



DEN EUROPÆISKE CENTRALBANK

EUROSYSTEMET



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## OFFENTLIG HØRING

### om et udkast til Den Europæiske Centralbanks forordning om tilsynsgebyrer

**Maj 2014**

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Dette dokument består af tre dele:

- I. Baggrunden og anvendelsesområdet for ECB's forordning om tilsynsgebyrer
- II. Indholdet af udkastet til forordningen om tilsynsgebyrer
  1. Overordnede principper for gebyrrammen
  2. Fastsættelse af det samlede tilsynsgebyr
  3. Gebyrfaktorer
  4. Metode til at beregne individuelle tilsynsgebyrer
  5. Procedurer i forbindelse med fakturering
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  7. Sanktioner og klageadgang
  8. Samarbejde med de kompetente nationale myndigheder
  9. Ansvarlighed og rapportering
- III. Udkastet til forordningen om tilsynsgebyrer

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<b>Adresse</b>	Kaiserstrasse 29, 60311 Frankfurt am Main, Tyskland
<b>Postadresse</b>	Postfach 16 03 19, 60066 Frankfurt am Main, Tyskland
<b>Telefon</b>	+49 69 1344 0
<b>Internet</b>	<a href="http://www.ecb.europa.eu">http://www.ecb.europa.eu</a>

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# **I RATIONALE FOR AND SCOPE OF AN ECB REGULATION ON SUPERVISORY FEES**

- (1) The Single Supervisory Mechanism (SSM) is established by Council Regulation (EU) No 1024/2013<sup>1</sup> (hereinafter the “SSM Regulation”). The SSM Regulation entered into force on 3 November 2013 and the ECB will assume its SSM-related tasks from 4 November 2014.
- (2) The expenditure incurred by the ECB in relation to the tasks conferred on it under Articles 4 to 6 of the SSM Regulation will be covered by fees in accordance with Article 30 of the SSM Regulation. The ECB will levy supervisory fees on:
  - (a) credit institutions established in euro area Member States or non-euro area Member States that have established a close cooperation under Article 7 of the SSM Regulation (hereinafter jointly and individually referred to as “participating Member States”);
  - (b) branches established in a participating Member State by a credit institution located in a non-participating Member State.<sup>2</sup>

## **I.1 Supervision under the SSM**

- (3) The SSM is a system of financial supervision composed of the ECB and the national competent authorities (NCAs) of participating Member States.<sup>3</sup> Within the SSM, the ECB will be responsible for the direct supervision of significant credit institutions, while the NCAs will be responsible for the direct supervision of less significant credit institutions.<sup>4</sup> The ECB will also be responsible for the effective and consistent functioning of the SSM. In this context, it will be exclusively competent to grant and withdraw authorisations for credit institutions and to assess acquisitions of qualifying holdings in all credit institutions. Furthermore, the ECB will be able to issue general instructions to the NCAs with regard to the supervision of less significant supervised entities and will retain investigatory powers over all supervised entities. Such powers include the authority to request information, conduct investigations and carry out on-site inspections, as well as the power to take up direct supervision of less significant supervised entities, when necessary, to ensure a consistent application of high supervisory standards.

<sup>1</sup> Council Regulation (EU) No 1024/2013 conferring specific tasks on the ECB concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

<sup>2</sup> Branches are secondary and dependent commercial facilities and therefore, unlike subsidiaries, not separate legal entities.

<sup>3</sup> See Article 2(9) of the SSM Regulation.

<sup>4</sup> The distinction between significant and less significant credit institutions is laid down in Article 6(4) of the SSM Regulation and Part IV of Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 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) (ECB/2014/17) (OJ L141, 14.5.2014, p.1).

- (4) Benefits of the SSM: The establishment of the SSM will contribute to restoring confidence in the banking sector through independent, integrated supervision in all participating Member States.
- (5) The SSM will also contribute to the effective application of the single rulebook for financial services and the harmonisation of supervisory procedures and practices by removing national specificities. This harmonisation will bring efficiency benefits for supervised entities as they will no longer be required to comply with a range of supervisory systems across participating Member States. This is particularly true for significant cross-border credit institutions.

## **I.2 The ECB Regulation on supervisory fees**

- (6) The ECB must have adequate resources at its disposal to carry out its supervisory tasks effectively. Such resources must be financed via a fee, in order to ensure both the ECB's independence from the NCAs and market participants, and a clear separation of monetary policy and supervisory tasks. The fee will be levied on the entities supervised within the SSM. Together, the SSM Regulation and the ECB Regulation on supervisory fees will provide the legal framework for the levying of fees within the SSM.

## **I.3 Legal basis of the ECB Regulation on supervisory fees**

- (7) Article 30 of the SSM Regulation provides that “the ECB shall levy an annual supervisory fee on credit institutions established in the participating Member States and branches established in a participating Member State by a credit institution established in a non-participating Member State” (hereinafter “supervised entities”). The amount of the fee levied on a supervised entity will be calculated in accordance with the arrangements established by the ECB. The ECB will publish the detailed operational arrangements for its SSM-related tasks by means of regulations and decisions.<sup>5</sup> This requirement also applies to the arrangements for calculating supervisory fees. It was therefore decided that the arrangements for calculating the SSM fees should be established in the form of an ECB regulation.
- (8) An ECB regulation has general application. It is binding in its entirety and directly applicable in all euro area Member States. It is thus the appropriate legal instrument to organise the practical arrangements for the implementation of Article 30 of the SSM Regulation. The SSM Regulation and the ECB Regulation on supervisory fees (once adopted by the ECB's Governing Council) will both form part of EU law and will prevail over national law for the aspects that they regulate.

<sup>5</sup> See Article 33(2) of the SSM Regulation.

- (9) Before adopting the ECB Regulation on supervisory fees, the ECB must carry out open public consultations and analyse the potential related costs and benefits, and publish the results of both.<sup>6</sup> In accordance with the Interinstitutional Agreement<sup>7</sup> between the European Parliament and the ECB, the draft Regulation on supervisory fees was sent to the relevant committee of the European Parliament before the launch of the public consultation.

#### **I.4 Scope of the ECB Regulation on supervisory fees**

- (10) The ECB Regulation on supervisory fees (in its current draft form hereinafter referred to as the “draft Regulation on supervisory fees”) lays down all the rules and procedures for a fair and proportionate SSM-related fee policy.
- (11) In particular, the draft Regulation on supervisory fees sets out the methodology for calculating, allocating and levying the annual supervisory fee. Pursuant to Article 30 of the SSM Regulation, it sets out:
- (a) the methodology for calculating the total amount of the annual supervisory fees – Part II.2;
  - (b) the methodology and criteria for calculating the annual supervisory fee to be levied on individual supervised entities – Part II.3 to Part II.5;
  - (c) the procedure for collecting the annual supervisory fee – Part II.5;
  - (d) the cooperation between the ECB and the NCAs – Part II.8.
- (12) NCA expenditure for supervisory tasks is not included: The NCAs play an important role within the SSM. For the supervisory tasks related to significant institutions that are supervised directly by the ECB, the NCAs cooperate with and assist the ECB, while those related to less significant institutions are performed mostly by the NCAs upon instruction from the ECB. The costs incurred by the NCAs through carrying out the latter tasks are not taken into account in the calculation of the amount of the supervisory fee levied by the ECB.
- (13) In line with Article 30(5) of the SSM Regulation, the draft Regulation on supervisory fees is without prejudice to the right of the NCAs to levy fees in accordance with national law, to the extent that supervisory tasks have not been conferred on the ECB or in respect of the costs of cooperating with and assisting the ECB in the performance of its supervisory tasks.

<sup>6</sup> See Article 30(2) of the SSM Regulation.

