced like, for example, in Article 15 (1) of Directive 2007/44/EC or Section 2c (1) of the German Banking Act, although it should be made clear that "formal" completeness merely means checking that all the documents required by law have been presented.</p> <p>c) Time limit for a license application is governed by national law. As the ECB has an additional assessment to perform, the available time for assessment by the NCAs will in fact be shortened by the time required by the ECB. How will a due process and due assessment be guaranteed?</p>
NCAs' decisions rejecting an application	75	Clarification	<p>a) We request clarification that rejection of an application also falls within the ECB's responsibility. While Article 77 (1), sentence 2 seems to ensure this interpretation, the wording of Article 75 appears open to misunderstanding in this respect. Particularly if an application is rejected, however, it is very much in the applicant's interest that a uniform EU-wide assessment takes place.</p>

			<p>b) The FR should clearly state how an entity can appeal against a decision of the supervisor. Is the assumption correct that decisions based on the CRD can be challenged before national courts and that the CRR can be challenged before European Court? This should be clarified in the FR.</p> <p>The notification of an application for an authorization to take up the business of a credit institution shall be assessed by the NCA considering the conditions laid down in the relevant national law. A rejection of the application seems to qualify as a decision of a NCA, taking account of Article 88 (3)(b) which refers to 'an NCA decision'. Consequently, do the procedural rules laid down in national law apply to this decision?</p> <p>Can a NCA still make a supervisory decision or is each decision of a NCA per definition a decision of the ECB? Can a decision of the NCA be challenged before national courts or does it qualify as a decision under the responsibility of the ECB and subject to the European procedures?</p>
ECB decision on the withdrawal of an authorisation	83	Clarification	<p>a) Paragraph 1 should be worded more precisely. It is unclear what it ties in to, i.e. on what event the requirement to take a decision without undue delay is based.</p> <p>b) The exception to the right to be heard seems more a rule than an exception when reading article 83(1) where the ECB has the obligation to take a decision without undue delay. An exception to the right to be heard as mentioned in clause 31(4) is unacceptable in the situation of a (draft) decision on the withdrawal of an authorization. The institution has the unconditional right to be heard.</p>