



EUROPEAN CENTRAL BANK

EUROSYSTEM

## **Feedback statement: supervisory feeing framework from 2020 onwards**

Taking into account responses to the public consultation on amendments to the ECB Regulation on supervisory fees

December 2019



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# 1 Introduction

## 1.1 Opening remarks

The outcome of the second public consultation on the supervisory feeing framework reaffirms that the supervisory feeing methodology of the European Central Bank (ECB) is considered fair and that only comparatively small adjustments are needed to improve the framework. Almost half of the respondents mentioned that they appreciated the ECB taking steps to ease the administrative burden on fee-paying institutions. Particularly well received was the proposal to move to ex -post invoicing, confirming the ECB view that the move will improve internal planning and budget procedures of supervised institutions. The other steps taken by the ECB to ease the burden on institutions, namely the reuse of supervisory data, the discontinuing of the requirement for auditor verification of data for branches, and the provision of fee notices in all participating languages, were all mentioned as positive improvements to the feeing framework.

As a result, all the changes proposed in the [launch document](#), subject to small refinements, will be implemented from the 2020 fee period onwards.

The ECB will send regular communications to fee-paying institutions throughout the transition period to advise them on what these changes mean in practical terms and to guide them through the new processes related to (i) ex -post invoicing; (ii) reuse of supervisory data; (iii) language versions of the fee notice; and (iv) the format of the management letter to be used in place of auditor verification.

Ex -post invoicing in particular requires changes to current timelines, with a new process also required in relation to the confirmation of data resulting from the reuse of supervisory data. Therefore Section 3 of this document provides a high level description of these new elements, with further communications to follow in the course of 2020.

## 1.2 Context of the second public consultation

On 11 April 2019 the ECB launched a [second public consultation](#) related to the review of the ECB Regulation on supervisory fees (the Fees Regulation)<sup>1</sup>, including a draft amended Regulation.

This second public consultation, which ended on 6 June 2019, followed an initial call for comments from interested parties launched in June 2017 in order to assess possible improvements to the Fees Regulation.

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<sup>1</sup> [Regulation \(EU\) No 1163/2014 of the European Central Bank of 22 October 2014 on supervisory fees \(ECB/2014/41\) \(OJ L 311, 31.10.2014, p. 23\)](#).

The ECB has given due consideration to the comments received during the consultation period and has made further small changes to the amended Fees Regulation.

In view of the amendments to the Fees Regulation, the implementing decision (the Fee Factors Decision)<sup>2</sup> also needs to be updated and shall be recast.

As the two legal instruments are linked, the update is taking place in parallel and is included in this feedback statement to provide a complete overview of all the changes proposed to the framework. Several of the comments received during the two public consultations are reflected in the recast Fee Factors Decision, to which a number of references are made in this document.

The draft recast Fee Factors Decision is also attached to this feedback statement. However, it is not part of the review of methodology that was open to public consultation.

The two legal instruments will be applicable from the 2020 fee period onwards.

The amendments concern the ECB supervisory fee framework and are without prejudice to the supervisory fees of the national competent authorities (NCAs). Furthermore, the amendments proposed are without prejudice to changes in the wider legal framework governing the annual supervisory fees levied by the ECB, in particular the Single Supervisory Mechanism (SSM) Regulation<sup>3</sup>. Therefore, this document has no interpretative value and is not legally binding.

## 1.3 Structure of the feedback statement

Section 2 of the document includes a table with an overview of the comments received. The comments are grouped by topic and an indication is given of whether the suggestion has been *accepted* (stating where it can be found in the framework) or *not accepted* (giving the reason why), or, where applicable, *clarification* is provided. If the comment relates to an issue that has been addressed in the past, a link is provided to the ECB stance on the issue.

Section 3 provides an overview of the envisaged timeline from 2020 onwards and new elements of the feeing process.

Where more detailed clarifications are deemed necessary, they are provided in Section 4 of the document.

A [consolidated version](#) of the amended Fees Regulation is also available, showing all changes resulting from both consultations.

