EUROPEAN CENTRAL BANK

EUROSYSTEM

PUBLIC CONSULTATION

DRAFT ECB SSM FRAMEWORK REGULATION

# TEMPLATE FOR COMMENTS

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| Mr ☐<br>Ms ☐ | First name |
| | Surname |
| Institution<br>European Banking Federation | |
| E-mail address | |
| Telephone number | |
| ☐ | 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 |
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| Notification to NCAs of the acquisition of a qualifying holding | 85 | Clarification | a) Whilst Article 73 refers to a requirement to "notify the ECB of the receipt of such application", Article 85 (1) sets a requirement to "notify the ECB of such complete notification no later than five working days following receipt thereof". Does this different wording actually mean different things? If so, we request clarification; if not, we request alignment of the wording.<br><br>b) The wording of Article 85 (1) is unclear in that the NCA only notifies the ECB when it is satisfied that the notification of the intention to obtain a qualifying holding is complete. This article should refer to "formal" completeness which then triggers the notification requirement.<br><br>c) The NCA will notify the ECB after a 'complete notification' of an intention to acquire a qualifying |

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| | | | holding instead of 'notification' as mentioned in Article 22(1) CRD. Consistency with the clauses in CRD is necessary.<br><br>d) The current text does not include the case of an acquisition of a qualifying holding in a credit institution established in a third country. Furthermore, the CRD IV package does not regulate in Art 22 of the Directive 2013/36/EU the acquisition of a qualifying holding in a third country and, therefore, Member States are supposed to deal with this issue under national law. We would appreciate more clarification in the process taking into account that the ECB is in charge of the consolidated supervision. 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 and the authority that shall decide upon the acquisitions of qualifying holdings in the EU. |
| Assessment of potential acquisitions | 86 | Amendment | Whilst Article 15 (2) of the SSM Regulation provides for notification of the ECB no later than 10 working days before expiry of the assessment period, Article 86 (2) of the present Regulation calls for notification at least 15 days before expiry of the assessment period. It must at any rate be ensured that the requirements of Article 15a (2), sentence 1 of Directive 2007/44/EC are met. As a result, the supervisory authority may request additional information from parties interested in acquiring a qualifying holding up to no later than the 50th working day of the assessment period (i.e. 10 working days before expiry of the assessment period). To have enough time for drafting the decision to the ECB, the deadline for requesting additional information in both cases would effectively end between the 35th and 40th working day of the assessment period. While this would be beneficial for market participants, both clarification of the deadlines and alignment with Article 15a (2), sentence 1 of Directive 2007/44/EC should be requested in order to avoid any subsequent confusion in day-to-day practice. |
| Requests, notifications | 88 | Amendment | As a general rule, the significant supervised entities shall address to the ECB all their requests, notifications or applications. However, there are some exceptions (e.g., authorisations, qualifying |

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| or applications | | | holdings, managers suitability, opening of branches within the SSM). The use of a single point of entry (ECB or NCAs) for all the cases would make the framework simpler and more intuitive. Likewise, it would be advisable to use one single point of exit (Art. 88). |
| Supervision of significant supervised entities | 89 | Clarification | Confirmation is sought that measures to ensure the supervision of less significant supervised entities by NCAs will not be materially different to the level and nature of supervision applied by the ECB to significant supervised entities |
| Relationship ECB - NCAs | 90 | Clarification | More precision on the role of NCA, e.g. "day-by-day assessment". |
| Exchange of information | 92 | Clarification | The wording "serious indication of circumstances that could lead to a determination" is too vague to justify the far-reaching legal consequences.<br><br>A permanent exchange of information between the ECB and NCA should be institutionally arranged, not only under the circumstances as mentioned in this clause. The ECB has to take into account the information available to NCAs. |
| Supervision of significant supervised entities | 94 | Amendment | a) Article 94 suggests that the onus is on the significant credit institution to notify the NCA of any new facts that may affect an initial assessment of suitability; this would represent a change from the current national law which places the onus on the individual to notify the NCA of any new facts; is that the intention?<br><br>b) It is stated that 'the single point of entry for all requests coming from significant supervised entities is, as a rule, the ECB, except as otherwise provided for in the SSM Regulation or in the draft FR'. We note that there is no specific rule on vetting procedures. Apparently, the ECB will do this on the basis of national law (see previous remark). Does this mean that national administrative law will apply? How will ECB ensure a level playing field between countries? Will ECB (or maybe EBA) |

