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Ref. DK: SSM
Ref. BVR: ESFS-SSM

**Consultation of the European Central Bank on a draft Framework
Regulation pursuant to Art. 6 (7) of the Regulation for a Single
Supervisory Mechanism (SSM)**

14-03-13

CP1 – Framework Regulation Consultation

Dear Sir or Madam,

We wish to thank you for the opportunity to comment on the draft of a regulation establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation, SSM FR) published by the ECB on 7 February 2014.

The SSM FR is essentially in line with Council Regulation (EU) No 1024/2013 (SSM R) conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions. In accordance with Art 6 (7) SSM R the purpose of the SSM FR is to specify in more detail the individual regulations of the SSM and to provide more clarity and legal certainty in dealing with the requirements of the SSM R. This objective has not been fully achieved.

In view of the fundamental significance of the framework regulation presented by the ECB and future legislation to be adopted to further concretise supervisory practice within the SSM for the institutions domiciled in the Member States involved we see the need for additional explanation with regard to the legal validity of such regulations. It should be ensured here that this legislation measures up to scrutiny under Art. 4 (3) subpara. 2 sentence 2 SSM R in conjunction with Art. 132 of the Treaty on the Functioning of the European Union (TFEU).

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In many crucial regulatory areas, moreover, the draft does not provide the desired legal certainty for the supervised institutions. In fact, vague legal terms/concepts are in part adopted from the SSM R without adequate clarification or else existing vague legal terms of the SSM R are merely replaced with other vague legal terms. There is thus lacking, for example, an explanation as to what is understood by the term "material draft supervisory decisions" in Art. 1 (a) (iii) SSM FR. Unclear is also on the basis of which criteria institutions that although being part of a significant group, are on a stand alone basis less significant, may qualify to be supervised by the ECB in order to "ensure consistent application of high supervisory standards".

A key principle on which consistent European supervision is based is the principle of proportionality. In this respect, Art. 1 subpara. 3 SSM R requires the ECB to have full regard to the different types, business models and sizes of credit institutions when carrying out its tasks. This principle should be explicitly incorporated in Art. 1 SSM FR, too, in order to ensure that it is strictly applied, particularly when the institutions carry out their reporting obligations, in exercising national discretion conferred on the supervisory authorities pursuant to CRR and to the depth of supervision. In this regard, an exemption, by request if necessary, from supervision at EU-level via Art. 70 (1) SSM FR should be considered for non-significant supervised entities belonging to a group that would be classified as significant.

Lastly, the regulation of the language regime in Art. 23 and 24 SSM FR gives cause for concern. Granted, the institutions continue to be basically free to make submissions in the official language of the respective Member State. The other provisions, however, raise fears that over the medium term English will become the official language. For example, the ECB is obliged to specify English as the procedure language with the institutions and entities supervised by it. Moreover, English is the language for the supervisory authorities in its dealings with the ECB. In addition, submissions by the institutions must be accompanied at least by a summary in English. The end result of all this will be that communication with the supervisors will no longer be conducted in the official language of the Member State concerned. Here, urgent clarification is needed that the official language of the respective Member State will continue to be an official language vis à vis ECB supervision too.

For further details we refer to the enclosed individual comments on the requested forms.

Should you have any further queries Mr Jan Schmidt-Seidl would be pleased to answer them and conduct any further technical discourse if the need arises.

Yours truly
on behalf of the German Banking Industry Committee
National Association of German Cooperative Banks

by proxy



Gerhard Hofmann



Dr. Olaf Ahtelik

Annex