<sup>7</sup> Interinstitutional Agreement between the European Parliament and the European Central Bank on the practical modalities of the exercise of democratic accountability and oversight over the exercise of the tasks conferred on the ECB within the framework of the Single Supervisory Mechanism (OJ L 320, 30.11.2013, p. 1).

## II CONTENT OF THE DRAFT REGULATION ON SUPERVISORY FEES

### II.1 General principles of the fee framework

- (14) **Entities covered by the draft Regulation on supervisory fees:** The ECB is responsible for the effective and consistent functioning of the SSM in its entirety, i.e. in respect of both significant and less significant supervised entities.
- (15) **Obligation to pay fees:** All supervised entities that are supervised within the SSM are obliged to pay an annual supervisory fee to the ECB.
- (16) **Different fees for varying degrees of supervision:** The amount to be paid by the significant and less significant supervised entities will differ, in order to reflect the varying degrees of supervisory scrutiny by the ECB.<sup>8</sup> In particular, it is expected that the share of the total supervisory expenditure to be recovered from the less significant supervised entities will be much lower than that from the significant supervised entities.
- (17) **Fee calculation on the basis of entity groups:** Supervisory fees “shall be calculated at the highest level of consolidation within participating Member States”.<sup>9</sup> Therefore, the supervisory fee is to be calculated at the level of the highest entity in the ownership structure that is established in participating Member States and not on the basis of individual entities. All subsidiaries of this supervised entity are considered as belonging to the same supervised group. The calculation of fees will exclude subsidiaries established in non-participating Member States.
- (18) **Addressee of the fee notice:** The fee notice is to be addressed to each supervised entity that is not part of a group, or to one member of a group of supervised entities. In the latter case, only one fee notice is to be issued for the whole group. The members of the group are required to identify a fee debtor and send notification thereof to the ECB. If the ECB does not receive notification of the fee debtor by 1 March of a given fee period, the fee notice for that fee period will be sent to a supervised entity within the group, as determined by the ECB. The ECB reserves the right to determine the fee debtor, if deemed appropriate.
- (19) **Grouping of subsidiaries of parent entities outside participating Member States:** Supervised subsidiaries of parent entities established outside the participating Member States are also to be charged a fee, but treated separately and not consolidated when calculating the fee.

<sup>8</sup> See Article 9 of the draft Regulation on supervisory fees.

<sup>9</sup> See Article 30(3) of the SSM Regulation.

- (20) **Grouping of branches:** Supervised branches of entities located outside a participating Member State are treated as follows:
- a) Two or more branches of the same entity that are located in the same participating Member State are deemed to be one branch;
  - b) Branches of the same entity that are located in different participating Member States are treated separately;
  - c) A branch and a subsidiary of the same entity that are located in the same participating Member State are not combined when calculating the fee.

## II.2 Determination of the overall supervisory fee

- (21) **Amount to be recovered:** The amount to be recovered via annual supervisory fees is based on the ECB's annual expenditure in relation to its supervisory tasks, comprising all operating expenses, including those related to support functions and the depreciation of fixed assets.
- (22) **Determination of the annual expenditure:** More precisely, the annual expenditure will comprise primarily the expenses of the new business areas that have been established to carry out SSM-related tasks, i.e. the Directorates General Micro-Prudential Supervision I, II, III and IV, the Directorate General Macro-Prudential Policy and Financial Stability, and the Supervisory Board and its Secretariat. In addition, these supervisory business areas will use support services provided by the ECB, including services for the rental of premises, human resources management, administration, budgeting and accounting, as well as legal, internal audit, statistical, language and IT services. Services provided to the supervisory business areas will be billed in full in accordance with the ECB's cost accounting framework.
- (23) In addition, the amount to be recovered via the annual supervisory fee will take into account (i) any damages, in the context of the SSM, incurred by the ECB and to be paid to a third party; (ii) any fees related to previous fee periods that are determined as not collectible; (iii) any interest payments received owing to late payment by the fee debtor; and (iv) any amounts received or refunded in the context of authorisations of new supervised entities, the withdrawal of authorisations from supervised entities or changes in the status of supervised entities from significant to less significant or vice versa.
- (24) **Development in annual expenses:** On the one hand, the supervisory activities may include those that are intended to be temporary and/or that may vary considerably from year to year. On the other hand, the ECB is still in a transition phase, building up its supervisory capacity. The "steady state" level of the ECB's total supervisory expenditure will become apparent in the medium term. To mitigate the risks this entails, the ECB will (i) exercise sound financial management and budgetary control over all areas of expenditure; and (ii) seek to contain any unavoidable volatility in order to minimise the impact on supervised entities.

(25) **Expected expenditure during the first fee period:** For the first fee period, encompassing the final two months of 2014 and the 2015 advance payment, the ECB estimates the expenditure to be recovered at approximately €300 million<sup>10</sup>, broken down into €40 million for 2014 and €260 million for 2015. The latter can be broken down into roughly 60% for gross salaries and other personnel costs, approximately 10% for premises-related costs and around 30% for other operating expenses such as travel, consultancy and IT services.

### II.3 Fee factors

(26) **Importance and risk profile determine fees:** The SSM Regulation stipulates that supervisory fees must be based on objective criteria relating to the importance and risk profile of the supervised entity, as well as its risk-weighted assets.<sup>11</sup>

(27) **Total assets as an appropriate indicator of importance:** The draft Regulation on supervisory fees stipulates that total assets (TA) will be the indicator of the importance of a supervised entity. As the SSM Regulation defines TA as a primary parameter for assessing significance,<sup>12</sup> the ECB has selected the same variable for determining importance for the calculation of individual supervisory fees. Moreover, TA is closely related to the allocation of supervisory resources, reflecting the principle that the greater the value of TA, the more important the supervised entity and the more intensive the level of supervision required.

(28) **Total risk exposure as an appropriate indicator of risk profile:** Total risk exposure (TRE) is considered to be the appropriate variable for measuring the risk profile, including risk-weighted assets, of the supervised entities. TRE is used for calculating capital ratios pursuant to Article 92 of the Capital Requirements Regulation (CRR)<sup>13</sup> and covers different types of risk, in particular credit risk, counterparty credit risk, dilution risk, several forms of market risk, and operational risk. It is considered to be an appropriate and well-defined measure that complies with the requirements of the SSM Regulation.

(29) **Relative weights of fee factors:** The importance (i.e. TA) and risk profile (i.e. TRE) are given equal weight in the fee calculation, i.e. both fee factors are weighted at 50%. There appears to be no rationale for any other weighting scheme.

<sup>10</sup> This is a preliminary estimation based on the best available information at this juncture.

<sup>11</sup> See Article 30(3) of the SSM Regulation.

<sup>12</sup> See Article 6(4) of the SSM Regulation. The criteria laid down for determining significance are (i) size; (ii) importance for the economy of the EU or any participating Member State; (iii) significance of cross-border activities; (iv) request for or receipt of public financial assistance directly from the European Financial Stability Facility (EFSF) or the European Stability Mechanism (ESM); and (v) qualifying as one of the three most significant credit institutions in a participating Member State.

<sup>13</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p.1).



