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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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TEMPLATE FOR COMMENTS

Name	**German Banking Industry Committee**	**Country**	**Germany**

Comments on the draft ECB SSM Framework Regulation

			SSM R = Council Regulation (EU) No 1024/2013 of 15 October 2013 SSM FR = ECB's draft SSM Framework Regulation of 7 February 2014
Issue	**Article**	**Comment**	**Concise statement why your comment should be taken on board**
Legal basis under European Law and democratic legitimacy for issuing a directly binding ECB regulation	1	Amendment	Art. 6 (7) of the SSM R empowers the ECB to issue merely a framework to organise the practical arrangements for the implementation of the SSM. Whether the Regulation is the appropriate legal instrument for this, however, particularly with regard to Art. 4 (3) para. 2 sentence 2 of the SSM R, is questionable. Admittedly the provision concerned does grant the ECB the possibility to act by regulation, but only insofar as this is necessary for the tasks assigned. Art. 4 (3) para. 2 sentence 2 of the SSM R thus specifies the ECB's general regulation-issuing authority pursuant to Art. 132 (1) of the Treaty on the Functioning of the European Union (TFEU). According to the current regulatory contents the Framework has more the character of an administrative rule.
Subject matter and purpose of the Regulation	1	Amendment	According to recital 17 in EU Regulation 1024/2013 dated 15.10.2013 (SSM R) the "ECB should have full regard to the diversity of credit institutions and their size and business models, as well as the systemic benefits of diversity in the banking industry of the Union." This principle of proportionality to be observed by the ECB is not reflected hitherto in the ECB's Framework Regulation for the SSM (SSM FR) and should be supplemented and

			concretised in Art. 1 as a separate paragraph in order to ensure the application of the principle of proportionality in the ongoing supervision too. It should be ensured furthermore that institutions can organise their risk management with due regard to their risk profiles. Also the scope and depth of audits should be guided by the proportionality principle. In addition to the required gradations with the ongoing ECB supervision and corresponding data queries the proportionality principle must be observed in the exercise of national discretion with regard to CRR too (e.g. in Art. 24 CRR re IFRS, Art. 99 para. 6 CRR re FINREP). Against this background we propose the inclusion of a new para. 2 in Art. 1 as follows: *„When carrying out its assigned tasks and implementing the provisions of this Regulation the ECB should without prejudice to the objective, ensuring the security and soundness of the credit institutions, pay regard to the full extent to the diversity of the credit institutions, their size, their business models and their risk profiles as well as the systemic advantages of the diversity in the EU's banking sector."* Consequential amendment: the existing paras. 2 and 3 now become new paras. 3 and 4.
Subject matter and purpose of the Regulation - "material draft supervisory decisions"	1	Clarification	The provision in Art. 1 assumes the wording from Art. 6 (7) SSM R. The aim of the SSM FR is to explain the SSM R more precisely. We would understand this as concretising in more detail legal terms/concepts in the SSM R too. Particularly it remains unclear what one should understand under "material draft supervisory decisions" according to Art. 1 (a) (iii) 3rd bullet point and Art. 23 (3) d) of the SSM FR.
Establishment and composition of joint supervisory teams (JST)	4	Clarification	Art. 6 (3) SSM R governs the cooperation between the ECB and the NCAs. Art. 3 to 6 of the SSM FR provide for this cooperation to be carried out with the establishment of JSTs. It remains open, however, according to which criteria the size and composition of the JSTs are determined. This should be defined in more detail in Art. 4 SSM FR.
JST coordinator and sub-	6	Amendment	According to Art. 6 SSM FR JST members follow instructions of the JST coordinator with

