Launched in 1960, the European Banking Federation is the voice of the European banking sector from the European Union and European Free Trade Association countries. The EBF represents the interests of almost 5000 banks, large and small, wholesale and retail, local and cross-border financial institutions. Together, these banks account for over 80% of the total assets and deposits and some 80% of all bank loans in the EU only.

Position of the European Banking Federation on the proposals for a Single Supervisory Mechanism (SSM)

The European Banking Federation (EBF) welcomes the European Commission legislative package proposing a Single Supervisory Mechanism (SSM). EBF has long argued for further supervisory integration in the EU and in this regard the proposed SSM is an important step in that direction. EBF finds it important to strike the right balance and to build a solid foundation for further integrated high-quality supervision from the start. The EBF wishes to express its support of parts of the proposal, and draw attention to other parts that may need further consideration.

The legislative package includes a proposal for a Council regulation establishing the ECB as the Single Supervisor (2012/0242 (CNS)) and a proposal amending provisions in the EBA regulation1 (2012/0244 (COD)). Going forward the Council regulation (2012/0242 (CNS)) will be referred to as the proposal for a Council regulation and the proposal amending the EBA regulation (2012/0244 (COD)) will be referred to as the EBA amending proposal.

1. Key points

- EBF welcomes the proposals for a Single Supervisory Mechanism (SSM). However, it should be stressed that an important building block to obtain a well-functioning SSM is a “true” Single Rulebook that harmonizes rules and ensures consistent outcomes across all 27 Member States. The current CRD IV/CRR trilogue needs to take this into account and revert to its initial aim of maximum harmonisation.

- Furthermore, the role of the European Banking Authority (EBA) must remain the same - to enforce the Single Rulebook for the entire Single Market and to ensure convergent supervisory practices throughout the EU. The new SSM should not weaken this key role of EBA.

- EBF supports the ECB supervising all banks in the Euro-zone. However, for efficiency the day-to-day supervision of banks should be conducted by national supervisors within the context of a single supervisory approach. In general the division of tasks between national

---

1 EU regulation 1093/2010
supervisors and the ECB must be transparent and clear - no grey-zone should prevail going forward (banks must know clearly who their supervisor is for what parts of their business).

- The EBF supports the proposal to phase in the SSM and agrees that it should be possible for non-Euro Member States to opt-in, although this process should be made more attractive and easier. It is important that non-Euro Member States that opt in to ECB supervision will have the same rights within the Supervisory Board as Euro-Member States. Furthermore, banks from Non-Euro Member States should be supervised based on the same supervisory rules and practices as banks from Euro-Member States.

- The EBF agrees that there must be clear delineation within the ECB between supervisory and monetary policy functions with clear and transparent governance arrangements. Furthermore, the voting system of the Supervisory Board should offer sufficient safeguards against the constitution of political alliances.

- ECB will become the Competent Authority for the Euro-zone Member States in terms of prudential supervision. In this regard clarity and transparency must be provided for banks in respect of the existing supervisory decisions and derogations granted by Member States.

- The EBF supports the consequence that the ECB becomes both home and host supervisor for prudential matters within the Euro-zone.

- For home-host issues, EBF welcomes the fact that for participating Member States the theme of home-host cooperation will no longer be an issue, as ECB assumes these responsibilities. However, as long as not all EU Member States participate in the SSM, it is important to establish clear rules to ensure that Colleges continue to function properly.

- It is not clear whether ECB or national supervisors will be responsible for macro-prudential supervision, and hence how these authorities interact when implementing macro-prudential supervision. If ECB is designated as the macro-prudential supervisor this raises questions on accountability. Furthermore, the role of ESRB in the new set-up needs to be clarified.

- Banks should not end up paying or reporting twice for local supervision and EU supervision frameworks. A common framework for EU fees and reporting needs to be determined.

- It should be clarified that banks have a right to appeal ECB supervisory decisions. There needs to be an effective and swift mechanism for providing legal protection.

- The proposed implementation timetable should not compromise the quality of banking supervision – especially in the early stages when the BRRD and possibly CRR/CRD IV will not be in place.

