



Framework Regulation Consultation – Comments by Ministry of Finance of Finland

Legislative powers of the ECB

As a general note, we would like to draw attention to considerations relating to the legislative powers of the ECB in general. The EU Treaties define the legislative powers of the ECB rather narrowly and set careful limits to their exercise, stressing that they are to be used to the extent necessary to implement the ECB's tasks defined in the ESCB Statute and in cases that are laid down in the acts of the Council, in this case, in the SSM Regulation. Keeping in mind that the regulations adopted by the ECB have all the legal effects of EU legal acts in general, we note that the draft Regulation includes a number of 'additional issues' to those included in the SSM Regulation as matters to be covered by the framework. While we certainly see that some additional issues are necessary in order to enable the ECB to regulate the practical aspects of its own tasks, we also stress the importance of preserving the institutional balance of the Treaties. For example, Article 5(4) of the ESCB Statute reserves the power to define the natural and legal persons subject to reporting requirements, the confidentiality regime and the appropriate provisions for enforcement to the Council. In this regard, the institutional prerogatives would need to be respected, and the Framework Regulation would subsequently need to be limited to the practical aspects of these questions, if further regulation is indeed necessary.

Choice of legal instrument

As to the choice of legal instrument, we acknowledge the possibility for the ECB enumerated in the SSM Regulation to adopt regulations for certain purposes; however there is no obligation to adopt one or to include all matters to be addressed in one comprehensive regulation. Even if the inclusion of all provisions in one instrument has certain practical benefits, further consideration could be given to whether all the proposed provisions properly belong to a regulation, keeping in mind their technical nature, on the one hand, and the legal effects of regulations in the EU legal system, on the other.

Instead, some of the proposed provisions might more appropriately belong to the supervisory handbook or the Rules of Procedure of the ECB, or a separate Annex including the particular provisions relating to the implementation of the SSM Regulation. One example is Article 74 of the draft Framework Regulation (*NCA's assessment of applications*). Read in conjunction with Article 15(2) of the SSM Regulation, which is essentially stating the same thing, the provision seems more suitable to be included in the supervisory handbook rather than the Framework Regulation. We should be mindful of adopting overlapping legal provisions from two different sources even if they were



identical – and if not, their implementation and needs of alignment might cause further complications. These questions are of particular importance noting that the Framework Regulation will deal with the rights of individual credit institutions.

Specific issues

In light of the above, we think the Framework Regulation should not go beyond the mandate deriving from the Treaty and the SSM Regulation, i.e. specifying the practical arrangements for the ECB to carry out its tasks in accordance with the SSM Regulation. It should hence not create obligations in addition to the obligations in the SSM Regulation. One such example is Article 30(4) of the draft Framework Regulation, which empowers the ECB to require the persons mentioned in Article 11(1)(c) of the SSM Regulation to attend as witnesses in the offices of the ECB (or any other place in a participating Member State determined by the ECB). Such a provision creates an obligation that is beyond the scope of the SSM Regulation and should therefore be deleted.