coordinator			regard to their tasks in the JST. However, in the event of differences of opinion between the ECB and NCAs in carrying out their JST tasks, the rules do not provide for any mediation mechanism. We consider the establishment of such a mechanism for the effective execution of consistent supervision in the SSM necessary. We therefore suggest the inclusion in Art. 6 after sentence 2 SSM FR of the following new third sentence: *"Should differing opinions within the supervisory team make a coordination of the tasks impossible, then the Supervisory Board pursuant to Art. 26 SSM R shall at the request of the JST coordinator and NCA sub-coordinators initiate without delay mediation proceedings to ensure the speedy and fair reconciliation of the differences."*
Involvement of staff members from other NCAs in an NCA's supervisory team	7	Clarification	Art. 7 SSM FR allows the ECB to require staff members from NCAs concerned with the supervision of less significant supervised entities to be involved in other NCAs [apparently this means: NCAs from other Member States]. The type and extent of the involvement of these staff in the supervisory team of the host NCA remain unspecified. Clarification is needed here. It is unclear what legal status and what powers the seconded staff involved have. Linked to this is the question whether for the duration of their secondment these staff members are under an obligation of confidentiality to the host NCA regarding the handling of official secrets and sensitive information relating to the supervised institutions of the "guest" state. As the provisions on secrecy are covered in Art. 53 CRD IV and thus transposed into the national laws of the Member States, it must be ensured that the "seconded" staff are subject to at least the same secrecy and confidentiality requirements.
Language regime between the ECB and NCAs	23	Deletion	Art: 23 (1) SSM FR stipulates that NCAs communicate with the ECB only in the English language. This contradicts the principle that the language of each Member State is an official language (cf. Art. 1 Regulation (EEC) No. 1/58). To this extent the translation workload may not be passed on to the national authorities. More to the point, the ECB must ensure that input/submissions/documents from the authorities can be processed at the

			ECB. This applies particularly to the obligation of an NCA pursuant to Art. 23 (4) and (5) SSM FR when forwarding documents in the language of the country of a supervised entity to provide an English summary of the document on request. This will result in the official language regulations of the Member States being circumvented, since the institutions will de facto have to bear the translation workload. Art. 23 is totally inappropriate and should be deleted.
Language regime between the ECB and legal or natural persons, including supervised entities	24	Clarification	Art. 24 (1) SSM FR enables supervised entities to communicate with the ECB in writing in an official language of the EU. In oral hearings, however, the participants should be able to request to be heard in an official language of the EU other than English. The language regime is thus based on the understanding that communication with the ECB in English is the general rule. This is expressed in Art. 24 (2) subpara. 2 SSM FR too, according to which "[t]he ECB shall seek an explicit agreement on the use of the English language with significant supervised entities". This is contrary to the national and European official-language regulations. Thus significant supervised entities can, for example, invoke section 23 of the [German] Administrative Procedures Act in conjunction with the current version of Regulation No.1 of the EEC Council governing the languages to be used in the European Economic Community (official gazette no. 17/1958) to be able communicate with the ECB both orally and in writing exclusively in German. The ECB has to guarantee this. It must therefore be clarified that the official language is determined by the official language of the Member State in which the supervised entity has its registered office. In addition, Art. 24 (2) subpara. 2 SSM FR should be deleted. Art. 24 (2) SSM FR enables "supervised entities" and any other legal or natural person individually subject to ECB supervisory procedures to agree with the ECB to use English as the language of the case. Here, it must be clear that this is an exception on an individual basis. This can be best achieved by the aforementioned deletion. In addition, it must be clear that each supervised institution within a group classified as significant may agree a language regime with the ECB and not be bound by any language