- (30) **Exclusion of subsidiaries in non-participating Member States:** The SSM Regulation stipulates that, for the purposes of calculating the fee, subsidiaries established in non-participating Member States are to be excluded from the fee factors used.<sup>14</sup>
- (31) **Obligation to provide data:** If data on fee factors (TA and TRE) made available through regular supervisory or other reporting sources do not meet the requirements in terms of quality, definition or timeliness, the ECB may require the provision of all necessary data to support the fee calculation methodology. All supervised entities must provide the ECB with such data via their NCA.
- (32) **Frequency and reference date for the collection of data on fee factors:** The reporting frequency for fee factors is annual. The reference date for the fee factors (TA and TRE) is the end of the calendar year (i.e. 31 December) of the previous year. The first reference date is 31 December 2014.
- (33) **Access to information by the ECB:** Under the CRR, the European Banking Authority was given the mandate to develop implementing technical standards (ITS) that specify the details of the regulatory reporting requirements to be applied in the EU. The ITS will be part of the single rulebook, the aim of which is to enhance regulatory harmonisation in the EU banking sector and facilitate a proper functioning of cross-border supervision. They prescribe uniform formats, frequencies, reporting dates, definitions and IT solutions to be used by credit institutions in Europe, at both the individual and the consolidated level.<sup>15</sup>
- (34) **Reporting requirements for TA:** The total value of the assets of a supervised entity is derived from the “total assets” line on a balance sheet prepared in accordance with EU law for prudential purposes. In line with the SSM Framework Regulation, figures under the accounting scope of consolidation, as reported in the credit institutions’ audited financial statements, are considered a fallback option for credit institutions and branches that are currently not required to report figures in accordance with EU law for prudential purposes based on the prudential scope of consolidation.
- (35) **Specific reporting requirements for TA of supervised groups:** As outlined in paragraph 30, in the case of supervised groups it is necessary to exclude subsidiaries established in non-participating Member States. Fulfilment of this obligation requires information on the intragroup transactions of the entities of the group and the subsidiaries located in non-participating Member States and third countries that is not available via the ITS on supervisory reporting or other reporting sources. Therefore, in the case of supervised groups with subsidiaries outside the SSM area, the supervised group must calculate TA directly at the sub-

<sup>14</sup> See Recital 77 of the SSM Regulation.

<sup>15</sup> With the exception of the supervisory framework for financial reporting (FINREP), which, in principle, only applies at the consolidated level, and when applying International Financial Reporting Standards.

consolidated level and disclose this information. Information on TA calculated at the sub-consolidated level by the supervised groups concerned will be collected by the ECB via the NCAs in accordance with methodologies and procedures to be established by the ECB and published on its website. This obligation to directly calculate and return sub-consolidated TA data for the purposes of calculating the supervisory fee is proportionate, as these data impact the fee calculations for all credit institutions and are not otherwise available.

- (36) **ITS foreseen as the basis for the provision of data on TRE:** It is expected that data on TRE for all supervised entities will be sourced from the supervisory data submitted in accordance with the ITS. This would involve taking data on TRE obtained from the common reporting (COREP) framework. Sub-consolidated TRE data for all subsidiaries and operations controlled by the parent entity in participating Member States would be derived from the contribution to the risk exposure amount of each of the entities within the consolidated group.
- (37) **TRE for branches:** Given that branches are secondary and dependent commercial facilities, and not separate legal entities distinct from the principal company, information on the TRE of branches may not be available. The ECB considers that it would not be proportionate or cost-efficient to establish a requirement for branches to submit this information for the purposes of calculating the supervisory fee. For this reason, it is foreseen that the TRE factor for branches will be set at zero.
- (38) **Publication of the data on TA and TRE on the ECB's website:** The ECB will publish the TA and TRE amounts on its website prior to the issuance of the fee notice and for significant and less significant supervised entities separately.

#### **II.4 Methodology for calculating individual supervisory fees**

- (39) **Split of expenditure to be recovered:** The annual amount to be recovered will be related to the status of the supervised entity, reflecting the varying degrees of supervisory scrutiny by the ECB.<sup>16</sup> Therefore, the annual amount to be recovered will be split into two amounts, i.e. the amount to be recovered from significant supervised entities and the amount to be recovered from less significant supervised entities. This split will be determined on the basis of the costs incurred by the ECB's business areas that are responsible for the supervision of significant supervised entities and the business areas overseeing the supervision of less significant supervised entities respectively. Based on the preliminary estimate of expenditure to be recovered for the first fee period, as outlined in Part II.2, the split would be €255 million for the significant supervised entities and €45 million for the less significant supervised entities.

<sup>16</sup> See Article 9 of the draft Regulation on supervisory fees.

- (40) Once the proportion of the total expenditure has been determined for each category of supervised entity, the individual supervisory fee for each supervised entity will be calculated on the basis of the methodology outlined below.
- (41) **Composition of fee:** The annual supervisory fee will consist of two elements – a fixed minimum fee component and a variable fee component. The sum of the minimum fee and the variable fee will constitute the annual fee to be paid by each supervised entity.
- (42) **Minimum fee component:** A percentage of the total amount to be allocated to supervised entities is distributed to all entities in the same category (i.e. the category of significant entities or that of less significant entities). The minimum fee component represents the lower limit of the supervisory fee. The percentages will be kept stable over time, which means that the actual minimum fee will then vary in line with the total expenditures to be recovered.
- (43) **Minimum fee percentage for significant entities:** The minimum fee percentage for significant entities will be 10%. In each participating country, at least the three most significant credit institutions will be subject to direct supervision by the ECB, irrespective of their total asset size. These credit institutions may be small relative to the other supervised entities in this category. For this reason, the ECB will halve the minimum fee component for the smaller significant institutions with total assets of €10 billion or less.
- (44) **Minimum fee percentage for less significant entities:** The minimum fee percentage for the less significant entities will be 10%.
- (45) **Variable fee component:** The distribution of the amounts remaining after the deduction of the minimum fee component will be conducted on the basis of the fee factors (i.e. TA and TRE). An entity's share in the variable component will depend directly on the entity's weighted fee factors as a proportion of the sum of all entities' weighted fee factors. The table below provides an example:

	TA (50%)	TRE (50%)	Proportion of expenditure
Entity A	100	30	$[(100/400)*0.5]+[(30/100)*0.5] = 27.5\%$
Entity B	<u>300</u>	<u>70</u>	$[(300/400)*0.5]+[(70/100)*0.5] = \underline{72.5\%}$
<b>Total</b>	400	100	100.0%

- (46) **Impact analysis:** An analysis of the impact of the foreseen methodology has been conducted, when applied to preliminary data.
- (47) For significant supervised entities, the supervisory fees may range from roughly €150,000 for the smallest ones to about €15 million for the largest ones. The majority of these entities, representing nearly 50%, are expected to have weighted fee factors in the range of €30 billion to €200 billion. The average fee calculated for this category may then vary from about €700,000 to about €2 million.

- (48) For less significant supervised entities, the supervisory fees may range from roughly €2,000 for the smallest ones to about €210,000 for the largest ones. The majority of these entities, representing nearly 75%, are expected to have TA in the range of €1 million to €1 billion. The average fee calculated for this category may then vary from about €2,000 to €7,000.

## II.5 Procedural aspects of invoicing

- (49) **Advance payment based on a reasonable estimate:** In principle, supervised entities will be charged annually in advance, using the budget of the ECB<sup>17</sup> necessary to carry out the tasks conferred on it by the SSM Regulation to calculate the amount to be charged. The budget for a particular year will be finalised towards the end of the previous year. The collection of an advance payment on the basis of an estimate is explicitly provided for in Article 30 of the SSM Regulation.
- (50) **Treatment of surplus/deficit:** The annual supervisory fee levied by the ECB must cover, but not exceed, the annual expenditure incurred by the ECB in the relevant fee period in relation to the supervisory tasks conferred on it by the SSM Regulation<sup>18</sup>. As the advance payment is based on an estimate, a surplus or deficit between the amount collected in advance and the actual expenditure incurred may arise. The surplus or deficit from the previous year, if any, will be deducted from or added to the advance payment for the following year.
- (51) **Publication of overall amount to be recovered:** Prior to the issuance of the fee notices, the ECB will publish on its website the total annual amount to be collected in the current fee period, split into the amount recoverable from significant supervised entities and that recoverable from less significant supervised entities. This will represent the total amount to be collected from all supervised entities, consisting of (a) the estimated total annual expenditure collected in advance for the current fee period; and (b) the surplus (or deficit) from the previous year, if any, that will be refunded (or charged). The total amount will also include any other amounts received or paid in the previous period, such as damages paid, interest received for late payments of fees or adjustments to income resulting from changes in the status of supervised entities.
- (52) **Fee notice:** The ECB will issue fee notices on an annual basis to each supervised entity within the first eight months of the calendar year. The foreseen date of issuance of the fee notices is between June and August.
- (53) **Elements of the fee notice:** As a minimum, a fee notice will contain the following elements:

<sup>17</sup> Article 29(1) of the SSM Regulation states that the ECB's expenditure for carrying out the tasks conferred on it by the SSM Regulation must be separately identifiable within the budget of the ECB.

