

PUBLIC CONSULTATION
DRAFT ECB REGULATION ON SUPERVISORY FEES
TEMPLATE FOR COMMENTS

Name of Institution/Company	European Savings and Retail Banking Group (ESBG)	Country	
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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	1	Clarification and Amendment	<p>The draft Regulation does not involve any provisions on how to include the fee paying credit institutions in the review of costs. Thus, ESBG believes that establishing a committee that verifies that the fee level is reasonable and that the fees are spent in a proper and cost-effective manner should be considered. Against the background that 100% of the funds will be provided by the supervised entities, their representatives should be members of this committee. Alternatively, representatives from ESBG, EBF and EACB (and maybe EMF) could be members of the aforementioned committee.</p> <p>In addition, ESBG believes that having an external auditor for the SSM could be taken into consideration.</p> <p>It should also be added that the two following principles regarding the calculation of the fees to</p>

			<p>be levied on credit institutions are of central importance: First, costs must be allocated fairly, based on who causes them to be incurred. Second, the principle of proportionality must be respected.</p> <p>It is important to ensure a level playing field and to ensure that banks from smaller Member States do not finish up paying proportionately more than the banks in larger Member States. The compliance costs for banks operating in small Member States are usually larger compared to banks operating in larger Member States on the account of the lack of economies of scale and scope.</p> <p>ESBG further believes that a review clause could be included in the ECB’s Regulation. For instance, the Regulation could be reviewed every two years. This would be of particular importance regarding the interaction of national and ECB related supervisory fees. The review could examine whether the amount of fees levied could perhaps be lowered in the future.</p>
Scope	2(2)	Clarification	<p>According to ESBG’s opinion, it would be helpful if the term “highest level of consolidation” could be defined. We suggest that, in principle, the ECB assumes the fee debtor at the highest level of consolidation. The definition should eventually be included in Art 3.</p>
Definitions	3	Amendment	<p>Art 10(3) provides that one of the fee factors used to determine the individual annual supervisory fee payable in respect of each supervised entity will be the total risk exposure. Art 3 defines “total risk exposure” as the amount calculated by application of Art 92(3) of Regulation (EU) No 575/2013, which takes, among others, the risk weighted exposure amounts for credit risk and dilution risk into account. In fact, significant differences in RWAs level across European institutions have been recognised by the BCBS and EBA in recent studies. In this connection, ESBG believes the RWA's density is not the best indicator of an institutions' level of risk. For this reason, we would propose the inclusion of additional risk indicators to the “total risk exposure” factor, similar to the European Commission’s public consultation on the contributions of credit institutions to resolution financing arrangements. For example the capital ratio, leverage ratio and liquidity indicators may be considered. The authorities could use a weighted average of the different measures as an indicator of an institution's risk profile.</p>

			Furthermore, it should not be forgotten that systemic resilience is not necessarily incompatible with functional diversity. High regulatory standards can still be achieved in the presence of differentiated lending rules and guidelines designed to accommodate national characteristics.
Fee debtor	5(5)	Clarification	<p>It would be helpful to define the term “sub-consolidated” and include the definition in Art 3.</p> <p>In the context of Art 5(5) and recitals 35 et seq, ESBG further asks to clarify whether the fee debtor shall provide the sub-consolidated data or whether the supervisory authority shall look after them.</p>
Fee debtor	5(6)	Deletion	ESBG objects to 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 itself to determine the debtor.
Annual costs	6 in conjunction with II.2(22)	Clarification	<p>Only expenses incurred by the “new” DGs I - IV as well as certain expenses incurred by shared support services shall be financed through the supervisory fee. In contrast, costs incurred by the “old” DG Macro-Prudential Policy and Financial Stability should not be financed through the fee levied on supervised entities. As a result, the total amount of the annual supervisory fee should be reduced.</p> <p>The division between the ECB’s monetary policy and the ECB’s supervisory functions also needs to apply to the budget allocations, income and expenditure sides.</p> <p>Another point worth reflecting on would be the introduction of a pure concept of cost recovery strictly linked to the function of the SSM.</p>
Annual costs	6(2)(a)	Amendment	According to the wording of Art 6(2)(a), it is not just the expenses incurred that are directly related to the ECB’s supervisory tasks shall be levied through the annual supervisory fee, but also expenses incurred that are only indirectly related to the supervisory tasks. In our opinion, it remains unclear where exactly the line is drawn between directly and indirectly related expenses. Hence, ESBG proposes that only directly related expenses should form part of the annual

			supervisory fee.
Annual costs	6(2)(b)	Deletion	The yearly supervisory costs measured as the total amount of the yearly expenditure is the basis for determining the yearly fees. Including damages incurred to be paid to a third party into the determination would lack any legal basis. Claims for damages stemming from sovereign ECB acts should not be paid by the fee levied on supervised entities. The ECB's responsibility for its own misconduct cannot be attributed to the fee-paying credit institutions. Including Art 6(2)(b) in the Regulation would also increase the amount of supervisory fees for credit institutions due to incorrect performances of the ECB. Furthermore, the amount of damages incurred to be paid to third parties would be impossible to calculate in advance. Under no circumstances should supervisory fees follow the idea of an "open cheque" that has no capping on it. Therefore, ESBG strictly objects to the inclusion of Art 6(2)(b).
Annual costs	6(3)(a)	Amendment	Art 6(3)(a) should not lead to the result that the (partially) outstanding fee of a credit institution of the previous fee period is invoiced to all credit institutions in the following fee period.
Estimating and determining the annual costs	7	Clarification	<p>The ECB could be more transparent in providing a detailed breakdown of the costs covering the SSM activities. In this regard, the ECB's SSM activities could be given a three year running budget that needs to be presented to the European Parliament and the Court of Auditors for review.</p> <p>Taking all the new compliance costs into account (SSM, Single Resolution Fund, DGS) initial estimates for the banking community in a small Member State are between 0.4 to 0.5 per cent of every year's Gross Domestic Product over the next 8 to 10 year period.</p> <p>Moreover, the transition from the NCAs' to the ECB's supervision should be kept as much cost neutral as possible for the European banking industry. This is very important to safeguard the competitiveness of the European banking industry vis-a-vis other jurisdictions.</p>
Split of annual costs between significant and less significant	9	Clarification	Art 9 provides for the split of annual costs between significant and less significant supervised entities. To our mind, it is indeed important to strictly split the costs between the two groups. No cross-subsidising should be allowed. However, Art 9 does not contain many details on this. For