- Going forward the right sequencing of the different elements of the Banking Union is key. The Banking Union should be seen as an evolutionary process where a “true” Single Rulebook, the finalising of the directives on BRR and DGS and the establishment of the SSM are necessary steps before considering the next proposed items of the Banking Union, e.g. a Single Resolution Scheme.
2. Specific observations

2.1.1 ECB as prudential supervisor

The EBF understands that the ECB as the Single Supervisor will be responsible for the prudential supervision of all banks in Euro Area Member States and hence function as the Competent Authority in these areas (defined in article 4 of the proposal for a Council regulation). The ECB is expected to carry out these tasks in close cooperation with national supervisors. EBF welcomes this, but stresses the need to take into consideration the prudential supervisory powers of the Single Supervisor in the CRD IV/CRR trilogue discussions going forward and to eliminate any doubts and inconsistencies between the two proposals.

Furthermore, as the ECB will become responsible for carrying out tasks in relation to early intervention (article 4.1(k)), this aspect of ECB’s powers needs to be taken into consideration in the negotiations on the BRRD. In general any considerations on the next steps of the Banking Union should not be taken in a vacuum, but must carefully consider the final rules on recovery and resolution.

The proposed role of the ECB to participate in the supervision of financial conglomerates raises some questions and potential concerns from the level playing field perspective. As referred to in Article 4(1)(j), ECB only has the mandate to participate in supplementary supervision in relation to the credit institution included in the conglomerate and, where appointed, the tasks of the coordinator. This implies that the ECB cannot carry out supervision on a group-wide basis in cases where the financial conglomerate is led e.g. by the insurance company or investment firm. Presumably, it is not possible to appoint the ECB as coordinator of the insurance- or investment firm-led conglomerate if the supervisor in a particular country has responsibility to supervise all financial sectors? The supervisory tasks of the ECB for the financial conglomerates should not vary depending on the group structure.

Also, EBF would appreciate a quick implementation of the Single Supervisory Handbook as a consistent supervisory approach and risk assessment framework is very important for improving the quality of supervision.

Macro-prudential supervision

It is not clear from the Commission’s proposals how macro-prudential supervision is intended to be implemented under the new structure. As macro-prudential supervision will effectively be implemented by micro-prudential supervisors it needs to be understood whether it will be the ECB or national supervisors which will assume this task and which body will be designated as the macro-prudential supervisor. It is noted that if national authorities are designated as the macro-prudential authority, then the ECB as micro-prudential supervisor will be required to take directions from the national authority and that such directions may conflict with the ECB’s micro-prudential supervision. Furthermore, if the ECB is designated as the macro-prudential supervisor for the SSM countries this implies that the ECB will take on an even greater centralization of economic power in the Euro-area which lead to further questions about the accountability of the ECB.

Furthermore the Commission’s proposals do not provide a detailed discussion of the ECB’s proposed supervisory responsibilities in relation to the current responsibilities of the European Systemic Risk Board (ESRB) for monitoring and assessing systemic risks and providing
European Banking Federation position paper on proposals for a Single Supervisory Mechanism (SSM)

recommendations for remedial action in response to these risks. The proposal seems to overlook the role that the ESRB and European Supervisory Authorities (ESAs) can play in identifying sources of financial instability.

2.1.2 Supervisory decisions and derogations

One area of special concern to EBF is the amount of supervisory decisions and derogations. In addition to the (minimum harmonisation) provisions enshrined in the successive versions of the CRD, national supervisors have been empowered to take a vast range of decisions and to grant derogations to the credit institutions under their supervision. Such decisions cover the validation of internal models or the exercise of national discretions, and most of them prove to be of great relevance for the banking industry.

In the future, as the ECB will be the competent authority for at least the 17 Euro-zone Member States, it will get the power to maintain or to suspend these supervisory decisions and derogations. While EBF welcomes this approach, we believe however that visibility and legal certainty are necessary for the banking industry during the transition between the establishment of the SSM and when it becomes fully operational. Hence, it is important that banks which will be affected by such adjustments of supervisory decisions and derogations by the ECB get the appropriate time to adjust.

