

PUBLIC CONSULTATION
DRAFT ECB SSM FRAMEWORK REGULATION
TEMPLATE FOR COMMENTS

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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 |
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| Three most significant credit institutions criteria | 66 | Clarification | The word "each" in Article 66(1) FR seems to be incorrect and could be replaced by the word "such" |
| Particular Circumstances | 70 | Amendment | In order to provide more guidance in line with the existing wording of Article 70 FR, it should be stipulated that in case of a credit institution with a low risk profile the objectives and principles of the SSMR do not require a supervision by ECB. |
| Rejection of an application by a NCA | 75 | Clarification | The word "shall" should be replaced by the word "can" in order to avoid the misperception that EU law is the basis for the decision of the NCA; the decision of the NCA to reject the application is |

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| | | | purely national decision that can only be contested in front of national courts. |
| conditions in connection with an authorisation | 76 | Clarification | <p>Pursuant to Article 76 (3) FR the relevant NCA suggesting to grant an authorisation may suggest in its draft authorisation decision to attach recommendations, conditions and/or restrictions to the authorisation. The NCA shall be responsible for assessing compliance with the conditions and/or restrictions.</p> <p>This seems to indicate that national conditions and/or restrictions can be attached to an authorisation decision of ECB (as the authorisation decision is taken by ECB).</p> <p>This seems to us to be inconsistent with the SSMR. The SSMR provides that the authorisation decision is adopted by the ECB and that the relevant NCA shall provide a draft authorisation decision. The NCA may therefore suggest conditions/restrictions but ECB decides whether they become part of the authorisation decision</p> |
| Lapsing of authorisation | 79 | Deletion | Article 79 FR is not a procedural rule and should therefore be deleted. |
| Applicable law | 82(1) | Clarification | <p>The term Union law (which is also used in other Articles) should be defined and should include directly applicable law of the EU and national law implementing directives.</p> <p>As ECB is the only authority that might withdraw the authorisation for deposit taking and lending (i.e. the authorisation as credit institution), also the question arises whether ECB would be allowed to withdraw such authorisation on the basis of national law that is not implementing EU directives (see Article 18 e) CRD IV). It should be clarified that in such a case the authorisation may only be withdrawn upon a proposal of the relevant NCA (although we think that this follows already now from the reference to Union law in Article 82 (1) FR).</p> |

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| Correct reference | 83 | Clarification | <p>The reference in Article 83 (3) FR should probably refer to Article 84 (instead of Article 85) FR.</p> <p>The wording "shall prepare a complete draft decision" should be replaced by "shall decide", as the ECB decides in these cases.</p> |
| Notification requirement | 93(1), 94(1) | Deletion | Article 93 and 94 FR stipulate notification requirements in connection with the fit and proper requirements. In our view there would only be a need for such notification requirement if national law does not provide for such notification. However, even then the question arises whether the ECB may stipulate such general notification obligations. |
| Point of entry for notification, request | 95 | Clarification | <p>It should be clarified what it means that requests, applications and notifications shall be addressed "notwithstanding ... to its ordinary interaction with its NCA". The assumption of supervision by the ECB should not lead to double communication lines. It should be clear to whom the communication should be directed.</p> <p>On this note, it is surprising that the notifications pursuant to Article 93 (1) and 94 (1) FR have to be provided to the NCAs although ECB has to decide (i.e. to approve if an approval is required under national law or may only object, provided only a right to object to an appointment does exist).</p> |
| Definition of macro prudential tools | 101 | Clarification | As there is no clear deliniation of microprudential and macroprudential tools, the FR should clearly identify what are macro-prudential tools in its meaning. Article 101 (c) FR should therefore be replaced by a reference to Articles 124 (5) and 164 (5) CRR. |
| Liability | 108 | Amendment | It should be clarified that the NCA is liable to the relevant supervised entity for any damages resulting from its failure to apply any ECB measure etc. |
| Regulation 2532/98 | 121 | Amendment | The application of the procedures laid down in Regulation 2532/98 - in particular with a view to the decision making bodies involved - are not in line with the basic concept of the SSMR. Based on Article 18 (4) SSMR "as appropriate" it should be clarified that - unless such regulation is amended - |

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| | | | only the procedural rules of the FR shall apply for procedures relating to administrative pecuniary penalties. |
| Scope of the power to impose sanctions | 122 | Clarification | It should be clarified that the ECB may impose sanctions pursuant to Article 18 (1) SSMR only on significant supervised entities. Article 124 (a) FR is based on this concept, but it should be clarified. |
| Procedural rights | 126 | Amendment | The concerned supervised entity should be heard to the proposed draft decision. The submission of the concerned supervised entity must be made available to the Supervisory Board. |
| Opening of proceedings | 134 | Amendment | In respect of significant supervised entities NCA should be able to initiate proceeding in respect to national law only on its own initiative, if the the national law does not implement CRD IV. If this is the case the opening of such proceeding should depend on the request of ECB. |
| Legal privilege | Part XI | Amendment | With a view to the rights of defence as envisaged by Article 22 (2) SSMR, a provision should be added that correspondence between the supervised entity and its legal adviser is privileged. |
| Options | 150 | Clarification | In respect of options for national competent authorities under CRR, it should be clarified that the options chosen by the national competent authorities shall continue to apply. |
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