

PUBLIC CONSULTATION
DRAFT ECB REGULATION ON SUPERVISORY FEES
TEMPLATE FOR COMMENTS

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Please separate your comments per issue, citing the relevant article of the draft Regulation on supervisory fees where appropriate and indicating whether you are proposing an amendment, clarification or a deletion. If you require more space for your comments, please copy page 2.



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COMMENTS ON THE DRAFT ECB REGULATION ON SUPERVISORY FEES

Issue	Article	Comment	Concise statement why your comment should be taken on board
Subject matter, Definitions	3	Clarification	<p>While Art. 3 No. 18 includes in b) and c) financial holding companies and mixed financial holding companies in the definition of supervised entities, this is not the case in the rest of the draft regulation. This may be explained by the wording of Art. 30 SSM Regulation that addresses only credit institutions and branches. Therefore we argue the case for an amendment and clarification of the definition of supervised entity in Art. 3 No. 18 in the context of the draft ECB regulation or Art. 1, 2 etc.</p> <p>Enterprises which are exempt from Directive 2013/36/EU (art. 2 para. 5) or which are not institutions according to Regulation (EU) 575/2013 art. 4 para. 1 but only by law of a Member State shall not be</p>

			obliged to pay supervisory fees.
Fee debtor	5	Deletion	We object the wording of paragraph 6 which leaves it to the ECB to reserve the right to determine the fee debtor. We believe that if the group is to nominate the fee debtor according to the criteria set out in Art 5(2) and if the group promptly notifies this to the ECB there will be no need for the ECB to determine the debtor itself.
Annual costs	6	Deletion/& amendment	<p>The yearly supervisory costs measured as the total amount of the yearly expenditure is the basis for determining the yearly fees.</p> <p>Art. 6.2 (a) should be deleted to explicitly exclude damages incurred by ECB to third parties from expenses indirectly related to ECB's supervisory tasks as well as eventual insurance costs incurred by ECB to cover such damages.</p> <p>Art. 6.2 (b) should be deleted entirely as it is not deemed justified for supervised entities to bear damages incurred by ECB to third parties. Including damages incurred to be paid to a third party into the determination would lack a legal basis. Therefore, we object the inclusion.</p>
Split of annual costs between significant and less significant supervised entities	9	Clarification, amendment	<p>Significant supervised groups typically include significant and less significant supervised entities, the latter being entities that would not meet the criteria for significance acc. to Art. 6 SSM Regulation on a stand-alone basis. Notwithstanding, being members of a significant supervised group, these entities will be directly supervised by ECB. This should be clarified in the text.</p> <p>The ECB estimates that 85% of supervisory costs will be borne by significant and 15% by other institutions. However it remains unclear how this proportionality is calculated and this ratio is also not provided in the Regulation. Therefore it remains an estimation. The split of annual costs would be made on the basis of costs allocated to the ECB's organisational units, the ones which perform the direct and indirect supervision. This would reflect the level of fees paid by significant and non-significant banks. However it remains unclear what the ratio between total amount of costs due by</p>

			<p>significant and non-significant banks would be.</p> <p>In addition, it is not clear how the costs of the ‘shared’ organisational units, such as the secretariat of the supervisory board, supervisory board itself, and the horizontal supervision unit would be covered (by significant or non-significant banks?) (see also below).</p>
Costs for small institutions	10	Amendment	<p>There seems to be a mistake in the calculation method according to Art. 10 if there are scenarios where a non-significant credit institution would pay more than a significant credit institution. But this could be the case according to the calculation examples of the ECB, where a bigger non-significant institution could pay 200.000 € whereas the range of significant institutions starts with the amount of 150.000 €. In this sense the Regulation needs to be more concrete.</p> <p>It is not entirely clear how the calculation of the annual expenditure is done: in particular we are wondering whether external staff costs (eg. consultancy firms) are included into the planned budget. It is important that cost factors are driven by supervisory tasks and that the budget is handled in a cost effective manner. This begs the question whether there will be specific agreements between the new business areas within ECB on the usage of the budget (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.).</p>
Annual supervisory fee payable in respect of individual supervised entities or supervised groups	10.3	Clarification, amendment	<p>As to groups of fee-paying entities, the calculation method is not sufficiently clear. In conjunction with Art. 5.5 we assume that sub-consolidated means a special top-down consolidation undertaken at the highest level of consolidation within participating Member States excluding entities in non-participating Member States. Or is it rather an add-up as Art. 10.3 last sentence could be interpreted? If the second subparagraph of para. 3 of Art. 10 does not apply to significant supervised groups only, why is this content not laid down in a separate paragraph?</p> <p>It is important for financial institutions to know the methodology for calculating the total amount of</p>