In the proposal for a Council regulation it is not clear how the ECB will exert powers to maintain or to suspend supervisory decisions and derogations, whether it will be in a uniform manner or on a case-by-case basis and in which areas these powers will apply. Does the transfer of these powers to the ECB for example include national discretions granted to Member States instead of to Competent Authorities? And what about cases where individual Member States have gone beyond existing or upcoming CRD provisions, and where the issue is not directly within the scope of the CRD? EBF calls for more clarity on these issues as they form an essential part of the process towards a “true” Single Rulebook.

As a matter of principle, the Single Rulebook should be implemented in all Member States at the same time and in the same way. However, as the proposal for a Banking Union stands there is concern about the lack of mechanisms to ensure the timely and leveled implementation of the Single Rulebook across Europe. The removal of supervisory decisions and derogations has to be done in a coordinated fashion in all EU Member States irrespective of the currency they use. The EBA should have the capacity to ensure that the shift towards a Single Rulebook is accomplished in the same terms and within the same timelines in all Member States. This is particularly important in the case of legacy national supervisory decisions and derogations as it is not believable that they will disappear within the Euro-zone by virtue of appointing a Single Supervisor.

2.1.3 Supervisory and investigatory powers and sanctions

Becoming the Competent Authority ECB will also be granted supervisory and investigative powers as well as the right to impose sanctions. This is a sensible solution that will give ECB the adequate powers needed for a Competent Authority. EBF has the following comments:

- In relation to on-site inspections (article 11 in the proposal for a Council regulation) it should be ensured that the expertise of national supervisors is used actively and as a first step.
- The level of sanctions (article 15 in the proposal for a Council regulation) that the ECB can impose - up to twice the amount of the profits gained or losses avoided or up to 10% of the total annual turnover in the preceding business year - is higher than is currently the case in some Member States. For consistency, these sanctions would be better aligned with those currently proposed in the CRD – Art 66(2) (c) and (d) and Art 67 (2) (e) and (f), which have sanctions of up to 10% of total annual net turnover for a legal person only (no reference to profit gained / loss avoided). Either CRD or 2012/ 0242 should change.

- The authorization procedure (article 13 in the proposal for a Council regulation) sets out that the ECB will authorize the establishment of credit institutions based on the preliminary assessment of the national supervisor. Whilst EBF agrees with this procedure, we would nevertheless welcome a time limit for the final publication of the decision of the ECB.

- Clarity must also be provided on which authority is responsible for assessing whether a bank meets the conditions for resolution. It is noted that ECB is granted the power to issue (and presumably take away licenses) but there is a lack of clarity over whether the resolution trigger would remain national pending an EU resolution framework. Consideration should be given to whether the ECB should have an over-ride in the interim. Unless this is the case, it is conceivable that there may be a disagreement between national authorities and the ECB over whether a bank should be resolved. Whilst the ECB would have the ability to revoke the bank’s license it is not credible that it would do this given the impact it would have on the critical functions provided by the institution and market confidence.

2.1.4 Legal protection

In the proposal for a Council regulation no legal safeguards or reference to any existing rules on the ECB (like the statute of the European System of Central Banks and of the European Central Bank) have been designated for banks to challenge ECB decisions. In some Member States there is an administrative procedure which is completely absent in the current proposal. It is the understanding of the EBF that the European Court of Justice (ECJ) would serve as the appeal system under this new set-up.

As the proposal now stands, the only mechanism for a bank affected by an ECB decision is an appeal before the European Court of Justice (ECJ) on a question of law (as set out in the Treaty) and not of fact and merit. This would however, in EBF’s view, mean a deterioration of current schemes under national law, in terms of effectiveness, rapidity and legal certainty. The ECJ is not equipped to decide on questions of national law and national procedure. This is important: under the current proposal the ECB decisions are to be executed by the national supervisors, based on national law (i.e. Directive implemented in national law) and in line with national procedures. Without intensive knowledge of all national legal systems and national banking law the ECJ cannot rule on the content of the ECB/national supervisors’ decisions.

In case of disagreement on an ECB decision a swift legal verdict within one or two weeks is necessary. The ECJ has a fast track procedure but even this expedited procedure of the ECJ takes about 8-12 months. Currently there is no institution that can take up this role.