<sup>18</sup> Specifically the tasks set out in Articles 4 to 6 of the SSM Regulation.

- a) the details of the fee debtor to whom a fee notice is being sent (i.e. contact person, address, country, VAT registration number and/or a bank identification number (if relevant));
  - b) the total amount of the fee, split into the minimum fee component and the variable fee component;
  - c) the period to which the fee relates;
  - d) the individual fee factors applied for the purposes of calculating the fee;
  - e) the due date of the payment;
  - f) the means of payment and bank account details of the ECB.
- (54) **Payment maturity date:** The fee is due within 30 days of the fee notice being issued. A credit institution is deemed to have paid within the payment period if the fee has been credited in euro to the ECB's account by the 30th day after the fee notice has been issued. If the 30th day after the issuance date of the fee notice falls on a Saturday, Sunday or a public holiday, the fee is to be credited to the ECB's account by the working day preceding the due date.
- (55) **Partial payment or non-payment of fees:** In the event of a partial payment or non-payment by the due date, the ECB will initiate a follow-up procedure and will notify the fee debtor of the outstanding amount.
- (56) **Penalty fee:** In the case of overdue payments (or partial payments), an interest amount (penalty fee) will be imposed on the fee debtor. The interest amount will accrue on a daily basis on the overdue amount<sup>19</sup> outstanding from the date on which the payment was due.
- (57) **First fee notice:** The first fee notice will be issued in 2015. It will cover the advance payment for 2015 and the actual expenditure incurred during the first fee period, i.e. November and December 2014.

## **II.6 Change in status: new supervised entities, withdrawal of authorisation and the change in supervisory status within the SSM**

- (58) **Pro-rata approach for supervised entities that change status:** Each supervised entity is obliged to pay a supervisory fee for the portion of the year for which it is supervised by the SSM. It follows that supervised entities that are authorised will be obliged to pay a supervisory fee covering the period from the date of authorisation to 31 December of that year. Similarly, an entity whose authorisation is revoked or lapses during the course of the year will be obliged to pay a supervisory fee covering the period from 1 January to the date on which its authorisation

<sup>19</sup> The overdue amount is the difference between the amount charged and the amount credited to the ECB's bank account within the payment period.

lapsed or was revoked. The supervisory fee payable will be calculated on the basis of the number of full months during the fee period that the supervised entity was supervised.

- (59) **Pro-rata approach for a change in status between significant and less significant:** Since, over time, the status of a credit institution can change between significant and less significant, a procedure has been set out for reviewing and determining the annual supervisory fee based on the status of a supervised entity. The annual supervisory fee will be calculated on the basis of the number of months during the fee period that a supervised entity was significant or less significant on the last day of the month.
- (60) The change in status of a supervised entity from significant to less significant and vice versa will be determined in an ECB decision that will specify the date on which the change in status becomes effective.<sup>20</sup>
- (61) **Changes in status after calculation of fee has been finalised:** Where the annual supervisory fee levied deviates from the fee calculated on the basis of paragraphs 58 or 59 above, a refund to the supervised entity will be paid or an invoice will be issued by the ECB.

The ECB will publish on its website a list of those credit institutions identified as significant supervised entities or as forming part of a significant supervised group. Furthermore, the ECB will publish on its website a list of each entity that is supervised by an NCA together with the name of the supervising NCA. These lists will be updated on a regular basis.<sup>21</sup>

## II.7 Sanctions and appeals

- (62) **Appeals:** Within one month of receipt of a fee notice, a fee debtor will be able to submit an appeal against it to the Administrative Board of Review.
- (63) **Sanctions:** If a supervised entity is in breach of its obligations as these arise under the Regulation on supervisory fees, the ECB may impose sanctions in accordance with Council Regulation (EC) No 2532/98.<sup>22</sup>

## II.8 Cooperation with the NCAs

- (64) **Cost-effectiveness of the overall supervision:** The SSM Regulation has changed the supervisory architecture for all supervised entities in participating Member States. This will necessarily have an impact on the overall cost of supervision resulting from the sum of expenditure at the national and the supranational level. It is a stated objective of the SSM

<sup>20</sup> See Articles 43 to 47 of the SSM Framework Regulation.

<sup>21</sup> See Article 49 of the SSM Framework Regulation.

<sup>22</sup> Council Regulation (EC) No 2532/98 of 23 November 1998 concerning the powers of the European Central Bank to impose sanctions (OJ L 318, 27.11.1998, p. 4). See Article 18(7) of the SSM Regulation.

Regulation<sup>23</sup> that due regard should be given to ensuring that supervision remains cost-effective and its costs reasonable for all credit institutions and branches concerned. In this regard, the ECB must communicate with the NCAs before determining the total amount of the annual supervisory fee.

- (65) **ECB to communicate with the NCAs on final fee level:** The ECB will develop and implement a channel of communication between the NCAs and the ECB. Prior to deciding on the final fee level,<sup>24</sup> it will use this channel to ensure that supervision remains cost-effective and reasonable for all credit institutions and branches concerned.
- (66) **Rights of the NCAs to charge fees:** The right of the ECB to levy a supervisory fee is without prejudice to the right of the NCAs to levy fees in accordance with national law and, to the extent supervisory tasks have not been conferred on the ECB, or in respect of the costs of cooperating with and assisting the ECB and acting on its instructions.<sup>25</sup>

## II.9 Accountability and reporting

- (67) **Annual Report:** The ECB is accountable to the European Parliament and to the Council for the implementation of the supervisory fee framework. On an annual basis, the ECB will submit to the European Parliament, to the Council, to the Commission and to the Eurogroup a report on the execution of the tasks conferred on it by the SSM Regulation, including information on the amount of the supervisory fees. This reporting requirement is further specified in the Interinstitutional Agreement between the European Parliament and the ECB, confirming that the SSM Annual Report must cover the method for calculating the supervisory fees together with the budget for supervisory tasks.<sup>26</sup>
- (68) **Review clause:** The ECB will conduct a review of this Regulation on supervisory fees, in particular of the methodology and criteria for calculating the annual supervisory fee to be levied on each supervised entity or group, no later than 2017.
- (69) **Explanation of the calculation of the supervisory fees on the ECB's website:** The supervisory fees and an explanation of how they are calculated will be published on the ECB's website.

<sup>23</sup> See Article 30(3) of the SSM Regulation. The ECB must communicate with the national competent authority before deciding on the final fee level so as to ensure that supervision remains cost-effective and reasonable for all credit institutions and branches concerned.

<sup>24</sup> *ibid.*

<sup>25</sup> See Article 30(5) of the SSM Regulation.

<sup>26</sup> As stated in the accountability, access to information, confidentiality provision of the Interinstitutional Agreement between the European Parliament and the European Central Bank (see footnote 8).