			<p>the annual supervisory fee, as well as its criteria in more detail, and moreover in advance (before the publication of the total amount to be collected on the ECB website). The method and procedures should be presented as part of a regulation with legal character, and not only issued on the ECB website. Otherwise the consequence could be legal uncertainty (see here in particular Art. 10 (3) and the wording "The data regarding the fee factors shall be determined and collected in accordance with the methodology and procedures as established by the ECB and as published on its website.") The meaning of this phrase should be clarified. Also with regard to Recital (69) which information the ECB plans to publish on its website, these information should be provided in the ECB-Regulation.</p> <p>Part "II.3 (28) Fee Factors" of the consultation paper is unclear. It leaves open vital questions, such as how the different components of the total risk exposures will be weighted. In order to prevent legal uncertainty the weighting of the TRE defining factors should be clearly stated and explained in the regulation. In order to prevent an unbalanced burden of supervisory fees among financial institutions the clarification of the TRE is of crucial importance.</p> <p>As to the total risk exposure being zero in case of fee-paying branches, this leads to distortion in fee payments according to the structure of banking groups (subsidiaries vs. branches).</p>
Annual supervisory fee payable in respect of individual supervised entities or supervised groups	10.4	Clarification, amendment	<p>Submission of the required data with reference date of 31 Dec. of the preceding year by 1 March of the following year is not in line with timelines for preparing and publishing financial statements which is end of April.</p> <p>For the calculation of fee factors data already available to supervisors should be used, and no additional reporting requirements should arise. This should be explicitly stated in Art. 10.4.</p>
Annual supervisory fee payable in respect of individual supervised	10.5	Amendment	<p>The reduction by 50% of the minimum fee component for significant supervised entities with total assets of EUR 10 billion or less must also apply to the calculation of the minimum fee for groups of fee-paying entities comprising supervised entities with total assets of EUR 10 billion or less –</p>

entities or supervised groups			otherwise, there will be distortion.
Cooperation with NCAs	12	Amendment, Clarification	We would generally support the proposed mandatory communication between the ECB and the NCAs. As there are no more concrete provisions or guidelines for the authorities to determine whether a fee is “reasonable” or “cost-effective” we call the impact of the cooperation into question. Furthermore, the Regulation does not further determine the rights of the ECB to intervene in case of disagreement. Thus, if the two sides commit each other to communicate the appropriateness of fees we kindly ask the ECB to incorporate further assessment criteria into the Regulation on supervisory fees.
Fee notice	14	Amendment	Payment by fee debtor should be within 30 days of the date of receipt of the fee notice by the fee debtor, the receipt to be notified immediately to ECB instead of issuance of fee notice by ECB, i.e. the fee debtor should not bear the risk of receipt of fee notice or the timing gap associated to different means of notification as mentioned in Art. 15.2
Notification of the fee notice	15	Amendment, Clarification	<p>There should be procedurally provided that the fee notice can be amended ex officio if it includes manifest spelling errors or calculation errors which result from an obvious mistake of the ECB. Furthermore it should be procedurally provided that the fee notice can be put before the European Court of First Instance and in further consequence before the European Court of Justice in order to be reviewed and suspended.</p> <p>We see no compelling reason why according to Art. 15.1 the fee debtor shall communicate to the ECB by 1 March of each fee period, the contact details (i.e. name, function, organisational unit, address, e-mail address, telephone number, fax number) of the person to whom the fee notice should be issued. The fee notice could be issued to the management board. The management board could forward the fee notice then to the responsible unit.</p>



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