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| | | | develop common standards? Will ECB aim for mutual recognition of approvals?<br><br>c) Article 94 provides that a significant supervised entity shall inform the relevant NCA of any new fact that may affect the initial suitability assessment of a manager,without undue delay once the facts are known to the supervised entity or the relevant manager. We would suggest the regulation should also provide for the duty of the manager to inform the bank and the parent company without undue delay of such new facts or issues. |
| Relationship between ECB and NCAs | 95 | Amendment | All communications from ECB to supervised entities belonging to a directly supervised group and vice versa should be channelled via the parent company, at least for those related to the JST activities.<br><br>In this regard the role of the parent company should be clarified, above all the reconciliation with the jurisdictions where the holding is ruled to have an effective steering and control role.<br><br>It is unclear what is meant by the reference to 'its ordinary interaction with its NCA'. The significant supervised entity shall address to the ECB all its requests, notifications of applications relating to the exercise of the tasks conferred on the ECB without changing its ordinary interaction with the NCA. How does this relate to the Joint Supervisory Teams? |
| Deterioration of the financial situation of a less significant supervised entity | 96 | Clarification | The wording "rapidly and significantly" is too vague to justify the far-reaching legal consequences. |
| Application of macro-prudential tools by the ECB | 102 | Clarification | Regarding to the second sentence of article 102 "If an NDA does not set a buffer rate, this does not prevent the ECB from setting a buffer requirement in accordance with this Regulation and Article 5(2) of the SSM Regulation". It should be clarified that in case Member State has decided not to introduce a particular buffer (e.g. systemic risk buffer) in its national legislation, the ECB has no right |

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| | | | to set a buffer of such type. |
| Setting macroprudential buffers | 104 | Amendment | In case NCA does not accept ECB point of view, it should clearly disclose the underlying rationale. |
| Exchange of information and cooperation in respect of the ECB's use of macro-prudential tools | 105 | Clarification | NCA should have more than 5 days to object to the ECB's intended measure, in order to have time to assess consequences to all relevant market participants if the measure affects the whole domestic system or several financial institutions. The NCA might need to collect extra data from the financial institutions and 5 days seems short. 10 days seems more appropriate time-frame. |
| Close cooperation | 106 | Clarification | We would appreciate clarification of how the SSM/ECB will interact with regulatory authorities in Member States which choose not to enter into a close cooperation agreement |
| Administrative penalties | 120 | Clarification | Clarification that less significant entities supervised by NCAs are subject to an Administrative Penalties regime that is not materially different to those significant entities supervised by ECB. Why are entities supervised by ECB singled out given that all regulated entities in Euro area are subject to same Banking regulations? What safeguards are in place to ensure consistent administrative penalty regime between entities supervised by ECB and those supervised by NCAs? |
| Procedural rights | 126 | Amendment | The notification referred to in point 2 should also mention the legal provisions presumably violated that have been the cause for the investigation as well as the exact time period in which the supervised entities are expected to answer. |
| Right to be heard | 129 | Amendment | "May be combined" is not appropriate. According to SSMR Article 22, before taking supervisory decisions, the ECB shall give the persons who are the subject of the proceedings the opportunity of being heard and shall base its decisions only on objections on which the parties concerned have been able to comment. Only in cases where urgent action is needed should it be possible for the person not |