Therefore, in order to enable complaints to be dealt with efficiently, a Board of Appeal should be set up at the ECB along the lines of that created under Regulation no. 1093/2010 establishing the
European Banking Authority. If a bank objects to a decision made by the Board of Appeal, it should be able to appeal the decision before the Court of Justice of the European Union. Until such a European solution has been established the most practical will probably be not to change the current procedures in which decisions are brought to national courts. Given the fact that the ECB will only act through the national regulators, it will not be the ECB but the national regulator that will formally be subject to the jurisdiction of the national courts.

Furthermore, it is not clear from the proposal for a Council regulation if and where banks from a non-Euro Member State that opt in to the SSM can challenge ECB decisions. This should be clarified.

Additionally, the proposal is silent on the existence of possible conflict of interests between prudential supervision, behavioral supervision and consumer protection supervision. It should be clarified which authority has the responsibility of solving such conflicts and where to appeal the decisions taken.

2.1.5 Home-Host cooperation

Home-host cooperation among Euro Member States

EBF welcomes that the Proposal for a SSM will solve the issue of allocation of powers between home and host supervisors in Euro-area Member States as the proposal for a Council regulation transfers the powers of both home and host supervisors to ECB. In this regard, it is important that the transfer of supervisory powers to the ECB does not create imbalances between home and host supervisors. Moreover, any delegation of tasks and of supervisory powers from the ECB back to national supervisors must also be balanced. To make this simplification effective and for the sake of legal certainty, it is necessary to cross-check the relevant provisions of the CRR / CRD IV framework before its final adoption by the EU Parliament and by the Council. Amongst others, the provisions related to the waivers for applying the new liquidity rules on a consolidated or sub-consolidated level only should reflect the new role of the ECB for credit institutions present in the Euro-zone.

Furthermore, in the current cross-border supervisory landscape memorandums of understanding (MoU) play an important role. They have been mostly developed during the last 6 years as a consequence of the implementation of Basel II and contain agreements regarding a range of supervisory issues including the allocation of tasks and many practical questions affecting the day-to-day relationship between banking groups and host and home supervisors. In the view of the EBF, there should be clarity as to the prevalence or replacement of those MoU’s both between national supervisors of Euro-Member States and between Member States in and out of the Euro zone. The transition should be monitored by a third institution, preferably the EBA.

Home-host cooperation between Non-Euro and Euro Member States

However, between participating and non-participating Member States Union acts will still apply, e.g. Union acts on home-host competences, on the cooperation between supervisors and on colleges in relation to consolidated supervision. This entails some concerns for the EBF, especially in regard to the relative weight of the ECB within these supervisory colleges. This concern is relevant for example for banks headquartered in non-Euro Member States that have operations within a number of Euro Member States, and in cases where non-Euro Member States are predominantly host
European Banking Federation position paper on proposals for a Single Supervisory Mechanism (SSM)

supervisors for banks head-quartered within the Euro-zone. Therefore, the EBF finds that as long as not all EU Member States participate in the SSM, clear rules are needed to ensure that colleges continue to function properly. This means that in the Colleges there needs to be a real exchange of views and common decisions between the ECB and the national supervisors involved. To make such supervisory coordination and cooperation as effective as possible, further attention should be paid to common powers and tools. Furthermore, as a counterbalance, it is also important that EBA keep its current powers and is equipped to act as a neutral mediator in any disagreements between home supervisors. These issues are addressed in more detail in 2.2.4.

Furthermore, there is some uncertainty as to the scope of consolidation in cases of cross-border bank structures where for example the ultimate parent company is situated in a non-participating Member State but with a subsidiary in a participating Member State. This subsidiary in turn might have one or more subsidiaries in participating and non-participating Member States - forming a “sub group”. In such cases it is not clear whether ECB can supervise the sub-group as a “home supervisor” and hence apply specific euro-zone rules or reporting requirements, or if the consolidated supervision and consolidated requirements are exercised at the ultimate parent level by the home supervisor of the non-participating Member State. EBF considers it important to avoid that in such cases the SSM creates a new division between participating and non-participating Member States in a similar manner as the division which exists today between EU/EEA member states and third countries. Therefore, the home supervisor should be the supervisor of the Member State where the ultimate parent company is placed, as in the end the ultimate parent will have to meet CRR/ CRD IV requirements etc. on a consolidated level.