### **III THE DRAFT REGULATION ON SUPERVISORY FEES**

*This draft Regulation is a working draft for consultation purposes only. It does not purport to represent or prejudge the final proposal for an ECB Regulation on supervisory fees to be presented by the Supervisory Board to the Governing Council in accordance with Article 30 of the SSM Regulation.*



## **DEN EUROPÆISKE CENTRALBANKS FORORDNING**

**af [dato måned ÅÅÅÅ]**

**om tilsynsgebyrer**

**([ECB/YYYY/XX])**

STYRELSESRÅDET FOR DEN EUROPÆISKE CENTRALBANK HAR –

under henvisning til Rådets forordning (EU) nr. 1024/2013 af 15. oktober 2013 om overdragelse af specifikke opgaver til Den Europæiske Centralbank i forbindelse med politikker vedrørende tilsyn med kreditinstitutter<sup>1</sup>, særlig artikel 4, stk. 3, andet afsnit, artikel 30 og artikel 33, stk. 2, andet afsnit,

under henvisning til den offentlige høring og den analyse, som er foretaget i overensstemmelse med artikel 30, stk. 2, i forordning (EU) nr. 1024/2013, og

ud fra følgende betragtninger:

- (1) Forordning (EU) nr. 1024/2013 etablerer Den Fælles Tilsynsmekanisme (Single Supervisory Mechanism, SSM), som omfatter Den Europæiske Centralbank (ECB) og kompetente nationale myndigheder.
- (2) ECB er ansvarlig for SSM's effektive og konsekvente virkemåde for alle kreditinstitutter, finansielle holdingselskaber og blandede finansielle holdingselskaber i alle euroområdet medlemsstater samt i medlemsstater uden for euroområdet, som indgår et tæt samarbejde med ECB. De regler og procedurer, der gælder for samarbejdet mellem ECB og kompetente nationale myndigheder inden for SSM og med udpegede nationale myndigheder, er fastsat i Den Europæiske Centralbanks forordning (EU) nr. 468/2014 (ECB/2014/17)<sup>2</sup>.
- (3) I henhold til artikel 30 i forordning (EU) nr. 1024/2013 skal ECB opkræve et årligt tilsynsgebyr af kreditinstitutter, der er etableret i de deltagende medlemsstater, og filialer, som et kreditinstitut, der er etableret i en ikkedeltagende medlemsstat, har etableret i en deltagende medlemsstat. De gebyrer, som ECB opkræver, skal dække, og må ikke overstige, de udgifter, som ECB afholder i forbindelse med de opgaver, som overdrages til den i henhold til artikel 4-6 i forordning (EU) nr. 1024/2013.
- (4) I henhold til forordning (EU) nr. 1024/2013 er ECB ansvarlig for SSM's effektive og konsekvente virkemåde. Derfor bør det årlige tilsynsgebyr bestå af et beløb, som betales årligt

1 EUT L 287 af 29.10.2013, s. 63.

2 Den Europæiske Centralbanks forordning (EU) nr. 468/2014 af 16. april 2014 om fastlæggelse af en ramme for samarbejde inden for Den Fælles Tilsynsmekanisme mellem Den Europæiske Centralbank og de kompetente nationale myndigheder og med de udpegede nationale myndigheder (SSM-rammeforordningen) (ECB/2014/17) (EUT L 141 af 15.5.2014, s. 1).

af alle kreditinstitutter, der er etableret i deltagende medlemsstater, og filialer, som et kreditinstitut, der er etableret i en ikkedeltagende medlemsstat, har etableret i en deltagende medlemsstat, og som er omfattet af SSM's tilsyn.

- (5) Inden for SSM fordeles tilsynsansvaret mellem ECB og de enkelte kompetente nationale myndigheder på grundlag af enhederne under tilsyns signifikans.
- (6) ECB har kompetence til at føre direkte tilsyn med signifikante kreditinstitutter, finansielle holdingselskaber, blandede finansielle holdingselskaber, der er etableret i deltagende medlemsstater, og filialer i deltagende medlemsstater af signifikante kreditinstitutter, der er etableret i ikkedeltagende medlemsstater.
- (7) ECB overvåger ligeledes virkemåden for SSM, som omfatter alle kreditinstitutter, uanset om de er signifikante eller mindre signifikante. ECB har enekompetence vedrørende alle kreditinstitutter, der er etableret i de deltagende medlemsstater, til at meddele enheder tilladelse til at drive virksomhed som kreditinstitut, til at inddrage tilladelser og til at vurdere erhvervelser og afhændelser af kvalificerede andele.
- (8) De kompetente nationale myndigheder er ansvarlige for det direkte tilsyn med mindre signifikante enheder under tilsyn, uden at dette indskrænker ECB's beføjelser til at foretage direkte tilsyn i særlige tilfælde, hvor dette er nødvendigt af hensyn til den konsekvente anvendelse af høje tilsynsstandarder. Denne fordeling af tilsynsansvaret inden for SSM og de udgifter, som ECB afholder i forbindelse hermed, tages i betragtning ved fordelingen af det beløb, der skal dækkes ind via tilsynsgebyrer, mellem kategorierne af signifikante enheder under tilsyn og mindre signifikante enheder under tilsyn.
- (9) I henhold til artikel 33, stk. 2, i forordning (EU) nr. 1024/2013 skal ECB ved forordninger og afgørelser offentliggøre de detaljerede operationelle ordninger for gennemførelsen af de opgaver, som overdrages til den ved forordning (EU) nr. 1024/2013.
- (10) En forordning har almen gyldighed, er bindende i alle enkeltheder og umiddelbart gældende i alle euroområdet medlemsstater. Det er således det mest hensigtsmæssige retlige instrument til fastlæggelsen af de praktiske retningslinjer for gennemførelsen af artikel 30 i forordning (EU) nr. 1024/2013.
- (11) I denne forordning fastsættes ordningerne for ECB's opkrævning og inddrivelse af det årlige tilsynsgebyr, der vedrører ECB's tilsynsopgaver, navnlig de metoder og kriterier, der anvendes til at a) bestemme de årlige tilsynsgebyrers samlede beløb og b) beregne det individuelle beløb, som skal betales for hver enkelt enhed og koncern under tilsyn.

- (12) I overensstemmelse med artikel 30, stk. 5, i forordning (EU) nr. 1024/2013 berører denne forordning ikke de kompetente nationale myndigheders ret til at opkræve gebyrer i henhold til national lovgivning, [herunder i forbindelse med omkostningerne for at samarbejde med og bistå ECB] –

VEDTAGET DENNE FORORDNING:

## **DEL I**

### **ALMINDELIGE BESTEMMELSER**

#### **Afsnit 1**

#### **Genstand og anvendelsesområde**

##### *Artikel 1*

#### **Genstand**

Denne forordning fastsætter:

- a) metoden til at beregne den samlede størrelse af de årlige tilsynsgebyrer, som skal opkræves fra enhederne under tilsyn
- b) metoden til og kriterierne for beregningen af det årlige tilsynsgebyr, som skal opkræves fra hver enkelt enhed og koncern under tilsyn
- c) proceduren for ECB's inddrivelse af det årlige tilsynsgebyr
- d) ordninger vedrørende samarbejdet mellem ECB og kompetente nationale myndigheder med hensyn til artikel 30 i forordning (EU) nr. 1024/2013.

##### *Artikel 2*

#### **Anvendelsesområde**

1. Denne forordning gælder for:
  - a) kreditinstitutter, der er etableret i de deltagende medlemsstater
  - b) filialer, som et kreditinstitut, der er etableret i en ikkedeltagende medlemsstat, har etableret i deltagende medlemsstater.

2. Den samlede størrelse af de årlige tilsynsgebyrer omfatter det årlige tilsynsgebyr for hver enkelt signifikant enhed under tilsyn og hver enkelt mindre signifikant enhed under tilsyn og beregnes af ECB på det højeste konsolideringsniveau i deltagende medlemsstater.