			ruling for the parent entity. It should also be clearly emphasised again that the language agreement pursuant to Art. 24(2) subpara. 3 SSM FR can be revoked without giving any reasons.
Language regime between the ECB and legal or natural persons, including supervised entities	24	Clarification	According to Art. 24(3) SSM FR "ECB supervisory decisions [...] shall be adopted in the English language and the official language of the Member State […]" In our opinion it should be specified that regular and ad-hoc/special-purpose data queries be conducted in the official language of the Member State.
General obligations of the ECB and parties to an ECB supervisory procedure	28	Amendment	Art. 28 SSM FR stipulates the principle that in a supervisory procedure initiated on request the ECB may limit its determination of the facts to requesting the party to provide the relevant factual information. There may be circumstances, however, in which it is impossible for the requesting party to provide the facts material to the decision, because it has no access to them, but rather only third parties or even the ECB itself. Art. 28(3) sentence 2 SSM FR should therefore read as follows: *"In an ECB supervisory procedure initiated at the request of a party the ECB can limit its determination of the facts to requesting the party to provide the relevant factual information, so far as it is possible for the party to do this."*
Right to be heard	31	Clarification	Art 31 (3) SSM FR gives supervised entities a time limit of two weeks as a general rule to make submissions. This time limit is clearly far too short. An ECB resolution/draft supervisory decision must if necessary be internally analysed with the involvement of various departments and if necessary external expert advice - e.g. an external law/chartered accountants firm - must be called on. The submission must then be agreed upon according to internal rules. Hence it appears that a time limit of 4 weeks based on existing appeals proceedings would be appropriate as it would be in line with regulations governing administrative procedures in several EU states, whereby after due consideration it must be possible to grant a request for an extension based on individual circumstances.

			If an urgent decision is necessary to prevent significant damage to the financial system Art. 31 (4) SSM FR provides for the possibility of completely foregoing an appeals deadline. This provision is too vague and should be substantiated at least with correspondingly meaningful examples in order to satisfy the constitutional requirements of the rule of law.
Access to files in an ECB supervisory procedure	32	Clarification	Art. 32 SSM FR entitles the parties to an ECB supervisory procedure access to the procedure files. This is standard administrative procedures law. Preferably, it should be clarified that this right may be exercised during normal business hours. Insofar as the ECB would like to comply with file access pursuant to Art. 32 (5) (a) and (b) SSM FR a time limit according to the urgency/priority should be set for sending the information. The right of access must as a matter of principle cover all files. Exceptions from a time standpoint are conceivable, for example if the object of the administrative procedure is jeopardised. But it cannot be that correspondence between NCAs and ECB in general is classified as confidential, as provided for in Art. 32 (1) sentence 3 in conjunction with (3) (b) SSM FR. One of the main principles of the future supervision by the ECB is the close cooperation with NCAs, which will continue to carry out substantial parts of the actual supervision (e.g. preparing resolutions/draft supervisory decisions). In this respect, the exclusion of this type of correspondence between NCAs and ECB is an unreasonable restriction of file access and incompatible with the principles of the rule of law. This applies also to internal documents of the ECB and/or NCAs (Art. 32 (3) (a) SSM FR). These make particularly clear which factors contributed to the decision making process. File access will be circumvented if institutions may study only those documents that they themselves have drawn up.
Notification of ECB supervisory decisions	35	Clarification	Art. 35 SSM FR assumes a legally fictitious period of 10 days for the service of a notification. The possibility of evidencing a date other than the legally fictitious one should apply only in the case of a date later than the legally fictitious, which corresponds to the general nature of a notice deemed to have been served. In case of doubt, the burden of proof of the service of notice should, at least in line with the normal standards of

			administrative procedure in some Member States, fall to the ECB. We do not deem it expedient to specify by special resolution at a later date the criteria for serving a notice, since for reasons of legal clarity the standardisation of the various means of (service of) notification should pursuant to Art. 35 SSM FR, which governs the notification of supervisory decisions, be announced at the same time (in Art. 35).
Reporting breaches – Procedures for the follow-up of reports	36 ff.	Clarification	Art. 36 et seq. SSM FR contain extensive provisions to protect "whistleblowers". It is basically correct to facilitate the detection of unlawful conduct and to afford persons party to the detection of illegal activity appropriate protection. Conversely, the protection of entities against unjustified informing (denunciation) must nevertheless be guaranteed too. This is not expressed adequately enough in the provisions of the SSM FR. It is precisely Transparency International's recent remarks on best practice rules in the area of whistleblowing that call for protection against such breaches where a certain materiality threshold is overstepped. Only in those cases in which a "formal reprimand" as part of operational audits/reviews can no longer be considered sufficient does enhanced protection have to be provided. This should be taken into account in Art. 36 et seq. too. Particularly the following should be defined more precisely: • What is to be understood by good faith according to Art. 36 SSM FR. • What disclosure obligations does the ECB have in case of suspected criminal behaviour by a whistleblower. • What specific obligations to provide information should the entity have pursuant to Art. 38 (5) SSM FR.
Classification of a supervised entity as significant or less significant	39	Clarification	Contrary to the provision of Art. 6 (4) subpara. 4 SSM R the scenarios for EFSF assistance are not enumerated here. To align it with SSM R, Art. 39 SSM FR should include these. (In contrast to this, the EFSF is explicitly mentioned in Art. 67 (2) (f) SSM FR).
Classifying supervised entities which are part of a	40	Amendment	Insofar as a less significant entity within a group is in view of the significance of the group at its highest level of consolidation likewise deemed significant, it should be made clear at