Home-Host cooperation - Third country issues

In general, as banks today operate in a global context the issue of the relationship with third countries is important. EBF proposes that more consideration should be given to the issue of third countries, i.e. where the ultimate parent company of a banking group is situated in a third country but have subsidiaries in both non-Euro and Euro-Member States, e.g. some parts of the group is subject to the supervision of the ECB.

2.2 Institutional set-up

Effective functioning of the ECB as the Single Supervisor will depend on a number of issues. In particular, it is crucial that the design of the overall institutional set-up of the ECB as the Single Supervisor vis-à-vis the national supervisors on one hand and the European Banking Authority (EBA) on the other is fully considered from the beginning. Furthermore, ECB must reserve sufficient resources to be able to exert high-quality supervision. Finally, strong accountability mechanisms towards EU-institutions, coupled with ECB independence from political interests and the appropriate governance structure of the SSM are important requisites. Below, EBF gives its views on the institutional set-up in detail.

2.2.1 Separation of monetary and supervisory tasks

EBF supports the view put forward in the proposal, that there should be a clear separation between the monetary and supervisory functions of the ECB in order to avoid conflicts of interests, and EBF also supports the provisions requiring professional secrecy of staff etc. to underpin this separation.
However, the fact that the Governing Council will be ultimately responsible for taking decisions related to both monetary policy and supervisory matters could jeopardise this clear separation of tasks. Hence, the Supervisory Board which is to be established within ECB will only be responsible for the planning and execution of the tasks conferred upon ECB – not the decision making. However, Article 19(3) in the proposal for a Council regulation gives the possibility for the Governing Council to delegate clearly defined supervisory tasks and related decisions regarding individual or a group of banks to the supervisory board, subject to the oversight and responsibility of the Governing Council, i.e. the governing Council can instruct and give directions to the Supervisory Board. EBF finds that possibilities to give stronger decision-making powers to the Supervisory Board on supervisory matters needs to be explored further.

Furthermore, the relationship between the Governing Council and the Supervisory Board and the operational functioning of this relationship is not described in the proposal. In EBF’s view this should not be left to the discretion of the ECB but should be spelled out in the legislative proposal in order to be able to assess properly the rules which ultimately define the degree of separation between supervisory and monetary functions of the ECB.

2.2.2 The Supervisory Board

Furthermore, the proposal establishes no rules for the decision-making process for the Supervisory Board in cases where there would be one. But adequate governance rules are key to the independence and the political acceptability of the SSM. In particular, the voting system of the Supervisory Board should avoid reintroducing national political considerations.

Additionally, and considering that in this centralized system of prudential supervision the Colleges of Supervisors will become redundant for credit institutions established in participating Member States with cross-border activity within the Euro area, all the discussions and decisions should be held and taken at the Supervisory Board level. Hence, EBF does not see the need for a steering committee to be appointed, as proposed in article 19 (4) in the proposal for a Council regulation.

2.2.3 ECB and national supervisors

No two-tier system of Supervision...

It is a longstanding position of the EBF not to create a two-tier system of supervision. Therefore EBF supports the institutional scope proposed, e.g. that the Single Supervisor shall supervise all credit institutions established in the participating Member States (article 4.1 in the proposal for a Council regulation). The ECB should be responsible for all supervisory decisions on capital, own funds, liquidity, risk management and notification of branches.

... But day-to-day supervision left to national supervisors within the overall ECB framework

This being said, EBF finds that the proposal for a Council regulation should be clearer and more transparent in regard to the division of tasks between national supervisors and the ECB. There should be no “grey zone”, and double supervision should be avoided. EBF proposes to leave the day-to-day supervision of banks to national supervisors in order to ensure that the daily supervision functions smoothly. This daily supervision by national supervisors would take place within an
overall supervisory framework where ECB is responsible for coordination, uniform application of supervisory rules and has the ultimate responsibility, including enforcement capacity vis-à-vis national supervisors.