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<sup>2</sup> [Decision \(EU\) 2015/530 of the ECB of 11 February 2015 on the methodology and procedures for the determination and collection of data regarding fee factors used to calculate annual supervisory fees \(ECB/2015/7\) \(OJ L 84, 28.3.2015, p. 67\).](#)

<sup>3</sup> [Council Regulation \(EU\) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions \(OJ L 287, 29.10.2013, p. 63\).](#)

## 2 Assessment of comments

### 2.1 Statistics on the responses

In total, 11 responses were received comprising 47 individual comments. All were in English with the exception of one comment received in German. Responses were submitted by three NCAs, six banking associations, one supervised entity and one other market participant.

Although general provisions on the determination of the expenditure incurred by the ECB in relation to its supervisory tasks are outside of the scope of the review, comments related to this topic were also received.

The [comments](#) submitted using the template provided are available on the ECB's banking supervision website. Comments received in a different format are not available but were taken into consideration by the ECB.

### 2.2 Comments overview table

Topic area	Subject	Details	Action taken/explanation
General	Obligation to publish estimated costs	Request to consider reinstating the legal obligation to publish estimated costs in the Fees Regulation.	Accepted. Article 17 of the Fees Regulation has been adjusted to include an obligation to publish an estimate of the costs.
	Right of the ECB to determine the fee debtor	Suggestion that Article 4(3), which gives the ECB the right to determine the fee debtor, should be deleted.	Not accepted. The right of the ECB to determine the fee debtor will remain in Article 4(3) of the amended Fees Regulation. As stated in Section 4.4 of the <a href="#">launch document</a> , the ECB needs to have the right to unilaterally determine the fee debtor in exceptional cases.
	The ECB's banking supervision website	In the past the ECB posted information on the English pages initially and later on the other language pages.	The ECB takes note. As explained in Section 4.8 of the <a href="#">launch document</a> , the ECB endeavours to publish all language versions of feeing-related information on its banking supervision website simultaneously.
Calculation	Discount on the minimum fee component for smaller less significant institutions (LSIs)	Request to consider higher thresholds than the €500 million proposed.	Accepted. Article 10(6) of the Fees Regulation has been adjusted, and the new threshold has been set at €1 billion. Please see Section 3.1 for more details.
	Earlier fee calculation	Request to consider a final calculation of the fee within the first quarter of the fee period.	Not accepted. The ECB has assessed the request, taking into consideration all the steps involved in the feeing process, and cannot commit to a final calculation so early in the fee period. Banks can follow the instructions on the "Estimate your fee" part of the ECB's banking supervision website in order to calculate an estimated fee for year-end reporting purposes.
	Fee amounts related to previous fee periods that were not collectible	Suggestion that Article 5(3)(a) should not lead to a situation in which outstanding supervisory fees from previous fee periods would be invoiced to all institutions in the following fee period.	Not accepted. As explained in Section 4.3 of the <a href="#">launch document</a> , the ECB is required to cover expenditure incurred in relation to its supervisory tasks as outlined in Article 30(1) of the SSM Regulation. Excluding non-collectible fees would not be consistent with that provision.
	Treatment of LSI discount	Explanation sought regarding the effect of the discount on the calculation.	Clarification. The treatment of the discount is the same for both LSIs and significant institutions (SIs), i.e. the minimum fee component is halved and the discount is redistributed to all institutions within the respective category via the variable fee component.