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supervised entities			instance, cross-cutting issues, particularly costs incurred by DG IV, are not mentioned at all.
Annual supervisory fee payable in respect of individual supervised entities or supervised groups	10(3)	Clarifications	<p>According to Art. 10(3)(a)(ii), the total risk exposure is considered zero in the case of a fee-paying branch. In order to avoid unbalanced fees, the weighting of total assets must be set at 100% in this case.</p> <p>Again, it would be helpful if the term “highest level of consolidation” could be defined.</p> <p>For purposes of legal certainty and clarity, ESBG believes that all procedures and methods serving to determine the annual supervisory fee should be described in detail in the Regulation. More clarity needs to be given in the area of risk profile as well as more detail needs to be given on the methodology used for calculating large exposures, liquidity, leverage and public disclosure.</p>
Annual supervisory fee payable in respect of individual supervised entities or supervised groups	10(4)	Amendment and Clarification	<p>Art 10(4) stipulates that the required data for the calculation of the annual supervisory fee should be transmitted by the 1st of March. In ESBG’s opinion however, postponing this deadline could be considered. For instance, 1st of May could be the relevant date to transmit the required data.</p> <p>We further believe that data should be preferably collected at the competent authorities. The credit institutions should not be burdened with the reporting of data to the ECB first and foremost. This principle should be introduced into Art 10(4).</p> <p>Art 10(4) does not contain any (legal) consequences if a credit institution does not provide the necessary data to calculate the annual supervisory fee. Introducing such consequences into Art 10(4) should therefore be considered.</p>
Annual supervisory fee payable in respect of individual supervised entities or supervised groups	10(5)(b)	Amendment	<p>Art 10(5)(b) states that the minimum fee component could be halved for significant supervised entities. However, this possibility is not given to less significant supervised entities. In light of the principle of proportionality, the minimum fee component should under certain circumstances also be halved for less significant supervised entities (for instance, for credit institutions with total assets of EUR 500 million or less).</p>



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			<p>Furthermore, ESBG opines that the minimum fee component should not be split equally among less significant supervised entities. A corrective, which takes care that credit institutions with different amounts of assets pay different shares of the minimum fee component, should rather be established. On balance sheet and off balance sheet items should be taken adequately into account.</p>
Cooperation with NCAs	12(1)	Amendment and Clarification	<p>We generally support the proposed mandatory communication between the ECB and the NCAs. However, as there are no 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. Neither does the draft Regulation 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, ESBG asks the ECB to incorporate further assessment criteria into the Regulation.</p> <p>In addition, Art 12(1) does not say whether cost-effectiveness and reasonableness are assessed individually for each credit institution or for all entities as a whole. ESBG believes that an individual analysis would be appropriate.</p> <p>Furthermore, ESBG is concerned that banks that are already charged by the ECB might be also charged by the NCAs (See Art 30(5) of the SSM Regulation in conjunction with I.4(13)). In other words, we refuse the possibility that banks will be charged twice. To our mind, it would in fact seem more reasonable that the ECB’s supervisory activities lead to less supervisory activities at national level, and therefore lower fees for credit institutions at national level are possible. This principle should be included as a target in Art 12(1).</p> <p>Finally, we would like to ask for more clarity: If the ECB mandates the NCAs to do work for the ECB, the draft Regulation does not answer the question of which entity will be paying for the work that the ECB has delegated. ESBG would object to the idea that the costs would be recovered from the banks.</p> <p>Ultimately, a cap on how much the NCAs can charge could be placed. For example, the fees of the NCAs could be capped at half of the supervisory fees. This would clearly reflect the concept</p>



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			of “cost-effective” and “reasonable”. It is important to take into account that nowadays the supervisory tasks carried out by NCAs in some Member States are free. Hence, it is in our opinion not justified to start charging a fee to those institutions whose supervision will remain at NCA level.
Fee notice	14(3)	Amendment	Art 14(3) stipulates that the date of issuance shall be decisive in order to calculate the 30 days period to pay the amount due under the fee notice. Due to the fact that Art 15(2) provides for different ways of bringing a fee notice to an institution’s knowledge, each institution might not have the same amount of time to make the required payment. Hence, the date of issuance should be replaced by the date of service.
Notification of the fee notice	15(1)	Amendment	To ESBG’s mind, it does not seem imperative that the contact details of a person to whom the fee notice should be issued has to be communicated to the ECB for each fee period. Fee notices should be rather sent to the managing board, which officially represents the credit institution.
Notification of the fee notice	15(2)	Deletion	Finally, the option “or by other comparable means of communication” should be deleted as this term is very vague.
Sanctions	16	Amendment	Any proceeds from penalties should only go to the budget of SSM and not the general pool of the ECB.