## **Afsnit 2**

### **Definitioner**

#### *Artikel 3*

### **Definitioner**

I denne forordning finder de i forordning (EU) nr. 1024/2013 fastsatte definitioner anvendelse, medmindre andet fremgår, sammen med følgende definitioner:

1. "årligt tilsynsgebyr" ("annual supervisory fee"): det gebyr, som skal betales for hver enkelt enhed under tilsyn, og som beregnes efter den metode, der er fastsat i artikel 10, stk. 5, for signifikante enheder under tilsyn og mindre signifikante enheder under tilsyn
2. "årlige omkostninger" ("annual costs"): det beløb, som ECB skal have dækket ind via de årlige tilsynsgebyrer for en specifik gebyrperiode, og som fastsættes i overensstemmelse med bestemmelserne i artikel 6
3. "filial" ("branch"): en filial som defineret i artikel 4, stk. 1, nr. 17, i Europa-Parlamentets og Rådets forordning (EU) nr. 575/2013<sup>3</sup>
4. "medlemsstat i euroområdet" ("euro area Member State"): en medlemsstat, der har euroen som valuta
5. "gebyrdebitor" ("fee debtor"): det gebyrbetalende kreditinstitut eller den gebyrbetalende filial, som defineret i overensstemmelse med artikel 5, og til hvilket eller hvilken gebyrmeddelelsen stiles
6. "gebyrfaktorer" ("fee factors"): de data vedrørende en enhed under tilsyn, der er defineret i artikel 10, stk. 3, litra a), som anvendes til at beregne det årlige tilsynsgebyr
7. "gebyrmeddelelse" ("fee notice"): en meddelelse, der anfører det årlige tilsynsgebyr, som skal betales af og udstedes til den relevante gebyrdebitor i overensstemmelse med denne forordning
8. "gebyrbetalende kreditinstitut" ("fee-paying credit institution"): et kreditinstitut, der er etableret i en deltagende medlemsstat

3 Europa-Parlamentets og Rådets forordning (EU) nr. 575/2013 af 26. juni 2013 om tilsynsmæssige krav til kreditinstitutter og investeringsselskaber og om ændring af forordning (EU) nr. 648/2012 (EUT L 176 af 27.6.2013, s. 1).

9. "gebyrbetalende filial" ("fee-paying branch"): en filial i en deltagende medlemsstat af et kreditinstitut, der er etableret i en ikkedeltagende medlemsstat
10. "gebyrperiode" ("fee period"): et kalenderår
11. "første gebyrperiode" ("first fee period"): perioden fra den dato, hvor ECB overtager de opgaver, som den har fået overdraget ved forordning (EU) nr. 1024/2013, til udgangen af det kalenderår, hvor ECB overtager disse opgaver
12. "koncern af gebyrbetalende enheder" ("group of fee-paying entities"): et antal enheder under tilsyn, der indberetter konsoliderede informationer om deres gebyrfaktorer til ECB
13. "koncern" ("group"): en koncern som defineret i artikel 2, nr. 5, i SSM-rammeforordningen
14. "medlemsstat" ("Member State"): en EU-medlemsstat
15. "medlemsstat uden for euroområdet" ("non-euro area Member State"): en medlemsstat, der ikke har euroen som valuta
16. "deltagende medlemsstat" ("participating Member State"): a) en medlemsstat i euroområdet og b) en medlemsstat uden for euroområdet, der har indgået et tæt samarbejde med ECB i overensstemmelse med artikel 7 i forordning (EU) nr. 1024/2013
17. "ikkedeltagende medlemsstat" ("non-participating Member State"): en medlemsstat, som ikke er en deltagende medlemsstat
18. "enhed under tilsyn" ("supervised entity"): enhver af følgende: a) et kreditinstitut etableret i en deltagende medlemsstat, b) et finansielt holdingselskab etableret i en deltagende medlemsstat, c) et blandet finansielt holdingselskab etableret i en deltagende medlemsstat, d) en filial i en deltagende medlemsstat af et kreditinstitut, som er etableret i en ikkedeltagende medlemsstat
19. "tilsynsopgaver" ("supervisory tasks"): de opgaver, som ECB har fået overdraget i henhold til artikel 4-6 i forordning (EU) nr. 1024/2013
20. "signifikant enhed under tilsyn" ("significant supervised entity"): en signifikant enhed under tilsyn som defineret i artikel 2, nr. 16, i SSM-rammeforordningen
21. "mindre signifikant enhed under tilsyn" ("less significant supervised entity"): en mindre signifikant enhed under tilsyn som defineret i artikel 2, nr. 7, i SSM-rammeforordningen
22. "samlede aktiver" ("total assets"): den samlede værdi af aktiver, som udledes af linjen "Aktiver i alt" på balancen for en koncern af gebyrbetalende enheder, et gebyrbetalende kreditinstitut, som ikke er en del af en koncern, eller en gebyrbetalende filial i overensstemmelse med den metode og de procedurer, som fastsættes og offentliggøres af ECB i henhold til artikel 10, stk. 3. Vedrørende en koncern af gebyrbetalende enheder omfatter samlede aktiver ikke datterselskaber, der er etableret i ikkedeltagende medlemsstater og tredjelande

23. "samlet risikoeksponering" ("total risk exposure"): vedrørende en koncern af gebyrbetalende enheder og et gebyrbetalende kreditinstitut, som ikke er en del af en koncern af gebyrbetalende enheder: det beløb, som beregnes ifølge artikel 92, stk. 3, i forordning (EU) nr. 575/2013. Vedrørende en koncern af gebyrbetalende enheder omfatter "samlet risikoeksponering" ikke bidraget til den samlede risikoeksponering fra datterselskaber, der er etableret i ikkedeltagende medlemsstater og tredjelande.

### **Afsnit 3**

#### **Generel forpligtelse**

##### *Artikel 4*

#### **Generel forpligtelse til at betale det årlige tilsynsgebyr**

1. ECB opkræver et årligt tilsynsgebyr af hvert enkelt gebyrbetalende kreditinstitut og hver enkelt gebyrbetalende filial vedrørende hver gebyrperiode.
2. De årlige tilsynsgebyrer skal tilsammen dække, men må ikke overstige, de udgifter, som ECB afholder i forbindelse med dens tilsynsopgaver i den relevante gebyrperiode.

##### *Artikel 5*

#### **Gebyrdebitor**

1. Gebyrdebitoren, for så vidt angår det årlige tilsynsgebyr:
  - a) er kreditinstituttet, hvor der er tale om et gebyrbetalende kreditinstitut, som ikke er en del af en koncern
  - b) er den gebyrbetalende filial, hvor der er tale om en gebyrbetalende filial, som ikke er knyttet sammen med en anden gebyrbetalende filial
  - c) bestemmes i overensstemmelse med bestemmelserne i stk. 2, hvor der er tale om en koncern af gebyrbetalende enheder.
2. Uanset de ordninger, som findes inden for en koncern af gebyrbetalende enheder, med hensyn til fordelingen af omkostninger, behandles en koncern af gebyrbetalende enheder som én gebyrdebitor. Hver koncern af gebyrbetalende enheder skal udpege gebyrdebitoren for hele koncernen og meddele ECB gebyrdebitorens identitet. Denne meddelelse anses kun for at være gyldig, hvis:
  - a) den anfører navnene på alle de gebyrbetalende enheder i den koncern, som meddelelsen omfatter

- b) den er underskrevet på vegne af alle koncernens gebyrbetalende enheder
- c) den er modtaget af ECB senest 1. marts hvert år, for at den kan tages i betragtning i forbindelse med udstedelsen af gebyrmeddelelsen vedrørende den næstfølgende gebyrperiode.