Topic area	Subject	Details	Action taken/explanation
	Underlying data used for calculation	Request to provide the precise number of institutions used for the calculation and their fee factors data.	Not accepted. The ECB currently provides the average number of fee debtors and the aggregated fee factors annually on its banking supervision website. More detailed information is not provided, partly for reasons of confidentiality of financial data but also because the number of fee debtors fluctuates as a result of changes in banks' situations (e.g. mergers).
Fee factors	Determination of fee factors	Suggestion that the "total exposure measure", as defined in Article 429 of the Capital Requirements Regulation (CRR), be used.	Not accepted. Please see Section 4.1 for an explanation.
	Deadline for the provision of fee factors	Clarification sought regarding the deadlines under the new fee factors collection procedure.	Clarification. The reference date for fee factors remains 31 December of the preceding fee period. The collection of data takes place by 11 November of the fee period (for fee debtors that still need to provide fee factors via a separate collection process). The ECB will publish the fee factor values for all fee debtors by 15 January of the following fee period and provide fee debtors with 15 working days to comment and/or resubmit the data. For more details, see Section 3.4 "Envisaged changes to fee factors 'collection' procedures".
	Fee factors for groups that wish to exclude assets	Request to include more information in the Regulation regarding the provision of fee factors for groups that wish to exclude assets.	Partially accepted. The procedures for groups that wish to exclude assets and risk exposure amounts are clarified in the Fee Factors Decision (not the Fees Regulation). See Section 3.4 "Envisaged changes to fee factors 'collection' procedures".
Cost-related	Level of SSM costs and governance issues	Comments received on level of SSM costs, budget, reporting and governance issues.	Suggestions outside of scope of this review. For further information, see Section 4.2 "Cost and governance-related topics".
	Removal of "fees shall cover, but not exceed" in Article 5(2) of the Fees Regulation	Clarification sought regarding whether the removal of the words "fees shall cover, but not exceed" from Article 5(2) of the Fees Regulation implies that the fees can exceed the ECB's costs in the future.	Clarification. The removal of this part of the sentence is purely editorial in nature, as it repeats what is already stated in Article 30(1) of the SSM Regulation. Article 30 of the SSM Regulation is the legal basis governing the levying of supervisory fees and continues to ensure that the fees will not exceed expenditure related to those tasks. Nothing is changing in relation to the costs that are included in the ECB supervisory fee.
	Aligning Article 5(2) of the Fees Regulation with Article 30(1) of the SSM Regulation	Suggestion that the phrase "that are directly or indirectly related to its supervisory tasks" be replaced by the phrase "in relation to tasks conferred on it under Articles 4 to 6 of Regulation (EU) No 1024/2013, irrespective of its responsibility as direct supervisor, as indirect supervisor or for ensuring the effective and consistent functioning of the SSM".	Not accepted. As with the above comment, the suggestion repeats what is already provided for in Article 30 of the SSM Regulation. The current wording of Article 5(2) refers to the all of the ECB's supervisory tasks, which include oversight responsibilities. Nothing is changing in relation to the costs that are included in the ECB supervisory fee.
	Penalties and sanctions	Suggestion that any proceeds from sanctions imposed by the ECB pursuant to Article 15 should only go into the ECB Banking Supervision budget and not into the general budget of the ECB.	Not accepted. As explained in Section 4.8 of the <a href="#">launch document</a> , the purpose of pecuniary sanctions is not to reduce supervisory fees.

## 3 The envisaged new elements of the feeing process from 2020 onwards

### 3.1 Discount on the minimum fee component for smaller LSIs

Under the new framework, aside from calculating the fees on the basis of actual instead of estimated costs, the main change related to the calculation methodology is the introduction of the discount on the minimum fee component for smaller LSIs.

While the introduction of the discount for smaller LSIs was positively received, several of the respondents suggested a higher threshold than total assets of €500 million. The proposals requested the ECB to consider €1 billion, €3 billion or €5 billion as the threshold. The respondents questioned the necessity to establish a new threshold when the above were already used for defining smaller institutions in the context of Single Resolution Board (SRB) contributions, the ECB's supervisory framework and the CRR II, respectively.

The initial threshold of total assets of €500 million or less was considered appropriate when estimating the benefits using 2018 data. Around 50% of the LSI population would benefit from the discount in 2018, while the increase (of up to 3%) for those above the threshold would be moderate and acceptable.

The ECB re-ran the analysis using the latest available data for 2019. The new analysis showed that in 2019 around 62% of LSIs would be eligible for a discount when the threshold is set at €1 billion. The impact on the LSI population that would not benefit from the discount remains moderate – their supervisory fee would increase by up to around 3%. As explained in Section 3.2 of the [launch document](#), setting the threshold at €3 billion (or higher) would lead to an overall increase in fees for entities towards the upper boundary, as the increase in the variable fee component (of around 5%) would exceed the discount achieved, thereby rendering the proposal of a threshold of €3 billion or higher ineffective.

The table below shows the percentage of the LSI population with total assets up to certain thresholds that would be eligible for a discount on the basis of 2019 data.