group as significant			least with an amendment in Art. 40 SSM FR that the less significant entity is subject to supervision by the same joint supervisory team (JST) pursuant to Art. 3 (1) SSM FR that is responsible for the supervision of the entire group. Wording for a new subpara. 2 in Art. 40 (2) SSM FR is proposed as follows: *"The joint supervisory team responsible for a significant group as per Art. 3 (1) shall supervise also each individual entity within a group that pursuant to subpara. 1 of this provision is deemed to be significant."*
Review of the status of a supervised entity	43	Clarification	See remarks above re Art. 39.
Beginning of direct supervision by the ECB	45	Clarification	See remarks above re Art. 39.
Reasons for ending direct supervision by the ECB	47	Clarification	See remarks above re Art. 39. In addition, it should be noted that the three-year minimum-period condition for ending direct supervision by the ECB if the criterion "significant entity" is not fulfilled has no legal basis in the SSM R. Direct supervision by the ECB must therefore end immediately after the criterion "significant entity" no longer applies.
Method for calculating total assets	55	Clarification	EU law does not provide for the preparation of financial, statements for supervisory purposes. Analogous to Art. 51 SSM FR the "total value of assets" should instead be taken from the uniform reporting standard according to COREP.
Criteria for determining significance on the basis of importance for the economy of the Union or any participating Member	57	Clarification	In addition to Art. 56 SSM FR Art. 57 SSM FR mentions further criteria which can determine the significance of a supervised entity or group for the economy of the Union or any participating Member State. A determining factor pursuant to Art. 57 (1) (a) SSM FR should be inter alia the significance

State			of a supervised entity or group for "specific economic sectors" in the Union. The term "specific economic sectors" should for reasons of legal certainty be specified in more detail. Also the other criteria, such as the interconnectedness of the supervised entity/group with the economy (point (b)) or the substitutability of the services provided by the supervised entity or group (point (c)) and their complexity, should be urgently specified with threshold values and/or key figures. In the interests of transparency, the respective indicators and the measurement methodology underlying the calculations should be enumerated.
Criteria for determining significance on the basis of the significance of cross-border activities of a supervised group	59	Amendment	Art. 6 (4) subpara. 3 SSM R states that an institution may be considered significant if it has established banking subsidiaries in more than one participating Member States AND its cross-border assets or liabilities represent a significant part of its total assets or liabilities. Art. 59 SSM FR implements this provision. It is not sufficiently clear, however, that both conditions, viz. cross-border activities AND the relevance of these activities have to be met cumulatively. This should be clarified with a suitable AND linking Art. 59 (1) and (2) SSM FR. Furthermore, the 10% threshold specifying the criterion of cross-border activity in Art. 59 (2) SSM FR is, not least from the point of view of a functioning internal market with cross-border financial services, set too low. Institutions domiciled near the borders of other Member States and traditionally active in cross-border banking should be given the opportunity to carry on their business on an economically viable scale. Against this background, it is proposed to raise the threshold in Art. 59 (2) (a) and (b) SSM FR from 10% to 25%.
Request for or receipt of direct public financial assistance from the ESM	61	Clarification	See remarks above re Art. 39.
Criteria for a decision pursuant to Article 6(5)(b)	67	Amendment	Art. 6 (5) (b) SSM R allows the ECB to exercise supervision over non-significant institutions, insofar as this is necessary to ensure "consistent application of high

