

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
ECB direct supervision on branches	R.6.	Clarification	For the purpose of determining direct supervision over branches the provisions under SSMFR A. 41 and 50.5 are applied. It is the branches that are assessed and specifically the total value of their assets on the basis of the statistical data reported pursuant Regulation 25/2009 of ECB. A possible wording could be "... and significant branches located in a participating Member State, of credit institutions established in non-participating Member States".
Definition of the scope	2.1.	Amendment	Considering the wording of SSM Supervisory Fees Regulation (SSMSFR) that refers in Article 1.a. to "...supervised entities", in 1.b. to "supervised entity and group", in 10.1. to "significant supervised

			<p>entity or significant supervised group”, 10.2. to “less significant supervised entity or less significant supervised group”, in combination with SSMR Article 4.1. points g and h, Article 30.1. and 30.3. and SSM Framework Regulation (SSMFR) Article 8, the wording of Article 2, in line with the aforementioned, could be:</p> <p>“1.This regulation applies to: a. <i>Each supervised entity as defined in point 20 of Article 2 Regulation 1024/2013.</i> b. <i>Each supervised group as defined in point 21 of Article 2 Regulation 1024/2013.</i> 2. The total amount of the annual supervisory fees shall encompass the annual supervisory fee in respect of each significant supervised entity <i>and group</i> and each less supervised entity <i>and group</i> and shall be calculated by the ECB at the highest level of consolidation within participating Member States”.</p>
Annual supervisory fee	3.1.	Amendment	<p>Fees are imposed not only on each supervised entity but also on each supervised group. For this reason a possible definition could be: “Annual supervisory fee” means the fee payable in respect of each supervised entity <i>and group</i> in accordance with the methodology set out in Article 10.5. for significant supervised entities and less significant supervised entities.</p>
Total amount of annual supervisory fees	3.1.a.	Amendment	<p>There is no definition of the total amount of the annual supervisory fees, as the term is referred in Article 1.a. A possible definition could be: 3.1.a. “<i>Total amount of the annual supervisory fees</i>” means the amount, based on annual costs, levied by ECB on supervised entities, in accordance with SSMR Article 30, and collected via annual supervisory fees”.</p>
Annual costs	3.2.	Amendment	<p>A definition could be: “annual costs” means the expenditure incurred, related to the tasks conferred on ECB under SSMR Articles 4-6, as determined in accordance with the provisions of Article 6 to be</p>

			recovered by ECB. Since the annual costs are determined also by factors expanding beyond the annual expenditure, under Article 6.3., the phrase “for a specific fee period” could be deleted.
Fee paying credit institution	3.8.	Amendment	For purposes of clarification, the definition could be: “fee paying credit institution” means a credit institution established in a participating Member State, <i>which is not part of a group</i> .
Group	3.13.	Clarification	The definition refers to SSMFR Article 2.5. and accordingly to 2013/34 Annual Financial Statements Directive. Article 22 of the aforementioned Directive leaves options and allows differentiations between Member States with respect to the requirement of consolidated reports, leading to a potential factor of uncertainty, especially regarding the factor of “dominant influence”. SSMFR Article 49 requires the ECB to specify the group and legal basis for supervision. How can the exercise of significant influence be demonstrated for the purpose of group definition?
Supervised entity	3.18.	Clarification	The term “supervised entity” differs from the definition of the same term given in SSMFR in Article 20 point c. The term “mixed financial holding company” is not accompanied with the condition of point 21.b. Article 2 of SSMFR.
General obligation of supervised entities and groups to pay the annual supervisory fee	4.1.	Clarification	There is no reference to the case of groups, whereas, for example, Article 1.b. refers to “ <i>the annual supervisory fee to be levied on each supervised entity and group</i> ” and Article 10 refers to “ <i>annual supervisory fee payable in respect of individual supervised entities or supervised groups</i> ”. A possible wording could be: “The ECB shall levy an annual supervisory fee <u>on each supervised entity and supervised group</u> in respect of each period”.

