

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
Transparency of the ECB's costs			<p>As a general note, we would like to express our concerns over missing transparency of the costs of the ECB's supervision. In addition, we would emphasize that the draft Regulation only covers the costs of the ECB. The supervisory costs of the national competent authorities (NCAs) born by the SSM tasks are not estimated thus the total effect of the supervisory costs is left unclear.</p> <p>According to the draft regulation the ECB will report on the envisaged evolution of the structure and amount of the annual supervisory fees annually to the European Parliament, the</p>



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			<p>Council, the Commission and the Eurogroup.</p> <p>We remind that there are also other matters to be reported according to Art. 20 (2) and 29 of Regulation 1024/2013 and e.g. to the memorandum of understanding between the Council of the European Union and the European Central Bank on the cooperation on procedures related to the Single Supervisory Mechanism (SSM). However, this control or accountability relies on reporting. The control over whether the ECB will stay within the budgetary limits and whether its budget will not rise uncontrollably is eventually left to the ECB's own governing bodies. There is no actual external control over the annual costs of the ECB's supervision.</p> <p>At the same time, the supervised entities are responsible for all costs of the ECB's supervision and, in many Member States, of national supervision, too. The NCAs are also the ones facing demands for cost-cutting although the ECB is heavily dependent on the work of the NCAs at least in the beginning of the SSM.</p> <p>The ECB should therefore promote on its own initiative publicity of its financial statement and budget, and to be committed to cost-efficiency of its supervision.</p> <p>Finally, we highlight that the ECB shall analyse the potential related costs and benefits of the draft Regulation according to Art. 30 (2) of the SSM regulation before adopting it. The costs for the NCAs should be taken into account when making the assessment.</p>
Definition of 'group'	Art. 3 (13) and	Clarification	<p>A group should also be comprised of credit institutions permanently affiliated to a central body referred to in Art. 10 of Regulation (EU) No 575/2013.</p> <p>The definition of group should only include institutions subject to consolidated supervision</p>



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	Art. 5(2)		of credit institutions. Now, it seems that also e.g. insurance undertakings will be included. Because the single supervisory mechanism only covers credit institutions, total assets of e.g. insurance undertakings should not be taken into account when calculating the annual supervisory fee of a group.
Specification of timetable	Art. 5(2)	Clarification	In Art. 15 the notification of the fee debtor is meant to be requested annually. It could be specified in the subparagraph as follows: <i>...Each group of fee-paying entities shall nominate the fee debtor for the whole group and shall notify the identity of the fee debtor to the ECB annually...</i>
Specification of whose fee is in question	Art. 5(5)	Clarification	It could be specified whose fee is in question in the article in a similar way as it is done in Art. 5(2) <i>In calculating the annual supervisory fee of fee-paying entities of the group, subsidiaries established in non-participating Member States shall not be taken into account.</i>
ECB's role	Art. 5(6)	Clarification	The ECB's role in the subparagraph seems to be unclear. The regulation already stipulates the fee debtor. At least, it should be determined in which cases the ECB reserves the right to determine the fee debtor.
Responsibility for third party losses	Art. 6(2)	Deletion	It is questionable whether the paragraph is compatible with Art. 30 (1) of Regulation 1024/2013. We do not find it justifiable that the supervised entities would be responsible for paying 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. The ECB should be primarily responsible for paying the damages it has caused and only if the loss is somehow linked to the actions of the supervised entity it should be paid by the entity

			in question but not by all entities collectively.
Non collectible fees	Art. 6(3)	Clarification	How and when the fee is decided to be ‘not collectible’? There should be clear rules on the procedure if the supervised entities are collectively held responsible for non collectible fees.
Calculation of the fee	Art. 8	Clarification	There is no provision on how the annual supervisory fee will be calculated for those less significant supervised entities for which the ECB can take responsibility according to Regulation 1024/2013.
Division of costs	Art. 9(2)	Clarification / Amendment	The ECB has estimated that less significant entities would pay 15 % and significant entities 85 % of the annual costs. However, there are no guarantees that this balance will remain. It’s important that those entities which cause the costs pay them. The ECB should monitor closely that less significant supervised entities would not pay more than their share is. In this regard, we wonder whether it is possible to allocate every cost to either the ECB’s organizational units performing direct supervision or indirect supervision and whether some other division of costs should also be established just in case, for example, a new Art. 9(3): <i>“If some of the annual costs cannot be allocated according to the paragraph 2, they shall be divided between significant supervised entities and less significant supervised entities hence that the former pays 85 % and the latter pays 15 % of the costs.”</i>
Necessary information should be stipulated in the Regulation	Art. 10(3), point a	Deletion	The last subparagraph of the point a is unclear and seems to be unnecessary. All necessary information regarding the fee factors and the way the data is collected should be stipulated in the Regulation in question.
Specification of	Art.	Clarification /	Because the information regarding the sum of all fee debtors’ total assets and the sum of all



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timetable	10 (3), point b	Amendment	fee debtors' total risk exposure is essential for the calculation of the annual supervisory fee, there should be provision on timetable when the ECB shall publish the information on its website: <i>The sum of all fee debtors' total assets and the sum of all fee debtors' total risk exposure shall be published on the ECB's website by 30 April at the latest.</i>
Receiver of the data	Art. 10(4)	Clarification	In the last sentence of the paragraph clarification is needed regarding to whom the data should be submitted: <i>Where a supervised entity needs to revise the data submitted in relation to its fee calculation, the updated data shall be submitted to the NCA concerned without undue delay and by 15 March at the latest.</i>
Cooperation with the NCAs	Art. 12(1)	Clarification	We would like to get clarification on the purpose of the paragraph. The ECB shall communicate with the NCAs before deciding on the final fee level to ensure that supervision remains cost-effective and reasonable for all credit institutions and branches concerned. We suppose that the referred fee is the annual supervisory fee for a single entity. However, the methodology to calculate the annual supervisory fee is already determined in the Regulation in question and there are no possibilities for exemptions. So, what is the actual purpose of the communication? How does the ECB ensure that supervision remains cost-effective? What if the NCA does find the final fee excessive? In principle, we find it very important that cost-effectiveness is ensured and the general effects of the supervision costs (of the ECB and the NCAs) are taken into account; See also our general note in the beginning.
Levying fees	Art.	Clarification	We are not sure what 'assisting in levying fees' means? It should be kept in mind that the



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	12(2)		NCA can only help levying fees in a very limited way in Finland. The tasks of the NCA could only consist of tasks like passing the fee notice to the right entity. It might be possible to use a penalty payment to pressurize the entity. However, the NCA cannot act as a creditor because it is not the owner of the debt. The enforcement (to distrain assets) is always a task of enforcement authorities, not the NCA.
Division between significant and less significant entities	Art. 13(1)	Clarification / Amendment	<p>In the second subparagraph, it should be specified that the ECB also decides how the fees will be divided between significant and less significant entities. In addition, it should be clarified when the publication will take place:</p> <p><i>The ECB shall decide the total amount of the annual supervisory fees to be levied and how the fee is divided between significant supervised entities and less significant supervised entities. This information shall be published on its website by 30 April at the latest.</i></p>
Possibility of rectification	Art. 14	Amendment	There is no provision on rectification or on appeal in a case of an error in the fee notice in the draft Regulation. The supervised entity should have a possibility to challenge the notice in this regard. A provision stipulating the procedure should be added.
Sanctions	Art. 16	Deletion	This article seems to be unnecessary taking into account Art. 18 of Regulation (EU) No 575/2013.
Reporting	Art. 18		See our general note in the beginning.