

PUBLIC CONSULTATION
DRAFT ECB SSM FRAMEWORK REGULATION
TEMPLATE FOR COMMENTS

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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
Definitions	2	Amendment	In order to avoid operational difficulties, the definition of 'working days' should apply mutatis mutandis also for the non-euro zone Member States i.e. 'working day' should mean a day which is not a Saturday, Sunday or an ECB or a participating non-euro area Member State public holiday.
ECB decisions on applications	78	Amendment	Paragraph 1 needs to specify the reference date from which the 10 days timeframe starts.
ECB decisions on applications	78	Clarification	With regard to para 4, we would like to have the confirmation that these provisions are not meant to limit the right of the Member States to impose requirements under the national legislation in relation to, for instance, the conditions under which the activity of taking other repayable funds from the

			public in the form of covered bonds issue could be carried out, especially in case where national legal framework provides for special authorization of the issue.
Application of ECB Regulation in the context of close cooperation	Part IX	Clarification	As a general remark, since according to Article 139 (2) (e) read in conjunction with Article 132 of the TFEU it results that the legal act issued by the ECB are not applicable to non-euro Member State, it should be clarified which is the rationale for including for Part IX – Close cooperation in the ECB SSM Framework Regulation (whereby detailed operational arrangements for implementation of the task conferred on ECB by the SSM Regulation, both in relation to NCA as well as to credit institutions under their supervision are regulated). In other words, it is necessary to clarify to what extent and on what ground (in which way) the Regulation could be opposed to non-euro participating Member States (its NCA and credit institutions).
Close cooperation	Part IX	Amendment	The approach according to which the provisions of the Regulation applicable to euro participating Member States will apply mutatis mutandis to non-euro participating Member States does not seem to be appropriate and in line with relevant legal framework (TFUE and SSM Regulation provisions) and it should be revised. The core argument is that in the context of close cooperation none of the ECB competence conferred to it by the SSM Regulation can be directly exercised over credit institutions under supervision. Some specific observation on certain issues in this regard can be found below.
Liability in context of close cooperation	108(6)	Amendment	The provisions regulating the relation between ECB and NCA in a close cooperation should provide more clarity and legal certainty on the matter of how liability arisen from the act of supervision is segregated between ECB and NCA, especially in cases when the NCA applies ECB measures, instructions, requests or guidelines in a timely manner (it should be regulated similar by the Article 108 (6) of the Regulation where only the liability of the NCA for not acting in a timely manner is envisaged).
Application of administrative	113	Amendment	The reference to the rules provided in Part X – Administrative penalties as to be applied mutatis mutandis to non-euro participating Member States should be revised for the sake of clarity and

penalties			certainty, having in view that for the breach of a requirement under relevant directly applicable acts of Union law, there is no legal ground to apply other sanctions than those provided by relevant national legislation. In this respect, Article 18 (1) of SSM Regulation conferring ECB certain competences to impose sanctions could not be a legal basis for application of administrative penalties that are referred to in Part X, if such penalties are not provided by the national legislation of non-euro participating Member State. In this case, an instruction addressed by the ECB could not be itself sufficient for the NCA to impose such a sanction and these aspects should be clearly specified.
Investigating units and procedural rights	113	Amendment	It is necessary to make some amendments in order to be clearly stated how the provisions that are referred to in this Article, namely the provisions of Title 2 of Part X, would be applicable to credit institutions established in a non-euro participating Member States, having in view that those provisions stipulate rules regarding the establishment and powers of investigative unit, and also some procedural rights that are directly applicable to the credit institutions under supervision, and does not concern actions that could be taken by NCA following ECB instructions. The approach according to which these provisions are applicable mutatis mutandis is not appropriate and should not be retained.
Terminology	2 point 15	Amendment	With regard to the consistency of the terminology used in the Regulation, it could be noted that the expression “participating Member State in close cooperation” which is defined in Article 2 point 15 is used interchangeably with the expression “participating non-euro area Member State” also used in the Regulation (including in Article 2 – Definitions – see for example point 10, 12, 18). We consider that only the expression participating non-euro area Member State should be used in the entire Regulation and be defined as “any non-euro Member State that has established a close cooperation in accordance with Article 7 of SSM Regulation”, in order to be consistent with the last part of the definition of “participating Member State” provided in Article 2 (1) of SSM Regulation and having in view that the expression “Member State in close cooperation” is less accurate, since not the Member State is in close cooperation, but NCA is (Member State could only establish a close cooperation between its NCA and ECB).

Correlation of the title with the content	Part IX Title 2	Amendment	Title 2 of the Part IX (Procedures for close cooperation) should be renamed as follows: "Close cooperation in relation to Parts III, IV, V, VIII, X and XI", in order to include reference to part VIII, which is referred to in Article 112.
Investigatory powers	114(2)	Amendment	Consideration should be given to the fact that Articles 10 to 13 of the SSM Regulation do not refer to an NCA in close cooperation. Therefore, an NCA must act by virtue of its national legislation in order to be able to implement the ECB's instructions. Therefore, the wording that an NCA in close cooperation shall make use of the investigatory powers pursuant to Articles 10 to 13 of the SSM Regulation should be modified.
Investigatory powers	114(4)	Amendment	These provisions should be revised, in order to clarify the role of the NCA in order to ensure that designated ECB staff members can participate as observers in any investigation pursuant to Articles 10 to 13 of the SSM Regulation.
Investigation & on-site inspections	114	Amendment	It is not clear how the provisions of Part XI will be made applicable in relation to credit institutions established in a non-euro participating Member State in close cooperation and the provisions should be revised. The approach according to which these provisions are applicable mutatis mutandis is not appropriate and should not be retained.
Duty to inform	116(3)	Clarification	At article 116 para 3 it is not clear the legal basis for NCA to inform the ECB about decisions adopted in relation to tasks not conferred upon the ECB.
Publication of sanctions	132	Clarification	It is not clear whether sanctions applied by NCA following ECB instructions will be published on ECB website.
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