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| | | | to be heard until after the decision has been taken. |
| Limitation periods for the enforcement of administrative pecuniary penalties | 131 | Clarification | Is there a sunset date for the expiry of the limitation period for enforcement of administrative pecuniary penalties referred to in Article 131? |
| Publication of decisions regarding administrative pecuniary penalties | 132 | Deletion | Publication of decisions regarding administrative pecuniary penalties on the ECB's website is an unacceptable "name and shame" measure that is neither necessary nor appropriate nor helpful. Particularly in the case of significant institutions which conduct a wide range of different business activities and therefore have to meet a large number of different supervisory requirements, it can never be ruled out that, despite careful and conscientious conduct on their part, they may be fined for actions or breaches of rules.<br><br>Should this article not be deleted, paragraph 3 should at any rate be reworded to refer to a one-year period at most instead of a five-year period.A five-year period would lead to an unjustifiably long list of penalties that could create the impression in public that banks fail to comply with statutory provisions.<br><br>Penalties should only be published in last instance and only once the full legal procedings have ended. Publishing penalties without a solide legal ruling will damage the reputation of the institution, and lead to legal uncertainty. |
| Significant supervised entities | 134 | Clarification | a) Paragraph 1 (b) refers to "Union directives". This paragraph does not satisfy the requirement of clarity, given the large number of relevant legal acts and possible measures. In line with Article 1 of Regulation No. 1093/2010 on the establishment of a European Supervisory Authority (European Banking Authority), at least the relevant Union legal acts governing this area should be cited in the present Regulation. |

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| | | | b) Confirmation that a significant supervised entity will not be subject to two sets of Administrative Penalty proceedings for the same breach. |
| Cooperation between the ECB and NCAs as regards the powers referred to in Articles 10 to 13 of the SSM Regulation - Cooperation in respect of requests for information | 138 | Amendment | In connection with the power to request information under Article 10, in conjunction with Article 9, of the ECB Regulation, the principle that nobody needs to incriminate themselves (nemo tenetur se ipsum accusare) should be reflected in a right for any persons requested to provide information to refuse to provide it if, in doing so, they would expose themselves or relatives to the risk of legal prosecution. This is also stipulated in Article 47 of the EU Charter of Fundamental Rights; it should be made clear in Article 138 et seq. |
| Request for information | 139 | Amendment | There should be enough time to make preparations in order to secure the good quality of a response to a request, especially when the requested information is very detailed and is only partly the basis for existing reporting. The requested information and documentation should be able to be given in local languages. If the existing reporting framework is not enough, there should be clear agreement on items to be reported with relevant instructions and reporting tools. Reporting on ad hoc basis with varying items to be reported should be avoided. |
| Regulatory reporting | 140 | Clarification | In our understanding, the article does not clarify who is the relevant authority for consolidated regulatory reporting, i.e. the ECB or the NCA of the mother company? |
| Requests for information at recurring intervals under Article 10 of the | 141 | Amendment | Reporting to EBA and NCA is already required, in accordance with CRR. Therefore the ECB should always justify that its request for additional reporting is necessary because information has not already been reported to another supervision authority.<br><br>How will it be ensured that the reporting process will be as efficient as possible? It should be avoided |

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| SSM Regulation | | | that double reporting obligations (both to NCA and ECB) will be created. |
| Procedure and notification of an on-site inspection | 145 | Amendment | The notification time of "at least 5 working days" is very short. There should be enough time to make necessary preparations for on site inspection. As regards the involvement of JST in on site inspections, it would be preferable to have common timetables at Group level synchronised with other inspection activities. |
| Start of direct supervision by the ECB when the ECB assumes its tasks for the first time | 147 | Clarification | The article states that ECB shall address at least two months before 4 November 2014 a decision to each credit institution to confirm its status as a significant supervised entity. There is a need to clarify, will this decision be determined on the basis of the year end 2013 data (total value of assets) or later. |
| Pending procedure and transitional provisions | 149 | Amendment | Insitution should receive from their NCAs a recap of the pending procedures with for each of them the status (transferred to the ECB, still followed at the NCA level) and the timeframe.<br><br>Applies to article 48 as well. |
| Cooperation with Authorities out of SSM | 152 | Clarification | We would request further clarification on the transition of the current Memorandum of Understanding (MoU) with non-Euro member states and with third countries as well as their validity. Also, the rules that will govern the relationship of the SSM with third countries which had only signed MoU with one or various former NCAs. How and when will they be applicable to the whole SSM? |
| Regulatory cost of being a significant institution or a less significant one | | Clarification | We would like the ECB to address the differential between the incremental regulatory burden of being in the SSM versus the on-going regime for 'less significant' institutions which would continue to be regulated by the NCA. It is not clear at this point what exactly will be involved over and above current requirements, in being a SSM regulated institution. It is also not clear what practical difference it will be for an institution which remains outside the SSM. (For instance, will the NCAs |

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| | | | follow ECB/SSM practice to such an extent that there is no practical difference.) |
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