Total assets threshold	€500 million	€1 billion	€3 billion	€5 billion
LSIs eligible for a discount	48%	62%	85%	91%

Given the consolidation trend in the LSI population, which can be observed in the decrease in the average number of LSI fee debtors each year (see the table below), it is considered that for the future sustainability of the framework a higher threshold of €1 billion is acceptable.

Year	2016	2017	2018	2019
Average number of LSI fee debtors	3,077	2,916	2,766	2,440

As a result, the amended Fees Regulation will contain the threshold of €1 billion or less of total assets for the discount on the minimum fee component for smaller LSIs.

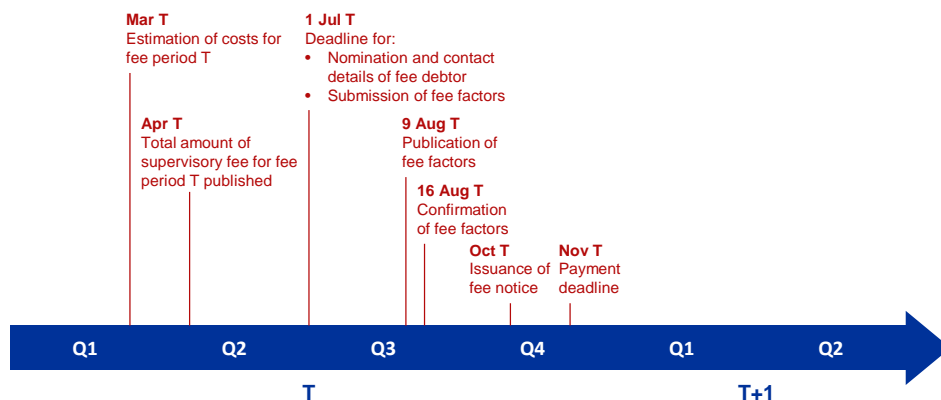
## 3.2 The new timeline

The move to ex -post invoicing means that banks will be invoiced on the basis of actual annual costs rather than an estimate. This not only provides more certainty about the amount charged but also benefits the banks in practical ways. The new process envisages that the majority of fee debtors will no longer be required to submit data via a separate collection process and will include an extended commentary period of 15 days for banks to verify and submit any revisions to their fee factors data. This verification process will take place from mid-January instead of during the summer period.

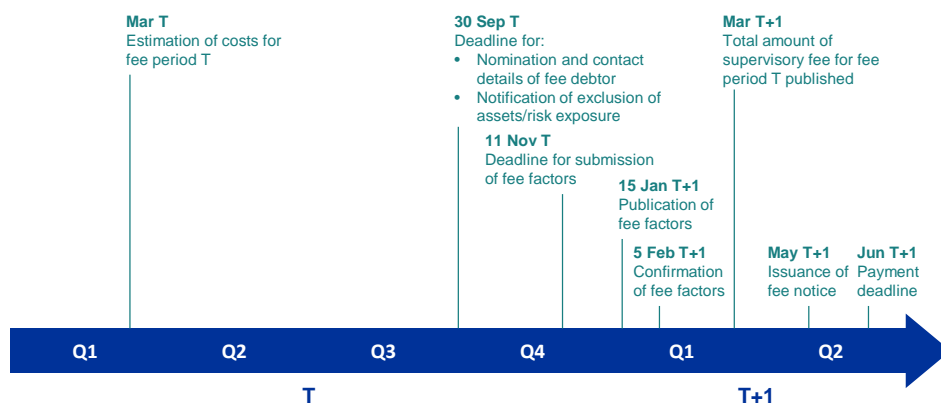
The figure below compares the timeline envisaged under the new framework with the current timeline. The example uses the timeline envisaged for the 2020 fee period, but the dates may vary slightly from year to year.



### Current timeline (example)



### Future timeline (example)



## 3.3 The envisaged new timeline in steps

1. Responding to the comments received, the ECB has retained the commitment in the Fees Regulation to publish an estimate of the costs for the current fee period. It is envisaged that this will take place in the Annual Report on supervisory activities, which is usually published in the second half of March of the fee period. Banks can therefore reasonably estimate their individual annual fee and make provisions based on this number, as has been the case to date. Instructions for estimating the fee are provided on the [ECB's banking supervision website](#), where average data are provided to enable an estimate to be calculated.
2. By 30 September, groups that have subsidiaries established in non-participating Member States or third countries are expected to notify the ECB whether they intend to exclude the related assets and risk exposure amounts from their fee factors (see Section 3.4.3 below).