An example where ECB should closely cooperate with national supervisors is with the validation of internal models. This is quite a time-consuming process. ECB needs to use local regulators to assess internal models but ECB will need to write down explicit guidelines for local regulators to ensure the Single Rule Book.

Another example of an area that needs further clarification relates to tasks on mergers & acquisitions (which in some cases require authorization by the local authority) within the banking sector. It would be resource demanding for ECB to involve all these measures.

It is also important to avoid double reporting requirements. The ECB would have the power to require regular or ad hoc reporting, which is a logical corollary of its new role. However, such reporting should come instead of, not on top of, existing requirements. Furthermore, common reporting formats and definitions should be used.

Finally, it is not clear from article 5 in the proposal for a Council regulation whether national supervisors can also have decision-making powers for the tasks conferred on ECB (spelled out in article 4 in the proposal for a Council regulation) or they will only have preparatory and implementing powers in these areas. This should be clarified.

2.2.4 Participation of non-Euro Member States

According to article 6 in the proposal for a Council regulation non-Euro Member States can opt-in - so-called close cooperation - to SSM supervision provided they ensure that the national supervisor will adopt the measures requested by ECB as stated in the regulation, notably by passing national legal acts ensuring the national supervisor is obliged to adopt ECB measures.

Voting rights in the ECB Supervisory board

From the proposal for a Council regulation it is not clear whether non Euro Member States that opt-in will obtain voting rights in the Supervisory Board. However, EBF has understood that granting such a right to non-Euro Member States does not seem to be legally possible within the framework of the TFEU. Furthermore, the lack of access for opting-in Member States to supervisory decisions taken by the Governing Council is also a concern.

While not having a clear solution to this legal problem, EBF regards it as very important to ensure that non-Euro Member States that opt-in to the SSM supervision will not have fewer rights than the Euro Area Member States subject to the same supervision. EBF encourages that this be considered further, in order to propose a satisfactory option for non-Euro Member States that want to opt-in and extend the integration of supervisory framework closer to all 27 Member States banks.

Supervision of opt-in Member States

It is unclear on which terms banks from non-Euro Member States that opt-in will be supervised. It is very important that the Single Market is preserved and that banks from Non-Euro Member States are supervised based on the same regulation and supervisory practices as banks from Euro Member States to obtain a level playing field.
In general it is vital that appropriate consideration is given to specific national market conditions and that the supervision activities are being conducted proportionately as regards size and complexity in order to obtain equal competitive power amongst banks.

EBF finds that it should be made more attractive and easier for non-Euro Member States to join the SSM, in order to minimize the possible negative reverberations on the functioning of the Single Market in financial services from a SSM only supervising Euro Member States.

2.2.5 ECB and EBA

The relationship between ECB as the Single Supervisor and EBA is addressed by a proposal for a regulation amending EBA Regulation (EU) No 1093/2010. The EBA amending proposal aims at maintaining the current role of EBA in the new set-up, meaning that EBA continues its work developing the Single Rulebook for the entire Single Market and ensuring convergent supervisory practices throughout the EU. EBF supports this aim fully. EBF finds it crucial that a Single Supervisor is underpinned by a strong pan-European institution like EBA that can enforce the Single rulebook, and contribute to further deepening the supervisory integration of the Single Market in Financial Services. Hence, a well-functioning EBA remains key within the new set-up.

EBF welcomes the proposed amendments which aim at making ECB a competent authority in line with other competent authorities and ensuring representation of all EU Member States in the EBA decisions-making process in the new supervisory set-up.

However, EBF is not sure whether the proposed changes will be sufficient to ensure the current weight of EBA - representing all 27 Member States - in the new supervisory set-up where ECB will be responsible for coordinating one common position within EBA. This in particular concerns the areas where the decisions of the EBA Board of Supervisors will continue to be decided by qualified majority (for example decisions on Binding Technical Standards, guidelines and recommendations).

Furthermore, due to the hierarchy of legal texts, in the cases of emergency situations and in situations of settlement of disagreements - areas where EBA would normally have binding powers over national supervisors - ECB could only be asked to comply-or-explain. In emergency situations EBA can even in special cases, where the national supervisor does not react to EBA’s request, apply its decision directly to credit institutions in Member States. It is not clear whether EBA will still have this right for banks in Euro Member States going forward. And if yes, the role of ESRB - and its connection to ECB acting as the SSM - should be made clear in such a case, as ESRB by law has to agree on the existence of emergency situations.