Hvis ECB ikke modtager meddelelsen om gebyrdebitorens identitet inden 1. marts, bestemmes gebyrdebitor af ECB.

Hvis ECB rettidigt har modtaget mere end én meddelelse pr. koncern af gebyrbetalende enheder, har den meddelelse forrang, som ECB har modtaget tættest på, men inden, fristen for modtagelsen.

- 3. To eller flere gebyrbetalende filialer af det samme kreditinstitut i den samme deltagende medlemsstat anses for én filial. Filialer af det samme kreditinstitut i forskellige deltagende medlemsstater anses ikke for én filial.
- 4. Et gebyrbetalende kreditinstituts gebyrbetalende filial og datterselskab, der er etableret i den samme deltagende medlemsstat, anses ikke for én enhed i forbindelse med denne forordning.
- 5. Datterselskaber, der er etableret i ikkedeltagende medlemsstater, tages ikke i betragtning ved beregningen af det årlige tilsynsgebyr. I denne henseende, og med henblik på at bestemme gebyrfaktorerne for en koncern af gebyrbetalende enheder, skal koncernen indberette delkonsoliderede data for alle datterselskaber og operationer, som kontrolleres af moderselskabet i deltagende medlemsstater.
- 6. Uanset stk. 2 forbeholder ECB sig ret til at bestemme gebyrdebitoren.

## **DEL II**

### **UDGIFTER OG OMKOSTNINGER**

#### *Artikel 6*

#### **Årlige omkostninger**

- 1. De årlige omkostninger danner grundlag for fastsættelsen af det årlige tilsynsgebyr og dækkes ind via indbetalingen af dette årlige tilsynsgebyr.
- 2. Størrelsen af de årlige omkostninger bestemmes på grundlag af størrelsen af de årlige udgifter, som udgøres af:
  - a) de udgifter, som ECB har afholdt i den relevante gebyrperiode, og som er direkte eller indirekte knyttet til dens tilsynsopgaver

- b) [eventuelle erstatningsudgifter, som er opstået i den relevante gebyrperiode, og som skal betales til tredjemand til dækning af et tab, som direkte eller indirekte er forårsaget af ECB under udførelsen af dens tilsynsopgaver].
3. Ved fastsættelsen af de årlige omkostninger tager ECB højde for:
- a) størrelsen af gebyrer vedrørende tidligere gebyrperioder, som ikke kunne inddrives
  - b) modtagne rentebetalinger i overensstemmelse med artikel 11
  - c) modtagne eller tilbagebetalte beløb i overensstemmelse med artikel 8, stk. 3.

#### *Artikel 7*

#### **Estimering og fastsættelse af de årlige omkostninger**

1. Uden at dette berører ECB's rapporteringsforpligtelser i henhold til forordning (EU) nr. 1024/2013, beregner ECB ved udgangen af hvert kalenderår de estimerede årlige omkostninger vedrørende gebyrperioden for det efterfølgende kalenderår. De estimerede årlige omkostninger danner grundlag for den i artikel 13, stk. 1, litra a), omhandlede beregning.
2. Senest fire måneder efter udgangen af hver gebyrperiode bestemmer ECB de faktiske årlige omkostninger for denne gebyrperiode. De faktiske årlige omkostninger danner grundlag for den i artikel 13, stk. 1, litra b), omhandlede beregning.

### **DEL III**

#### **FASTSÆTTELSE AF DET ÅRLIGE TILSYNSGEBYR**

#### *Artikel 8*

#### **Nye enheder under tilsyn eller ændring af status**

1. Såfremt en enhed under tilsyn kun er en enhed under tilsyn i en del af gebyrperioden, beregnes det årlige tilsynsgebyr i forhold til det antal hele måneder i gebyrperioden, hvor kreditinstituttet eller filialen er en enhed under tilsyn.
2. Såfremt en enhed under tilsyns status ændres fra signifikant til mindre signifikant eller omvendt som følge af ECB's beslutning herom, beregnes det årlige tilsynsgebyr på grundlag af det antal måneder, hvor enheden under tilsyn var en signifikant eller mindre signifikant enhed den sidste dag i måneden.
3. Såfremt det opkrævede årlige tilsynsgebyr afviger fra det i overensstemmelse med stk. 1 eller 2 beregnede gebyrbeløb, foretager ECB en tilbagebetaling til enheden under tilsyn eller udsteder en faktura til denne.



## *Artikel 9*

### **Fordeling af de årlige omkostninger mellem signifikante og mindre signifikante enheder under tilsyn**

1. Med henblik på beregningen af det årlige tilsynsgebyr, som skal betales for hver enkelt enhed under tilsyn, deles de årlige omkostninger i to dele, én for hver kategori af enheder under tilsyn, på følgende måde:
  - (a) de årlige omkostninger, som skal dækkes via signifikante enheder under tilsyn
  - (b) de årlige omkostninger, som skal dækkes via mindre signifikante enheder under tilsyn.
2. Opdelingen af de årlige omkostninger i overensstemmelse med stk. 1 sker på grundlag af de omkostninger, der vedrører ECB's organisatoriske enheder, som varetager det direkte tilsyn med signifikante enheder under tilsyn og det indirekte tilsyn med mindre signifikante enheder under tilsyn.

## *Artikel 10*

### **Det årlige tilsynsgebyr, som skal betales vedrørende individuelle enheder under tilsyn eller koncerner under tilsyn**

1. Det årlige tilsynsgebyr, som skal betales vedrørende hver signifikant enhed under tilsyn eller signifikant koncern under tilsyn, bestemmes ved at fordele de årlige omkostninger for signifikante enheder under tilsyn på de individuelle signifikante enheder under tilsyn eller de signifikante koncerner under tilsyn på grundlag af gebyrfaktorerne.
2. Det årlige tilsynsgebyr, som skal betales vedrørende hver enkelt mindre signifikant enhed under tilsyn eller mindre signifikant koncern under tilsyn, bestemmes ved at fordele de årlige omkostninger for mindre signifikante enheder under tilsyn på de individuelle mindre signifikante enheder under tilsyn eller de mindre signifikante koncerner under tilsyn på grundlag af gebyrfaktorerne.
3. Gebyrfaktorerne på det højeste konsolideringsniveau i deltagende medlemsstater beregnes på følgende grundlag:
  - a) De gebyrfaktorer, som anvendes til at bestemme det individuelle årlige tilsynsgebyr, som skal betales vedrørende hver enkelt enhed under tilsyn, er størrelsen, ultimo kalenderåret, af:
    - i) de samlede aktiver
    - ii) den samlede risikoeksponering. For så vidt angår en gebyrbetalende filial antages den samlede risikoeksponering at være nul.

Dataene vedrørende gebyrfaktorerne bestemmes og indsamles efter den metode og de procedurer, som fastsættes af ECB og offentliggøres på dens websted.

b) Den relative vægtning af gebyrfaktorerne er:

- i) samlede aktiver: 50 %;
- ii) samlet risikoeksponering: 50 %.

Summen af alle gebyrdebitorers samlede aktiver og summen af alle gebyrdebitorers samlede risikoeksponering offentliggøres på ECB's websted.

