

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	
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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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**COMMENTS ON THE DRAFT ECB SSM FRAMEWORK REGULATION**

Issue	Article	Comment	Concise statement why your comment should be taken on board
Definition of supervisory procedures	2	Clarification	<p>a) Please clarify if local public holidays will be taken into account as a non-working day.</p> <p>b) Supervisory procedures (definition no. 24); the text should more clearly state when supervisory procedures begin. It must be upfront clear when informal communication between the entity and supervisory turns into formal acts.</p> <p>c) What is meant by legal act of general application?</p>
NCA/NDA use of national powers	22	Clarification	How will the ECB guarantee a level playing field where it instructs NCAs/NDAs to exercise national powers to enforce ECB tasks, as national powers may differ (substantially)?

Administrative Board of Review	25	Amendment	<p>a) We suggest to include a definition of Administrative Board of Review in the Framework Regulation.</p> <p>B) A maximum timeframe should be set, as it is the case within CRD (3 or 6 months elapsed time for decisions, e.g. submission of internal models for approval). In the absence of supervisory reaction within the maximum timeframe the request should be considered as accepted.</p>
Lack of legal certainty	29	Amendment	It is stated in paragraph 3 that the ECB may set the time limits. This will create legal uncertainty. The ECB should not have discretionary powers to set the time limits. This paragraph should be adjusted to provide clear time limits.
Adjustment of criteria for size	52	Amendment	Legal separation is not mentioned in this article as one of the options as a change in circumstances. this option should be inserted into the paragraph.
	93	Amendment	93(2) states that the ECB shall (also) have the supervisory powers that NCAs have under national law, in addition to Union law. This suggests an extension of the authority to 'pure' national law that isn't based on EU law. We doubt whether this is intended effect of this wording, as it may go beyond the intended scope of ECB authority. It would be better to delete the phrase "and national law", or to clarify what is meant exactly.
	121	Clarification	Is it possible that the Framework Regulation superseeds the SSM Regulation? What happens in case of overlap or inconsistencies?
	137	Amendment	The FR states that proceeds from penalties shall be the ECB's property. We assume that these proceeds cannot be used by the ECB to carry out its tasks with regard to maintaining the euro's purchasing power and price stability in the euro area (i.e. monetary policy) but the text or explanation does not specify this. We propose to amend the text that the proceeds will be added to the budget meant in par. 29 of the SSM Regulation.

Ne bis in idem	142	Clarification	Why the addition “without prejudice to national law”? If an obstruction forms a breach of 18(7) SSM, and the ECB imposes sanctions on the basis of that article, then a potential national sanction would conflict with the ne bis in idem principle.
Sanctions	Part X	Amendment	Part X could be drafted more accurately. It should clearly specify the applicable regime considering the following criteria: (i) regulation that is breached (directly applicable Union law, national law transposing a directive, national law exercising options of applicable Union law, national law not transposing any directive and not exercising options of applicable Union law, or ECB regulations and decisions), (ii) type of supervised entity (significant or less significant), (iii) addressee of the penalty (legal entity or natural person), and (iv) type of penalty (pecuniary or non-pecuniary). In particular, it would be advisable to clarify the regime applicable to a breach of national law exercising options of applicable Union law.
Joint Supervisory Teams	6	Clarification	We would like to have clarifications if in those countries where the NCA is not the central bank, representatives of both authorities (the central bank and the institution in charge of supervision) will be members of JST.
On-site audit	144	Clarification	We would appreciate more clarity on the mechanisms adopted by ECB to ensure consistency in auditing methodology and procedures, above all when the head of the inspection team is not an ECB member.
General question		Clarification	On a general note, while we fully support the centralization of prudential supervision at the ECB level as a mean to further integrate the Eurozone banking system, we would like to highlight the importance of transitional arrangements and procedures between the ECB and NCAs in order to make sure that the functioning of the SSM banking system is not hampered until the ECB system becomes fully operational.
"ECB may request an	91	Amendment	It is suggested that the term "draft decision" is replaced by the word "recommendation" i.e. an NCA

NCA to prepare a draft decision"			may submit a recommendation to ECB as the ECB is the ultimate decision maker. Otherwise there may be consistency and credibility issues with regard to the decision making process.
Administrative penalties	126	Clarification	Will the materiality impact of a breach be taken into account when deciding upon an administrative penalty? Will the co-operation of the supervised entity be taken into consideration when deciding an administrative penalty?
Ad-hoc requests for information	139	Clarification	In situations where the supervised entity does not have information in the format requested by the ECB, will the ECB accept best available information or best estimates?
Requests for information at recurring intervals	141	Clarification	In situations where the supervised entity does not have information in the format requested by the ECB, will the ECB accept best available information or best estimates?
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