
AFME Contribution to ECB consultation on supervisory fees

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AFME and its Members have been, and continue to be, strong supporters of the establishment of a Banking Union in Europe. At a moment when the ECB and national competent authorities (NCAs) are working intensely on implementing the Single Supervisory Mechanism (SSM) before its entry into force later this year, may we take this opportunity to reiterate the industry's commitment to continuing to contribute actively and constructively to this process.

We welcome this consultation on SSM supervisory fees. This is a key aspect of the operational functioning of the SSM and we continue to take the view that it is essential that the ECB have adequate financial resources at its disposal to carry out its new supervisory tasks in an effective manner. In particular, it is very important that the ECB is sufficiently well-resourced to deliver the high quality and effective supervision at the heart of the SSM that is necessary to ensure a strongly integrated, ECB-led supervisory mechanism for the Banking Union.

On the basis of the SSM Regulation, SSM supervisory fees will be levied via an annual supervisory fee paid by credit institutions established in participating Member States. Large, cross-border banks, many of which are AFME Members, will provide the largest share of this contribution.

Balance SSM and national fees

AFME has consistently taken the view that the SSM should deliver an initially well-integrated supervisory mechanism, becoming a fully integrated one over an initial "transitional" period of three to five years.

Such strong integration implies as an inevitable corollary, and as an important indicator, a supervisory fees structure which is an integrated one and not simply additive.¹ It should not be expected that the creation of the SSM would create significant new supervisory costs at ECB level which would simply be added to the ones already levied at national level. Rather it should be expected that there would be something of a reciprocal dynamic whereby the implementation of ECB supervisory fees would be broadly offset by a corresponding, if not necessarily equal, reduction in National Competent Authority (NCA) fees.

We believe this is reflected in article 30(5) of the SSM Regulation: *'this Article [on supervisory fees] is without prejudice to the right of national competent authorities 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 costs of cooperating with and assisting the ECB and acting on its instructions...'*

In light of the above, and to appropriately reflect the new balance of power and responsibilities within the SSM supervisory framework, AFME and its Members take the view that the forthcoming new levying of the new SSM supervisory fees should be balanced by a decrease in the amount of annual fees levied at national level. It is acknowledged that this might not be fully achievable in the first year of operation due to start-up and adjustment costs; but we would hope to see this principle progressively implemented over a three to five year transitional period.

¹ AFME letter to ECB President Draghi on Single Supervisory Mechanism
<http://afme.eu/WorkArea/DownloadAsset.aspx?id=8371>

We also consider important that the method of calculation of the supervisory fees does not give rise to disproportionately high operational costs for the supervised entities, as regards for example reprocessing and resubmitting existing data, reporting etc.

We would also welcome some clarification in the way fees are calculated. For example, it seems unclear how the Total Assets (TA) portion of the fee calculation would be calibrated for branches of non-Banking Union, but EU-headquartered, banks within the SSM.

SSM budgetary and financial planning

The draft regulation foresees that the supervisory budget (to be identifiable within the general ECB budget) for a particular year will be finalised towards the end of the previous year. Supervised entities will be charged annually in advance, on the basis of an estimate of relevant costs.

We believe the ECB should strive to clearly set its long-term budgetary needs related to supervision, thus developing a budget that covers several years rather than one. This would help avoid budget drifting in the long term and will ensure full predictability for supervised entities as regards the supervisory fees they will have to pay over time.

In order to ensure that supervisory costs are covered and that they are fairly distributed a floor contribution for all supervised entities should be implemented.

Risk profile of supervised entities and fee factors calculation

AFME and its Members take the view that it would be preferable for the risk profile of the supervised entities to be dependent not exclusively on Total Risk Exposure (TRE), but also on other factors, such as those which make up the overall prudential requirements included in CRR/CRD IV.

As regards the calculation of fees, the draft Regulation foresees that the fee factors are calculated at the highest level of consolidation within participating Member States. It would be helpful to clarify that the relevant group perimeter is the prudential perimeter of financial institutions. Furthermore, it is important to exclude from the fees calculation intragroup assets/liabilities, irrespective of whether the counterparties are incorporated inside or outside of the EU, in order to avoid double counting of supervisory fees and ensure a level playing field.

Annual costs (Art. 6)

Art. 6(2)b of the draft Regulation provides for the inclusion of damages incurred in the relevant fee period to be paid to a third party for a loss directly or indirectly caused by the ECB in the performance of its supervisory tasks.

We strongly believe that the ECB should not be allowed to pass on to supervised entities claims related to damages to be paid to third parties in relation to the performance of its supervisory tasks. Since the ECB is totally independent in the performance of its supervisory duties, banks cannot exercise any influence or oversight on the compliance of the ECB duty.

Moreover, article 340(2) of the Treaty on the Functioning of the European Union, which governs the liability of EU institutions, provides in particular that *'the European Central Bank shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by it or by its servants in the performance of their duties.'*

We thus believe that the specific provision on article 6(2)b of the draft Regulation has no legal ground and should be deleted.

Moreover, we take the view that the wording related to indirect costs in Art. 6(2)a is currently too broad - indirect costs should be defined as strictly as possible.

Review clause

The ECB draft regulation includes a clause for the ECB to review the regulation, no later than 2017, and in particular the methodology and criteria for calculating the annual fees.

As this is the beginning of a whole new supervisory system, there might be a need to review and adapt the supervisory fees framework after the first few years of existence of the new system. We thus welcome the inclusion in the Regulation of a review clause.

We would of course be pleased to develop the above points further if this is considered helpful.