of the SSM Regulation			supervisory standards". Art. 67 SSM FR assumes this condition in Art. 67 (1) SSM FR. Art. 67 (2) SSM FR lists "factors" that may be taken into account, e.g. when an NCA has not carried out its duties in compliance with the SSM or the institution is already close to meeting the relevance criteria. In our opinion, this requires further clarification. Since the separation of ECB-supervised and nationally supervised institutions constitutes an essential core of the SSM R, those factors that lend themselves to a legal assessment should be formulated as genuine examples of the rules. In addition, the catalogue should be finalised or the inclusion of further cases should at least be subject to the condition that it is done under ECB supervision: *"[...] to ensure consistent application of high supervisory standards with due consideration of the relevance of the institution for the stability of the financial system as required within the SSM."*
Particular circumstances leading to the classification of significant supervised entity as less significant	70	Deletion	Art. 70 SSM FR defines the term "particular circumstances" in Art. 6 (4) subparas. 2 and 5 SSM R as "specific and factual circumstances that make the classification of a supervised entity as significant inappropriate." The result is that one undefined legal term has been replaced with another one. This does not suffice for concretisation. In addition, the stipulation in Art. 70 (2) SSM FR is legally inappropriate. The interpretation of laws - insofar as the SSM FR is in fact supposed to be a regulation with legal effect pursuant to Art. 288 TFEU - is a matter for the courts. Authorities can issue interpretative notes. These do not then have legal character, but are to be classified as internal administrative regulations which the authorities impose on themselves in applying the law. This provision should be deleted.
Particular circumstances leading to the classification of significant supervised entity as less significant	70	Clarification	Alternatively, the classification as less significant should be based on the concrete risk profile of the respective entity or supervised group member as a result of the supervisory risk assessment. In addition reference should be made to the criteria regarding the relevance for a national economy (Art. 56 and Art. 57 SSM FR) and the significance of cross-border activity (Art. 59

			SSM FR), which are not met even if many regionally active institutions or supervised group members do exceed the size criterion.
Particular circumstances leading to the classification of significant supervised entity as less significant	70	Amendment	In conclusion, we consider an exemption to be justified in those cases in which an entity by virtue of its membership of a group that is classified as significant is itself regarded as significant pursuant to Art. 40 SSM FR, but on an individual basis does not meet the significance criteria. Here, it should be possible to delegate supervision to national authorities based on an appropriate request of the entity, provided that there are no interests contrary to effective supervision. We also consider this appropriate to ensure observance of the proportionality principle. For this we propose the following wording for a new paragraph in Art. 70 SSM FR: *"By way of derogation from paragraph 1, an entity that by virtue of its membership of a group that is classified as significant is itself classified as significant pursuant to Art. 40 SSM FR, but that on an individual basis does not meet the criteria, can upon appropriate request be supervised by the respective NCA, provided that there are no interests contrary to effective supervision."*
Assessment of the existence of particular circumstances	71	Deletion	Art. 71 (1) SSM FR states that if particular circumstances exist the classification of significant entities as less significant shall be determined on a case-by-case basis. Precisely with regard to the aforementioned problematic nature of Art. 70 SSM FR concerning non-significant member entities of a group classified as significant it should also be possible to designate "collective exemptions". In this respect, the last clause of Art. 71 (1) SSM FR, according to which "…shall be determined […] but not for categories of supervised entities", should be deleted.
Notification of the ECB of an application for an authorisation to take up the business of a credit institution	73	Clarification	Art. 73 (1) SSM FR requires NCAs to "notify" the ECB of the receipt of an application for authorisation. It is not clear whether this is merely an informative action. The procedure should be clarified here. Precisely against this background and for the planning security of the applicants a definitive deadline for checking the formal completeness along the lines of Art. 15 para. 1 of Directive

