

PUBLIC CONSULTATION

DRAFT ECB REGULATION ON SUPERVISORY FEES

TEMPLATE FOR COMMENTS

Name of Institution/Company	National Bank of Romania	Country	Romania
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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
Application of the ECB Regulation in the context of close cooperation	Article 12 (3)	Clarification	<p>In our understanding, the draft Regulation on supervisory fees is not applicable to credit institutions from non-euro area participating Member States, considering that, according to Article 139 (2) (e) read in conjunction with Article 132 of the TFEU, ECB's legal acts are not applicable to Member States with a derogation. Thus, the collection of fee factors and invoicing shall be performed by the NCA of the non-euro Member State in close cooperation, in accordance with article 12(3). This aspect should be clarified in the preamble of the draft regulation.</p> <p>Also, the preamble should note that Council Regulation (EC) No. 2532/98 applies only to euro area Member States, and therefore the ECB may not impose sanctions to the supervised entities from non-euro area participating Member States.</p> <p>On the other hand, it is not clear the legal basis for including the text of article 12(3) in an ECB</p>



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			Regulation, since ECB's legal acts are not applicable to Member States with a derogation.
Cooperation with the NCAs of non-euro Member States in close cooperation	Article 12 (3)	Clarification	Under Article 7 (4) of SSM Regulation No. 1024/2013 and Article 108 (1) of ECB Framework Regulation No. 468/2014, ECB is entitled to address instructions to the NCA of non-euro Member States in close cooperation only for the scope of fulfilling by the ECB of the tasks referred to in Article 4(1) and (2) and Article 5 of Council Regulation No. 1024/2013. Therefore, it is not clear the legal basis by which ECB may address instructions to the NCA of the Member State in close cooperation for enforcing the provisions of Article 30 of SSM Regulation related to supervisory fees.
Annual costs	Article 6 (2) (b)	Deletion	At Article 6 (2) (b) we consider as not justified to include in the amount of the annual costs, of the damages to be paid to a third party for a loss directly or indirectly caused by the ECB in the performance of its supervisory tasks.
Determining the annual supervisory fee	Article 8	Amendment	The title of Article 8 should make reference to withdrawal of an authorization, not only to the case of the new supervised entities.
Remedy measures	Article 11	Amendment	In the Romanian translation of the regulation, it is necessary to replace the wording "căi de atac" with "măsuri/măsuri de remediere".
Interest in case of non-payment	Article 11	Amendment	For reasons of legal accuracy, the word "interest" should be avoided and be used instead "penalty fees". Accordingly, in the Romanian translation we suggest using "penalități" instead of "dobânzi".
Interest in case of non-payment	Article 11	Clarification	In our understanding, the establishment of penalty fees on a daily basis is also a sanction which may be imposed by the ECB, to the euro area Member States, based on Council Regulation No. 2532/98. In this context, we wish to draw attention to the fact that two sanctions of the same kind might be imposed for the same breach, situation which could raise substantial legal risks.
Interest in case of non-payment	Article 11	Amendment	It is necessary to be clearly mentioned that the penalty fees may be applied only until the date the payment is made.
Interest in case of non-	Article	Amendment	Article 11 has purpose of imposing a sanction and, therefore, it should be incorporated in Part VI –



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payment	11		Final Provision, near Article 16 – Sanctions.
Interest in case of non-payment	Article 11	Clarification	At Article 11, it is not clear the meaning of the wording “non-compliance with the conditions for payment” and until when the penalty fees could be imposed in this case (given the fact that, in this case, the payment was made, but not in the exact conditions for the payment).
Fee notice	Article 14	Amendment	At Article 14, we consider that the annual fee to be paid by a credit institution should be established by an official legal act of the ECB, and not by a simple communication (notice). Also, the draft regulation should include provisions related to the right of appeal against the fee notice.
Fee notice	Article 14	Amendment	For reasons of transparency and legal certainty, Article 14 should mention the minimum aspects which the fee notice should contain.
Fee notice	Article 14 (3)	Amendment	At Article 14 (3) the period of 30 days for making payment should be calculated from the date the fee notice was received by the credit institution and not from the date the notice was issued
Report and review	Article 18 (2)	Amendment	We propose reducing the time horizon that the ECB has foreseen for reviewing the methodology and criteria for calculating annual supervisory fees in order to ensure a faster calibration of costs.