---

2 Articles 10, 15 and 16 + article 9(5) + chapter VI in the current EBA regulation – (EU) 1093/2010

3 Article 18 in the current EBA regulation – (EU) 1093/2010

4 Article 19 in the current EBA regulation – (EU) 1093/2010

5 Article 18(4) in the current EBA regulation – (EU) 1093/2010
Finally, EBF is not convinced that the changed voting modalities proposed for the panels dealing with breach of Union law and settlement of disagreements, which will make it harder to reject proposed decisions from these panels, actually reach the aim of ensuring representation of all EU Member States in EBA decisions - even though it is proposed that the panels have equal participation from non-participating and participating Member States.

EBF invites regulators to further explore the proposed voting modalities in order to ensure that EBA will remain representing the interests of all 27 Member States and not be hindered in its role as a neutral mediator.

Furthermore, clarification is needed on the issue of cooperation between ECB and ESMA and EIOPA. Article 3 in the proposal for a Council regulation requires that ECB cooperate closely with the ESA’s, including ESMA and EIOPA, but it does not clarify how this cooperation will function.

2.3 Financial implications for banks/Supervisory fees

According to the proposal for a Council regulation (Article 24 in the proposal for a Council regulation) the ECB shall levy fees on banks to cover the expenditure relating to its supervision. In this regard EBF finds it very important to stress that banks should not end up paying twice for local supervision and EU supervision frameworks nor should they cover costs that are not directly linked to the new supervisory mechanism (like establishment costs of the new supervisory function).

Therefore EBF supports the mention in recital 39 that “in view of the transfer of significant supervisory tasks from national authorities to the ECB it is expected that any supervisory fees due at national level can be reduced as appropriate”. In this regard, it should be made clear in an article of the regulation that banks will pay fees to the EU level only for all prudential supervision that is transferred to the EU level.

Furthermore, the proposal for a Council regulation provides no guidance as to what the calculation methods for the supervisory fees should be. This should be further clarified in the proposal.

EBF calls for the development of an Impact Assessment on the SSM proposals - which has not yet been conducted - taking into account the costs for banks subject to the supervision of the SSM.

2.4. Phase-in arrangements

The Commission proposes that the regulation should enter into force on 1 January 2013 (Article 28) and that the ECB should be able to begin supervising selected institutions from this date (Article 27(3)). EBF finds this timetable quite ambitious. The current proposal raises a number of fundamental questions, which need to be considered thoroughly, such as the exact form of cooperation between the ECB and national supervisors.

It is crucial to ensure that the quality of supervision will not be weakened - especially in the early stages of the SSM becoming operational. There should be time to address the technical issues of a rather complex set-up and it is essential that the ECB has adequate personnel and resources from the outset in order for it to carry out its responsibilities effectively. Even during the transitional phase, day-to-day supervision should be carried out by one authority only (national or the ECB) to avoid

---

6 Article 17 in the current EBA regulation – (EU) 1093/2010
placing an unnecessary additional burden on banks. Banks must know precisely who their supervisor is for what part of the business.

Furthermore, more clarity needs to be given on the definition of national aid. The EBF thinks that only banks that are expected to receive state aid in the future (through the ESM) should fall under the scope of the ECB during the phase-in period. It would make no sense to start with EU supervision on banks that have already faced intense scrutiny by the European Commission and that are already in the process of restructuring because they received (national) state aid. These banks currently do not pose the most urgent problem.

2.5 Connection to next steps of the Banking Union

Apart from a Single Rulebook and the Single Supervisory Mechanism, a Single Resolution Scheme and a Single Deposit insurance Scheme are proposed building blocks in the Banking Union. EBF finds that the sequencing of the different elements of the Banking Union is key. The Banking Union should be seen as an evolutionary process, where the harmonization of the Single Rulebook, the finalising of the directives on BRR and DGS and the establishment of the SSM are necessary steps before considering the next stage of the Banking Union, e.g. a Single Resolution Scheme.