			2007/44/EU and/or section 2c para. 1 of the German Banking Act should be introduced. In addition, it should be made clear that "formal" completeness means merely a check that the legally required documents have been "presented".
NCAs' decisions rejecting an application	75	Clarification	Pursuant to Art. 4 (1) (a) in conjunction with Art. 6 (5) SSM R the power to authorise rests with the ECB. We understand the provision in Art 75 SSM FR to mean that the competence to reject an application rests with the national authorities only to the extent that the application is not compatible with national law. The procedure should nevertheless be focused again. Precisely in the event of a rejection, the applicant does have an overriding interest in an EU-consistent assessment.
Cooperation with regard to the acquisition of qualifying holdings	85	Clarification	In the event of the acquisition of a qualifying holding, Art. 85 (1) requires an NCA to notify the ECB "no later than 5 days after the receipt of the complete notification". The content of the notification follows directly from Art. 22 CRR. We propose the deletion of "complete", since this creates the impression of additional formal requirements of a notification. In addition, to avoid delays, it appears to us to make sense that the notification should be forwarded to the ECB immediately. Follow-up explanations or more detailed information can be submitted later on during the course of the proceedings.
Assessment of potential acquisitions	86	Clarification	While Art. 15 (2) SSM R provides for the ECB to be notified no later than 10 working days before expiry of the assessment period, Art. 86 (2) SSM FR requires notification no later than 15 working days before expiry of the assessment period. It must at all events be ensured that the requirements of Art. 15a (2) sentence 1 of Directive 2007/44/EU are complied with. On the basis of this, the supervisory authority can call for additional information from an interested acquirer up to the 50th day of the assessment period (hence 10 working days before expiry of the assessment period). In order to have enough time for submission of the draft decision to the ECB the deadline for the request for additional documentation would de facto end between the 35th and 40th working day of the assessment period. That would indeed be advantageous for market participants, but here one should request both clarification of the deadlines and coordination with Art. 15a (2)

			sentence 1 of Directive 2007/44/EU in order to avoid uncertainties in daily practice later on.
Requests, notifications or applications by significant supervised entities	95	Clarification	Art. 95 SSM FR requires that requests, notifications or applications by significant supervised entities be addressed to the ECB. At the same time reference is made to the provisions of Part V or Art. 140 SSM FR. According to these, however, the NCAs basically continue to be the recipients of such submissions. Here, a clear differentiation is necessary.
Deterioration of the financial situation of a less significant supervised entity	96	Clarification	The preconditions for the circumstances "rapidly and significantly" are too vague to justify far-reaching legal consequences. The purpose of the regulation is questionable, since it aims at putting the ECB in the position of taking the necessary steps to claim for itself the winding-up power pursuant to SRM.
NCAs' notification to the ECB of material NCA supervisory procedures	97	Clarification	Art. 97 (2) (b) SSM FR requires procedures that have a material impact on the less significant supervised entity must be reported. The term "material procedure" is borrowed from Art. 6 (7) (c) (i) SSM R. The purpose of the SSM FR is to specify in more detail the provisions of the SSM R. This should be done here.
Notification by NCAs to the ECB of material draft supervisory decisions	98	Deletion	Art. 98 (3) (b) SSM FR requires NCAs to additionally send the ECB all draft supervisory decisions that "may negatively affect the reputation of the SSM." Protection of the SSM's impeccable reputation is not the purpose of the Regulation. The objective is to ensure uniform and consistent supervision. The provision should be deleted.
Frequency and scope of reports to be submitted by NCAs to the ECB	100	Clarification	It should be made unmistakably clear here that this provision does not give rise to any additional reporting obligations for the entities concerned.
Publication of decisions regarding administrative pecuniary penalties	132	Deletion	The publication on the ECB's website of decisions regarding administrative pecuniary penalties constitutes an unacceptable "name and shame" measure that is neither necessary nor appropriate nor purposeful. Precisely with significant entities that have wide-ranging business activities and consequently have to fulfil a multitude of various regulatory requirements it can never be ruled out that despite careful and conscientious business conduct actions and/or offences will be penalised. But in view of the excessive amount of

