

Banking Union and the role of the European Central Bank

On 4 November 2014 the European Central Bank (ECB) assumed its role as a supra-national bank supervisor for banks established in the eurozone and other participating Member States. The ECB is given this role under the Single Supervisory Mechanism (SSM) which forms the first pillar of a “Banking Union” for the eurozone. The second pillar is the Single Resolution Mechanism (SRM).

This note provides an overview of the various legislative components of the SSM and the SRM. It also explains the division of responsibilities between national supervisors and the ECB in relation to standard supervisory and resolution related tasks for EU banks.

Legislative components of Banking Union

Regulation 1024/2013 (SSM Regulation, SSMR)

The SSMR is the key piece of legislation establishing the SSM. It was adopted on 15 October 2013 and entered into force on 3 November 2013. The SSMR confers specific powers and responsibilities on the ECB in relation to the supervision of SSM banks. The ECB assumed these powers and responsibilities on 4 November 2014. Under the SSMR the ECB has ultimate authority for the licensing of SSM banks and for approval of changes of control.

The SSMR distinguishes between SSM banks that are “significant” credit institutions (subject to direct ECB supervision, albeit acting with the day-to-day assistance of the national

competent authority (NCA)) and other SSM banks (indirectly supervised institutions for which NCAs will retain front line supervisory responsibility but acting within a framework and guidelines set by the ECB).

Significance of credit institutions is determined by the ECB and by reference to criteria including size, importance to the economy of the EU or a participating Member State and significance of cross-border activities.

In order to mitigate potential conflicts of interest the SSMR separates the ECB's new supervisory functions from its established role as central monetary authority for the eurozone. The SSMR establishes a supervisory board which is responsible for planning and carrying out the ECB's functions as a bank supervisor. The supervisory board includes a chair and vice chair (each appointed by the Council of the EU following a proposal by the ECB), four ECB representatives and one representative from each NCA.

Regulation 1022/2013 (EBA Amending Regulation, EBAAR)

This Regulation (which was adopted and entered into force in October 2013) amended the 2010 legislation that established the European Banking Authority (EBA). In particular, it clarifies the EBA's role in the context of the SSM and changes the voting procedures at the EBA in order to distinguish between those Member States which participate in Banking Union and those that do not.

Regulation 468/2014 (SSM Framework Regulation, SSMFR)

Initially made by the ECB (as ECB/2014/17) the SSMFR was published in the Official Journal and entered into force in May 2014. It supplements and adds detail to the provisions of the SSMR by specifying how the SSM is organised, describing its practical operation and setting out

administrative procedures for common supervisory tasks such as license applications and changes of control. It also establishes methodology that the ECB uses to determine whether a credit institution is significant or not. The SSMFR includes an administrative penalties regime and allows the ECB to require supervised banks to provide it with information that it needs to carry out its supervisory tasks. Between October and December 2014 the ECB consulted on a further draft regulation concerning the reporting of supervisory information.

In addition to the SSMFR, the following ECB documents will provide important guidance on the ECB's approach to bank supervision and its supervisory model:

- **Supervisory Reporting Manual**
This internal ECB document establishes an approach for supervisory reporting and outlines the SSM's data and reporting framework.
- **Guide to Banking Supervision**
The most recent version of this guide was published by the ECB in November 2014. It provides guidance for banks preparing for the new supervisory regime, outlines the SSM's supervisory principles, describes the operating structure of the SSM and explains the allocation of tasks to the ECB and NCAs. It is expected the document may be regularly updated as supervisory procedures and practices develop.
- **Supervisory Manual**
The supervisory manual will be a more detailed version of the guide and will establish the

principles, procedures and methodology for the supervision of both significant and non significant SSM banks. The manual will be an internal document for SSM staff.

Regulation 806/2014 (SRM Regulation, SRMR)

The SRMR was adopted in April 2014 at the same time as the EU Bank Recovery and Resolution Directive (the **BRRD**) and will for the most part apply from 1 January 2016. It creates an EU level resolution 'Board' with centralized resolution responsibilities and creates a (gradually) mutualised resolution Fund. For banks that are directly supervised by the ECB, the effect of the SRMR will be to move most of the resolution responsibilities under the BRRD from the national level to the Board and the ECB, although the resolution authority in the relevant Member State would retain responsibility for implementing the resolution decisions of the Board. The Board's decisions on resolution actions would be subject to a measure of control by the Commission and the Council of the European Union (which represents the Member States).

Under the SRMR, for entities and groups that are directly supervised by the ECB and cross-border groups (i.e. groups which have supervised entities in two or more participating Member States), the Board is responsible for resolution planning, setting Minimum Requirements for Eligible Liabilities (**MREL**) and adopting resolution decisions and writing down capital instruments. In addition, a Member State may decide that the Board shall exercise the tasks in the SRMR for all entities and groups established in its territory.