3. Also, by 30 September of the fee period, new groups that are subject to fees are expected to provide the fee debtor nomination form in accordance with Article 4(2) of the amended Fees Regulation.
4. For the small number of entities where fee factors still need to be provided in line with the Section 3.4.3 below, the data collection process takes place by close of business on the remittance date for quarterly reporting for the third quarter of the fee period for which the fee is calculated (currently 11 November of the fee period, as specified in Article 3(1)(b) of Regulation (EU) No 680/2014<sup>4</sup>), as established in Article 6 of the recast Fee Factors Decision. It should be noted that the reference date for fee factors remains 31 December<sup>5</sup> of the preceding fee period, as laid down in Article 10(3)(ba) of the amended Fees Regulation.
5. By 15 January, all fee factors will be published via the ECB online portal, and institutions will have 15 days to verify the data.
6. The total amount of supervisory fees for the fee period will be included in the Annual Report on supervisory activities for the fee period, which is usually published in the second half of March in the following fee period. This means that the total amount of supervisory fees for 2020 will be published by the end of March 2021.
7. Once fee factors data are finalised and the total amount of supervisory fees is established, the ECB will begin the process of calculating supervisory fees for the individual fee debtors. Issuance of fee notices is planned for May of the following fee period, with a payment period of 35 days following issuance.

### 3.4 Envisaged changes to fee factors “collection” procedures

The main procedural change for the majority of banks will come in relation to the collection of fee factors. Under the current regime, all fee debtors are required to submit fee factors to the ECB via their NCA. Under the new framework, over 90% of fee debtors will no longer need a separate collection process. The envisaged new procedures are laid down in Article 10(3)(bd) of the amended Fees Regulation for those fee debtors excluding assets and in the recast Fee Factors Decision (in particular Article 3(1) and Article 7) for those not needing a separate collection process .

As mentioned in the [launch document](#), the success of this new process is highly dependent on the compliance of the supervised entities and groups with the provisions of Article 3(4) and (5) of Regulation (EU) No 680/2014, under which audited figures, where they deviate from submitted unaudited figures, and other corrections have to be submitted to the competent authorities in a timely manner.

<sup>4</sup> [Commission Implementing Regulation \(EU\) No 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation \(EU\) No 575/2013 of the European Parliament and of the Council \(OJ L 191, 28.6.2014, p. 1\).](#)

<sup>5</sup> This applies for entities established before 31 December of the preceding fee period. For entities established during the fee period, but no later than 30 September, the reference date will be the next remittance date for quarterly reporting.

### 3.4.1 Procedure for those banks and groups where supervisory data will be reused

The ECB will publish the fee factors data in accordance with Article 3(1)(a) and (b) of the recast Fee Factors Decision by 15 January of the following fee period. Fee debtors will then have 15 working days to provide any comments and/or submit amended data.

It should be noted, that FINREP and COREP data, which are the basis for determining the fee factors, can be changed retrospectively. However, for feeing purposes, once data have been used for the calculation of a fee period, future amendments will not be taken on board and no recalculations of supervisory fees will take place.

### 3.4.2 Fee factors procedure for those banks and groups where supervisory data cannot be reused

As explained in Section 3.3 of the [launch document](#), two categories of banks must still provide their fee factors via a separate collection process: (i) groups that exclude assets or risk exposure amounts of subsidiaries in non-participating Member States; and (ii) branches established in participating Member States by credit institutions from non-participating Member States which are not subject to the ECB's FINREP Regulation<sup>6</sup>. The latter includes branches which submit FINREP data on a voluntary basis, as the ECB will not reuse the voluntarily submitted data for the purpose of determining the fee factors.

The collection process for these entities will remain largely the same as the current process, but with different collection deadlines. The process is described in detail in Article 3(2) and (3) and Articles 5 to 7 of the recast Fee Factors Decision.

The ECB will publish the fee factors data in accordance with Article 3(2) and (3) of the recast Fee Factors Decision by 15 January of the following fee period. Fee debtors will then have 15 working days to provide any comments and/or submit amended data.