			regulation, non-significant entities too can even with the highest level of due diligence in everyday business life make mistakes. Such offences are adequately with settled with money fines. The additional pillory-like parading of misconduct is not necessary. The 5-year period, moreover, is totally out of proportion. Apart from that, the provision is in breach of Art. 18 (6) SSM R, which allows the ECB only publications in accordance with the relevant regulations of EU law and the conditions laid down therein. The SSM FR does not constitute such a regulation. Such regulations, insofar as they are even permissible under the TFEU and/or EU Charter of Fundamental Rights as well as under the constitutional law of the Member States, are subject to the law. The SSM FR does not comply with this (cf. also above comments on Art. 1).
Significant supervised entities	134	Clarification	Art. 134 (1) (b) SSM FR invokes "relevant Union law". This provision does not take into account the principle of legal certainty in view of the numerous relevant laws and possible measures. Therefore, based on the model of Art. 1 of Regulation No. 1093/2010 for the establishment of a European Banking Supervisory Authority, relevant EU legislation should be defined in the Regulation at least for this section.
Cooperation between the ECB and NCAs as regards the powers referred to in Articles 10 to 13 of the SSM Regulation	138	Amendment	With the possibility available in Art. 10 in conjunction with Art. 9 SSM R to require information, a right to refuse giving information should be laid down for those obliged to provide information as a result of the principle that no one need incriminate him/herself (nemo tenetur se ipsum accusare), so far as they would expose themselves or their relatives to the danger of criminal prosecution according to national laws. This is required by Art. 47 of the EU Charter of Fundamental Rights. This should be clarified in Art. 138 ff. SSM FR.
Ad-hoc requests for information under Article 10 of the SSM Regulation	139	Amendment	Here, we request an amendment to para 1 sentence 2 to the effect that the time limit is appropriate and not unproportional. Accordingly, it should read: "…specify…an appropriate time limit that is not unproportional…"
Requests for information at recurring intervals under	141	Clarification	The provision of Art. 141 (1) SSM FR, according to which the ECB can on the basis of Art. 10 (1) SSM R require the submission of information "at recurring intervals" and "in

Article 10 of the SSM Regulation			specified formats" for supervisory and statistical purposes, is too vague. Here, in view of the proportionality principle and to avoid the impression of arbitrariness, it must be made clear that additional regulatory reporting obligations may be imposed only in particular circumstances and with regard to the type of entity, its business model as well as its size and risk profile. At least with respect to reporting, clarification is necessary to the extent that, because of the ECB's requirements, no indirect pressure to provide data in IFRS format arises and that national accounting standards (HGB = German commercial code) may be maintained.
Tasks related to supervisory reporting to competent authorities	140	Clarification	Art. 140 (3) SSM FR states that the existing reporting procedures with the national regulatory authorities remain in place regardless of whether significant or less significant entities are involved. The NCAs perform the initial data checks and make the information available to the ECB. Here the relationship to Art. 140 (4) SSM FR is unclear. The latter states: "The ECB shall organise the processes relating to collection and quality review of data reported by supervised entities…" But so far as the existing processes remain in place, this task falls to the NCAs. The ECB will at most assume a coordinating function. This must be clarified.
Procedure and notification of an on-site inspection	145	Clarification	The deadline of five working days for the notification of an on-site inspection is too tight. A longer time limit should be allowed here. A period of two weeks would appear to be appropriate.
PART XII - TRANSITIONAL AND FINAL PROVISIONS	147 ff.	Clarification	The requirements integrated in the SSM Supervisory Manual and deviating from existing national requirements for supervisory review and assessment procedures (pillar II) should apply after an adequate transition period for the banking industry of the Member States party to the SSM. Appropriate clarification should be included at a suitable place in the section on transitional provisions.