Determination by ECB of the fee debtor	5.2.	Clarification	Following the comments on A.3.13., how will the ECB determine the identity of the fee debtor in the case of a group of fee-paying entities and accordingly specify the annual supervisory fee to be levied?
Classification of supervised entities and calculations of assets for the purpose of the annual supervisory fee	5.5.	Clarification	<p>According to SSMR Article 30.3. <i>“The fees shall be calculated at the highest level of consolidation within participating Member States”</i>. In the same line, SSM Supervisory Fees Regulation (SSMSFR) provides that <i>“In calculating the annual supervisory fee, subsidiaries established in non-participating Member States shall not be taken into consideration”</i>. Nevertheless, according to SSMFR Article 53.2. <i>“For the purpose of determining significance on the basis of the size criterion, the supervised group of consolidated undertakings shall include subsidiaries and branches in non-participating Member States and third countries”</i>.</p> <p>So, a significant supervised entity, as determined under the provisions of SSMFR, with total assets more than euro 30 billion, may, for the purpose of calculating its annual supervisory fee under the provisions of SSMSFR Article 5.5., end up having estimated total assets less than the threshold of euro 30 billion. Will that event affect a supervised group’s classification and obligations in terms of fees (e.g. application of the halved minimum fee rule under A.10.5.b.)?</p>
Annual costs	6.1.	Amendment	For purposes of clarification a wording could be: <i>“The annual costs shall be the basis for determining the <u>total amount of the annual supervisory fees</u> and they shall be recovered via the <u>payment of the annual supervisory fees</u>”</i> .
Damages by ECB	6.2.b.	Clarification	What is the nature and cases of the damages that ECB maybe held liable of paying? More information

			could be given
Change of status and the TRE factor	8	Clarification	There is a consideration for the change of status but there is no provision for changes affecting the total risk exposure (TRE). Notwithstanding the cause of TRE changes, it is certain that this event could lead to a tighter supervisory scrutiny and therefor differentiation in sources and cost allocation. Changes that do not lead to a change of status are not taken under consideration.
Split of costs	9.1.	Amendment	For purposes of clarification, a wording could be: “ <i>Each supervised entity or group...</i> ”
Annual supervisory fee	10.3.a.	Amendment	For purposes of clarification, a wording could be: “ <i>each supervised entity or group..</i> ”.
Annual supervisory fee	10.4.	Amendment	For purposes of clarification, a wording could be: “ <i>Where each supervised entity or group..</i> ”.
Annual supervisory fee and supervised entities classification as significant or less significant by derogation to the general rules applicable	10.5.b.	Clarification	According to point 43 (Content of draft Regulation on supervisory fees, II.4. Methodology for calculating individual supervisory fees, page 9 of the public consultation document), the reason for the halved minimum fee component is the potential relative small size of the three most significant entities, in each participating Member State, compared to other supervised entities in the category of significant supervised entities. Contrary to the abovementioned, there is no explicit provision for the cases that a less significant supervised entity or a less significant supervised group (i.e. small in size) is directly supervised by ECB and for the purposes of SSM is classified as significant, in accordance with SSMR Article 6.5.b., SSMFR 39.5. and 67. There is also no provision for a less significant supervised entity or a

			<p>less significant supervised group (i.e. small in size) that is classified as significant due to a request of or the receipt of direct public financial assistance from ESM. Will the halved minimum fee component rule also be applied in these cases?</p> <p>On the other hand, there is no provision for the case of particular circumstances that may justify the classification of a significant supervised entity or significant supervised group as less significant, although the criteria for classification as significant are fulfilled, under the provisions of SSMR Article 6.4. and SSMFR Article 70. In this case, how will a supervised group with total assets more than euro 30 billion, but characterized as less significant, be treated in terms of the annual supervisory fee obligation?</p>
Supervised entities in non-euro Member States in close cooperation and administrative penalties	12.3.	Amendment	Regarding the non-euro participating Member States in close cooperation, there is only a provision concerning instructions issued by ECB to the relevant NCA's, for the definition of the fee factors, invoicing and collections of fees but no provision on the penalties in the event of a breach (e.g. interests, sanctions). For this purpose a paragraph similar and of equivalent results to SSMFR Article 113 "Administrative penalties under the regime of close cooperation" could be introduced.
Sanctions	16	Clarification	There is no provision regarding an appeal procedure with respect to the determination of the annual supervisory fee. Are the general provisions relating to due process for adopting an ECB supervisory decision applied under Part III, Title 2 of SSMFR?

			<p>Sanctions cannot be imposed by ECB on supervised entities in non-euro participating Member States. More specifically, Regulation 2532/1998, which is mentioned in Article 16 as the only legal base for imposing sanctions, applies only on undertakings in Member States, that have adopted the euro (Article 1). For this purpose a paragraph similar and of equivalent results to SSMFR Article 113 “Administrative penalties under the regime of close cooperation” could be introduced.</p> <p>There is no provision concerning the decisions imposing sanctions. Since the rules set in SSMFR Article 132, regarding publication of decisions, apply on “any decision imposing an administrative penalty, as defined in Article 120”, are they also applied in the case of SSMSFR Article 16?</p> <p>There is no provision with respect to the proceeds of the sanctions. Shall they be considered ECB’s property, in line with SSMFR Article 137, or taken into account when determining the annual costs under SSMSFR Article 6.3., as in the case of interest payment?</p>
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