

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
Definition of total assets	3 -22	Amendment	The total value of the assets of a supervised entity is derived from the “total assets” line on a balance sheet prepared in accordance with EU law for prudential purposes.
Annual costs	6-2-b	Deletion	Article 340 of the Treaty on the functioning of the EU states: “ <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</i>



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			<p><i>shall be governed by the provisions laid down in their Staff Regulations or in the Conditions of employment applicable to them.”</i> In view of the EU Treaty, damages caused by the ECB in the performance of its duties, are to be paid for by the ECB.</p> <p>Therefore, the provision under which damages would be included in the costs shared among banks should be deleted We believe that ECB should not charge via the annual supervisory fee any damages, in the context of the SSM, incurred by the ECB and to be paid to a third party. EBC should be responsible for its behavior and accountable.</p>
Annual costs	6-3	Amendment/addition	<p>Moreover the amounts of sanctions imposed by the ECB as administrative penalties should be taken into account when adjusting the SSM supervisory budget (See amendment on article 16).</p> <p>Art 6 -3 –d- new: any amount paid by banks as financial sanctions imposed by the ECB in its supervisory activity.</p>
Estimation of annual costs	7	Clarification	<p>Banks need to have more visibility on the future budgets of the SSM. A clear and strict definition of the ECB budget on the long term (several years), in order to avoid budget drifting should be designed.</p> <p>After a learning period, the EBC should be in a position to reduce its budget because of productivity gains and greater harmonization. After a stabilization period, the ECB cost should be planned on a three year period.</p> <p>Considering the transfer of significant supervisory tasks from NCAs to the ECB, it should be expected that supervisory fees due at national level be reduced as envisaged in articles (30 (5) of the SSM regulation. It would be appropriate to set a term (e.g. 3 years) when the total expenditure is to be evaluated also in relation to that of the NCAs in order to have some</p>



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			control over the size of the total budget.
Individual contribution	10	Clarification	The method of calculation of the supervisory fees should not give rise to disproportionately high operational costs for the supervised entities, as regards for example reprocessing and resubmitting existing data, reporting, auditing, etc..
Individual contribution	10(3)	Clarification	The fee should take into account the riskiness of the bank. For instance, two banks with the same level of assets and the same level of RWA do not deserve the same level of supervision if one has own funds close to the minimum required level and the other is far above.
Individual contribution	10-5-c	Clarification	A cap for the contribution of the largest banks should be introduced as there is a floor for the smallest ones. The ECB has minimum costs of functioning that do not depend on the size of the supervised entity. For instance, there are fixed costs for each bank that are not reflected in the criteria used for calculating individual supervisory fees (e.g. authorization cost for new banks).
Sanctions	16	Amendment	The SSM Framework Regulation (article 137) states that ' <i>proceeds from penalties shall be the ECB's property</i> '. It should be made clear in this Regulation that proceeds from penalties will be part of the ECB/supervisory budget and not of the ECB/Central Bank budget.
Report	18-1	Clarification	In addition to the European Parliament, the Council, the Commission and the Eurogroup, banks should be informed of or have an oversight on the envisaged evolution of the structure and amount of the annual supervisory fees they pay to the ECB.
Review	18-2	Clarification	A review clause should be introduced in case of a material change in the present CRR (floor on RWA for instance, trading book review, IRRBB)



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