

PUBLIC CONSULTATION  
DRAFT ECB REGULATION ON SUPERVISORY FEES  
**TEMPLATE FOR COMMENTS**

Institution/Company Nederlandse Vereniging van Banken	
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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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Name of Institution/Company	De Nederlandsche Vereniging van Banken	Country	The Netherlands
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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
Transparency of the supervisor and obligation to inform and to be audited	new	Addition	<p>There should be an advisory panel to discuss and oversee the annual budget of the SSM. Banks should have a seat in that panel in order to ensure that payers have at least the information and the capacity to communicate formal opinions on the use of the amounts paid.</p> <p>It should be made clear how the expenses of the supervisor will be audited. This could be done by an independent organ such as a court of auditors.</p>
Legal protection	New	addition	In the preamble under II.7 the possibility of appeal with the Administrative Board of Review is mentioned. It would be better if the legal protection – including the procedure with the ECJ – will be included in the Regulation itself.

No publication of fees	new	addition	Fees due by individual or groups of institutions should not be published.
No additional reporting requirements	new	addition	Fees should be determined on the basis of already submitted information. No additional reporting requirements should be imposed on institutions.
Costs for authorization	1	Clarification	In the Netherlands the handling by DNB of an application for authorization of a payment institution entails costs, regardless of whether the application is granted. These one-off costs are fixed annually by the Ministry of Finance. How does this relate to the costs that are charged by the ECB for authorization? How is potential double counting to be avoided?
Mixed financial institutions	6	Clarification	<p>The consultation paper creates a level of unclarity in relation to (mixed) financial holding companies. The definition of supervised entities includes (mixed) financial holding companies. Whereas article 4 seems to preclude holding companies from paying levies other articles of the consultation paper refer to supervised entities without making such distinction and appear to include reference to holding companies. As an example we refer to article 9 and 10. It is important to clarify this.</p> <p>We note that the definition of total assets (as defined in article 1) would have as a consequence that in the event financial holding companies would pay a fee over assets this would also include insurance and asset management activities in subsidiaries that are not in scope of ECB supervision. We would suggest to exclude these subsidiaries of the total assets definition.</p>
Cost benefit analysis	7	Clarification	<p>Section 30(2) of the SSM Regulation states that <i>'the amount of the fee levied on a credit institution or branch shall be calculated in accordance with the arrangements established, and published in advance, by the ECB. Before establishing those arrangements, the ECB shall conduct open public consultations and analyze the potential related costs and benefits, and publish the results of both'</i>.</p> <p>Please provide an analysis of <i>'potential related costs and benefits'</i> as this has not been provided by the ECB yet.</p>



EUROPEAN CENTRAL BANK

EUROSYSTEM

Damages	23	Amendment	<p>Article 6 (2b) reads: the expenditure of the ECB consists of ‘<i>any 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</i>’.</p> <p>Damages to be paid to third parties, including the supervised banks, by the ECB as a result of supervisory errors or failures of oversight should <u>not</u> be paid out of fees paid for by the banks. We refer to Article 340 of the Treaty on the functioning of the EU: “<i>The contractual liability of the Community shall be governed by the law applicable to the contract in question. In the case of non-contractual liability, the Community shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties. The preceding paragraph shall apply under the same conditions to damage caused by the ECB or by its servants in the performance of their duties. The personal liability of its servants towards the Community shall be governed by the provisions laid down in their Staff Regulations or in the Conditions of employment applicable to them.</i>”</p>
Total supervisory costs	24	Amendment	<p>Article 30 (5) of the SSM Regulation states that the ECB’s right to impose fees ‘<i>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</i>’.</p> <p>(1) It would be appropriate to set a term (3 years) at which the total expenditure is to be evaluated, also in relation to the expenditure of the NCAs, and fixed (in line with the EU budget process) in order to retain some control over the size of the budget. [Actually, even a review in 2015 could be considered because it is to be expected that the majority of hick-ups will pop-up in a start-up phase.]</p> <p>(2) In the Netherlands the NCA and Ministry have stated that the allocation of tasks to the ECB will lead to more supervision and probably additional costs. In view of the <u>transfer</u> of significant supervisory tasks from NCAs to the ECB it should be expected that supervisory fees due at national</p>

			<p>level are to be reduced.</p> <p>(3) What are the sound management and budgetary controls”? Could you please publish these controls?</p> <p>(4) The ECB regulation should lay down all the rules and procedures resulting in a fair and proportionate fee policy (Explanatory Notes). Will the ECB in all cases take the national costs into account performing the ‘reasonable test’? And how can a difference in fee levels related to the ECB supervision, as a consequence of different fee levels of the NCA performing SSM tasks, be prevented?</p> <p>(5) Subsidiaries outside the euro-member states are excluded, do assets allocated to branches outside the euro-member states also have to be excluded?</p>
Sanctions	63	Amendment	<p>Article 3 (11) of EC Regulation 2532/98 concerning the powers of the ECB to impose sanctions states that ‘<i>An undertaking shall bear the costs of the infringement procedure if it has been decided that it has committed an infringement</i>’.</p> <p>(1) this draft Regulation nor the SSM Regulation or FR Regulation take into account that costs related to enforcement should be paid for by the offender and that these costs can therefore <u>not</u> be paid out of the ECB budget, which is paid for by the banks.</p> <p>(2) in the context of the consultation of the FR regulation the NVB made a comment on Article 137 that states that ‘<i>proceeds from penalties shall be the ECB’s property</i>’. The NVB suggested that it should be made clear that proceeds from penalties should be part of the ECB/supervisory budget and not of the ECB/Central Bank budget.</p>
Communication	65	Clarification	The ECB will develop and implement a channel of communication between the NCA and the ECB to

channel			<p>ensure the supervision remains cost-effective and reasonable.</p> <p>(1)What will this communication look like?</p> <p>(2) To what extent is this linked to the budgeting process of the NCBs? We have a few questions in this regard:</p> <ul style="list-style-type: none"> <li>- How is guaranteed that double counting of costs is avoided?</li> <li>- What kind of national costs by the Supervisor are taken into account?</li> <li>- How can a level playing field in this respect be guaranteed by the ECB?</li> </ul> <p>(3) How will the (overall) cost-effectiveness and reasonableness of supervision be safeguarded and in what manner this will be done? Will guidelines with a legal status be published by ECB and NBA? What measures will be taken by the ECB if (overall) costs appear to become too high and unreasonable?</p>
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