### 3.4.3 Notification procedure on exclusion of assets and/or risk exposure

With the removal of the submission of fee factors by most fee debtors, it is necessary, in order to ensure a smooth collection process, to establish which groups with subsidiaries established in non-participating Member States or third countries intend to exclude the related assets and/or risk exposure amounts from their fee factors.

Article 4 of the recast Fee Factors Decision establishes a notification procedure for informing the ECB whether the group intends to exclude assets and/or risk exposure amounts. The notification should reach the ECB by 30 September of the respective year, so that the ECB and NCAs are aware whether to expect fee factors data from the

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<sup>6</sup> [Regulation \(EU\) 2015/534 of the European Central Bank of 17 March 2015 on reporting of supervisory financial information \(ECB/2015/13\) \(OJ L 86, 26.3.2015, p. 13\).](#)

group via a separate collection process, or whether available supervisory data can be used. If no such notification is received, it will be assumed that the group does not wish to deduct the contribution of non-euro area subsidiaries.

## 4 Additional clarifications

### 4.1 Determination of fee factors

The methodology is unchanged and the basis for the determination of fee factors remains the total assets and total risk exposure as at the reference date, in line with the definition in Article 2 of the Fees Regulation.

In this regard, one respondent suggested the use of the “total exposure measure” as defined in Article 429 of the CRR. This is calculated by taking a series of data points from the COREP leverage ratio calculation C47.00<sup>7</sup>. This is in contrast with the total assets figure which is based on a single data point extracted from FINREP. The larger number of data points underlying the “total exposure measure” would increase the complexity (e.g. data point resubmissions) and decrease the transparency of the fee factors. Furthermore, the total assets variable currently used is aligned with the determination of significance. As the SSM Regulation defines total assets as a primary parameter for assessing significance, the ECB selected the same variable for determining the importance of an entity for the purpose of calculating individual supervisory fees.

In summary, while suggestions for using different measures for the determination of fee factors are always considered by the ECB, any suggested changes are assessed on the basis of data availability, reliability and objectivity, ensuring that costs and operational burdens are minimised for both supervised entities and the ECB. To date, the current methodology has been found to be the most robust solution for the largest number of entities and is in line with the SSM Regulation.

### 4.2 Cost and governance-related topics

Generally it should be noted that cost and governance issues are outside the scope of this review. The review relates to the Fees Regulation which, in accordance with Article 1, lays down the arrangements for calculating the total supervisory fee to be levied; the methodology and criteria for calculating the fees; and the procedure for the collection of the fees.

The Fees Regulation has its legal basis in Article 30 of the SSM Regulation, which states: “The fees shall cover expenditure incurred by the ECB in relation to the tasks conferred on it under Articles 4 and 6 of this Regulation. These fees shall not exceed the expenditure relating to these tasks.”

However, given that some respondents have raised cost and governance issues, this Section gives an insight into the current developments of banking supervision costs at the ECB.

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<sup>7</sup> See [Annex XI “Reporting on Leverage”](#) of Regulation (EU) No 680/2014.

After five years of operation, the SSM is moving from an establishment phase towards maturity and the costs of banking supervision have consequently evolved. The ECB acknowledges the comments related to cost, and in the next phase the focus of the ECB will be on sustainable cost management. In this respect, the ECB is committed to rigorously pursuing efficiency improvements on an ongoing basis via internalisation measures where possible, maintaining resource discipline and continuous productivity improvements, –which, it should be noted, may require initial investment. This commitment has been made by the ECB in order to move towards cost stability in the medium term.

In relation to addressing the requests for further transparency on costs incurred, as an organisation that continuously strives for more transparency and accountability, it is planned that reporting on banking supervision costs in the Annual Report on supervisory activities will be enhanced. The enhancements will be included in the implementation of the outcome of this review.

In relation to the comments on governance related to the ECB's supervisory budget, the ECB reiterates its view, as explained most recently in Section 4.3 of the [launch document](#), that the interests of the supervised entities and the general public are taken into account in the current structures, whilst maintaining the independence of the supervisory function.

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For specific terminology please refer to the [ECB glossary](#) (available in English only).