4. Enhederne under tilsyn indberetter gebyrfaktorerne med referencedatoen 31. december i det foregående år og forelægger de relevante kompetente nationale myndigheder de krævede data med henblik på beregningen af de årlige tilsynsgebyrer inden arbejdstids ophør den 1. marts året efter ovennævnte referencedato eller den næste bankdag, hvis den 1. marts ikke er en bankdag. De kompetente nationale myndigheder skal forelægge alle disse data for ECB i overensstemmelse med de procedurer, som fastsættes af ECB. Hvis en enhed under tilsyn har behov for at revidere de data, der er forelagt vedrørende gebyrberegningen, skal de opdaterede data forelægges straks og senest den 15. marts.
5. Det årlige tilsynsgebyr pr. gebyrdebitor beregnes efter nedenstående metode.
  - a) Det årlige tilsynsgebyr er summen af minimumsgebyrkomponenten og den variable gebyrkomponent.
  - b) Minimumsgebyrkomponenten beregnes som en fast procentdel af den samlede størrelse af de årlige omkostninger for hver kategori af enheder under tilsyn, jf. artikel 9. For kategorien signifikante enheder under tilsyn er den faste procentdel 10 %. Beløbet fordeles ligeligt mellem alle gebyrdebitorer. For signifikante enheder under tilsyn med samlede aktiver, som ikke overstiger 10 mia. euro, halveres minimumsgebyrkomponenten. For kategorien mindre signifikante enheder under tilsyn er den faste procentdel 10 %. Dette beløb fordeles ligeligt mellem alle gebyrdebitorer. Minimumsgebyrkomponenten udgør den nedre grænse for det årlige tilsynsgebyr pr. gebyrdebitor.
  - c) Den variable gebyrkomponent er differensen mellem den samlede størrelse af de årlige omkostninger for hver kategori af enheder under tilsyn, jf. artikel 9, og minimumsgebyrkomponenten i samme kategori. Den variable gebyrkomponent fordeles på de enkelte gebyrdebitorer i hver kategori i forhold til hver enkelt gebyrdebitors andel i summen af alle gebyrdebitorers vægtede gebyrfaktorer som fastsat ifølge stk. 3.

## *Artikel 11*

### **Renter ved manglende betaling**

Uden at dette berører andre sanktionsmuligheder, som ECB måtte råde over, pålægges der ved delvis betaling, manglende betaling eller manglende overholdelse af betalingsbetingelserne fastsat i gebyrmeddelelsen renter på daglig basis på det udestående beløb af det årlige tilsynsgebyr til en rente svarende til renten for ECB's primære markedsoperationer plus 8 procentpoint fra forfaldsdatoen.

## **DEL IV**

### **SAMARBEJDE MED KOMPETENTE NATIONALE MYNDIGHEDER**

## *Artikel 12*

### **Samarbejde med kompetente nationale myndigheder**

1. ECB tager kontakt til de kompetente nationale myndigheder, før den træffer afgørelse om gebyrernes endelige størrelse, for at sikre, at tilsynet er omkostningseffektivt og rimeligt for alle berørte kreditinstitutter og filialer. Med henblik herpå udvikler og implementerer ECB en passende kommunikationskanal i samarbejde med de kompetente nationale myndigheder.
2. De kompetente nationale myndigheder skal bistå ECB i opkrævningen af gebyrer, hvis ECB anmoder herom.
3. For så vidt angår kreditinstitutter i en deltagende medlemsstat uden for euroområdet, hvis tætte samarbejde med ECB hverken er suspenderet eller afsluttet, udsteder ECB instrukser til den kompetente nationale myndighed i denne medlemsstat vedrørende indsamlingen af gebyrfaktorer og fakturering af det årlige tilsynsgebyr.

## **DEL V**

### **FAKTURERING**

## *Artikel 13*

### **Beløb der skal opkræves**

1. Det samlede årlige tilsynsgebyr, som ECB opkræver, udgøres af summen af:
  - a) de årlige omkostninger for indeværende gebyrperiode beregnet på grundlag af det godkendte budget for gebyrperioden
  - b) et eventuelt overskud eller underskud fra den foregående gebyrperiode, som bestemmes ved at trække de faktiske årlige omkostninger vedrørende den foregående gebyrperiode

fra estimatet af de årlige omkostninger, som er blevet inddrevet i den foregående gebyrperiode i overensstemmelse med stk. 1, litra a).

ECB bestemmer det samlede årlige tilsynsgebyr, som skal opkræves, og offentliggør beløbet på sit websted.

2. Det årlige tilsynsgebyr, der skal opkræves af hver gebyrdebitor, beregnes på grundlag af de gebyrfaktorer vedrørende slutningen af kalenderåret før den relevante gebyrperiode, som gøres tilgængelige ved begyndelsen af gebyrperioden i overensstemmelse med artikel 10, stk. 4.

#### *Artikel 14*

##### **Gebyrmeddelelse**

1. ECB udsteder en årlig gebyrmeddelelse til hver enkelt gebyrdebitor tidligst den 1. juni og senest den 31. august i kalenderåret.
2. I gebyrmeddelelsen anføres det, hvordan det årlige tilsynsgebyr skal betales. Gebyrdebitoren skal overholde de i gebyrmeddelelsen anførte krav med hensyn til betalingen af det årlige tilsynsgebyr.
3. Gebyrdebitoren skal betale det ifølge gebyrmeddelelsen skyldige beløb senest 30 dage efter datoen for udstedelsen af gebyrmeddelelsen.

#### *Artikel 15*

##### **Notifikation af gebyrmeddelelsen**

1. Senest 1. marts i hver gebyrperiode skal gebyrdebitoren fremsende kontaktoplysninger til ECB (dvs. navn, funktion, organisatorisk enhed, adresse, e-mailadresse, telefonnummer, faxnummer) for den person, som gebyrmeddelelsen skal udstedes til.
2. ECB notificerer den i henhold til stk. 1 anførte person om gebyrmeddelelsen på en af følgende måder: a) elektronisk eller med et lignende kommunikationsmiddel, b) pr. fax, c) med ekspres kurertjeneste, d) ved anbefalet brev med en form for kvittering for modtagelse, e) ved forkyndelse eller personlig levering.

## **DEL VI**

### **AFSLUTTENDE BESTEMMELSER**

#### *Artikel 16*

#### **Sanktioner**

Ved overtrædelse af denne forordning kan ECB pålægge enheder under tilsyn sanktioner i henhold til Rådets forordning (EF) nr. 2532/98<sup>4</sup>.

#### *Artikel 17*

#### **Overgangsbestemmelser**

1. Gebyrmeddelelsen for den første gebyrperiode udstedes sammen med gebyrmeddelelsen for gebyrperioden 2015.
2. For at ECB kan begynde at opkræve det årlige tilsynsgebyr, skal hver koncern af gebyrbetalende enheder udpege gebyrdebitoren for koncernen og meddele ECB gebyrdebitorens identitet senest 31. december 2014 i overensstemmelse med artikel 5, stk. 2.

#### *Artikel 18*

#### **Rapportering og gennemgang**

1. I henhold til artikel 20, stk. 2, i forordning (EU) nr. 1024/2013 forelægger ECB hvert år Europa-Parlamentet, Rådet, Kommissionen og Eurogruppen en rapport om den forventede udvikling i tilsynsgebyrernes struktur og størrelse.
2. ECB foretager senest i 2017 en gennemgang af denne forordning, navnlig med hensyn til metoden til og kriterierne for beregningen af de årlige tilsynsgebyrer, som ECB skal opkræve af hver enkelt enhed og koncern under tilsyn.

#### *Artikel 19*

#### **Ikrafttrædelse**

Denne forordning træder i kraft på femtedagen efter dens offentliggørelse i Den Europæiske Unions Tidende.

4 Rådets forordning (EF) Nr. 2532/98 af 23. november 1998 om Den Europæiske Centralbanks beføjelser til at pålægge sanktioner (EFT L 318 af 27.11.1998, s. 4).

[Den finder anvendelse fra [dag måned ÅÅÅÅ].

Denne forordning er bindende i alle enkeltheder og gælder umiddelbart i medlemsstaterne i overensstemmelse med traktaterne.

Udfærdiget i Frankfurt am Main den [dag.måned.år].

*For ECB's Styrelsesråd*

*Formand for ECB*

Mario DRAGHI