For other institutions and groups, national resolution authorities are responsible for resolution planning, setting MREL and adopting resolution actions and writing down capital instruments, except that if the resolution action involves the use of the resolution Fund, the Board adopts the resolution scheme. In addition, the Board can at any time displace the national resolution authority and take over all the tasks under the SRMR (e.g. at the request of the national resolution authority or if the Board is not satisfied with national actions taken).

Where the Board is taking resolution decisions, the ECB (not the NCA) is responsible for deciding whether the entity is failing or likely to fail. In addition, the SRMR establishes a defined process for the Board to initiate resolution which begins with the Board adopting a resolution scheme if the conditions to resolution are met and the Board sending its proposed resolution scheme to the Commission. The Commission may then either endorse or object to the scheme except in certain areas reserved to the Council. The Commission may propose to the Council to object on the grounds that the public interest test is not satisfied or to approve or object (by a simple majority vote) to a material modification of the amount of the resolution Fund that would be used to effect the Board's proposed scheme.

The Board's resolution scheme will only enter into force if no objection has been expressed by the Commission or the Council within 24 hours of the scheme being sent to the Commission. If the Commission objects or the Council approves a modification as to the use of the Fund, the Board has to amend its scheme to

reflect the reasons given. The Commission can direct changes to the scheme where the exclusion of liabilities from bail-in results in a contribution by the Fund. If the Council objects on the grounds that the public interest test is not met the institution must be wound up. The Commission may be required to give

State aid approval in relation to the resolution and the use of the Fund.

Where the Board is exercising tasks or powers under the BRRD, it is considered to be the national resolution authority or relevant group level resolution authority for Directive purposes. However, implementation

of the Board's scheme is carried out by the national resolution authority using its national powers implementing the BRRD. Where the national resolution authority is acting under the SRMR it must notify the Board in advance and coordinate its measures with the Board.

SSM: which regulator does what?

Supervisory Task// Responsible supervisor	Non-significant PMS banks		Significant PMS banks <small>(includes branches of NPMS banks where the branch is significant in the PMS)</small>	
	ECB	NCA	ECB	NCA
<i>Authorization and withdrawal</i>	ECB exclusive	N/A	ECB exclusive	Note 3
<i>Home state supervision of PMS bank passporting or branching into NPMS</i>	Note 1	Note 2		
<i>Assessing changes of control outside resolution</i>	ECB exclusive	N/A		
<i>Prudential supervision (own funds, securitization, large exposures, liquidity, leverage, reporting, public disclosure)</i>	Note 1	Note 2		
<i>Governance (fit and proper, risk management, internal controls, remuneration, internal capital adequacy assessment, IRB models)</i>				
<i>Supervisory reviews (including stress tests)</i>				
<i>Consolidated supervision</i>				
<i>Supplementary supervision of financial conglomerate</i>		N/A		
<i>Recovery planning</i>		Note 2		
<i>Host supervision of NPMS branch / cross border activity in PMS</i>	ECB	N/A		
<i>Application of macroprudential buffers</i>	Note 4			

KEY



PMS – Participating member state, NPMS – Non-participating member state

Note 1 – For non-significant PMS banks, supervisory tasks are normally carried out by the NCAs but the ECB still has responsibilities including issuing guidance / instructions pursuant to which NCAs carry out their supervisory tasks. Also, where necessary to maintain consistent application of high supervisory standards, ECB may exercise supervisory powers directly over non-significant banks. ECB may do this at own initiative but only following consultation with NCA or upon NCA request. ECB can also, at any time, use its investigatory powers to request information, conduct investigations and on-site inspections of non-significant banks.

Note 2 – Although the ECB can exercise its investigatory powers at any time in relation to non-significant banks, this is without prejudice to the equivalent investigatory powers of the NCA under national law. However when exercising those powers, NCAs must inform ECB and coordinate closely with ECB. NCAs must also report to the ECB on regular basis on performance of NCAs supervisory tasks

Note 3 – NCAs have to assist ECB with preparation and implementation of any acts relating to any ECB tasks including assistance in verification activities. NCAs must follow ECB instructions. These obligations of NCA not limited to non-significant banks so ECB can call on NCAs for support when carrying out ECB exclusive tasks.

Note 4 – Deployment of macro-prudential buffers subject to special regime. If NCA/ECB wants to introduce capital buffers it must notify the other 10 days in advance of decision. If the other objects, it must give written reasons within 5 working days to which NCA/ECB must have regard before its final decision. So neither authority is required to obtain the consent of the other, but must have regard to any objections.

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