

PUBLIC CONSULTATION
DRAFT ECB REGULATION ON SUPERVISORY FEES
TEMPLATE FOR COMMENTS

Institution/Company Polish Bank Association	
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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	Polish Bank Association	Country	Poland
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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
Fee debtor	Article 5(3)	Clarification/ amendment	The clarification is needed in order to express correctly the idea presented in rationale for ECB Regulation. It should be added in text “Two or more fee-paying branches in the same participating Member State of the same credit institution located outside a participating Member States are deemed to be one branch. (...)”
	Article 5(4)	Clarification/ amendment	The similar clarification as in article 5 (3) is needed also in art 5 (4).
Annual costs	Article 6(2)(b)	Deletion	The provision under which damages caused by the ECB would be included in the costs shared among banks should be deleted.



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			<p>Banks would face incalculable risks if they had to bear the financial consequences of a violation of duty by the ECB. The supervised banks will have no influence on the breach of duty committed by the ECB and cannot be expected to bear the associated costs. Ultimately, this would involve the company which was the victim of a violation paying a share of the resulting damages. There should be no separation of official responsibility and official liability, not least to avoid creating undesirable incentives in connection with the exercise of the ECB's supervisory powers.</p>
Estimating and determining the annual costs	Article 7	Clarification	<p>ECB should be more transparent and give more information related to the breakdown of costs covering the SSM activities on an annual basis. There is no monitoring mechanism concerning the accuracy of cost incurred by the ECB for supervisory tasks.</p> <p>Regarding the transfer of significant supervisory tasks from NCAs to the ECB, supervisory fees due at national level should be reduced. It would be appropriate to set a term (e.g. 3 years) at which the total expenditure is to be evaluated also in relation to that of the NCAs.</p>
Fee factors	Article 10(3)(a)(i)	Clarification	<p>Total asset amounts are dependent on the implementation of IFRS or on the national GAAPs. The treatment of certain accounts such as derivatives may imply big changes in those factors. The methodology should ensure consistency and comparability.</p>
Fee factors	Article 10(3)(a)(ii)	Amendment	<p>Total Risk Exposure (TRE) should not be the only indicator of risk profile. Article 30.3 of Regulation 1024/2013 (SSM) states that <i>“The fees... shall be based on objective criteria relating to the importance and risk profile of the credit institution concerned, including its risk weighted assets”</i>.</p> <p>The ECB draft Regulation on supervisory fees picks up however Total Risk Exposure (TRE) as the only indicator of risk profile. In our opinion risk profile is a broader concept than TRE, and much more aligned with –and better represented by– the <i>“general prudential requirements”</i> defined in Article 1 of Regulation 575/2013 (CRR). These include, besides TRE, other relevant</p>



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			aspects as large exposures, liquidity, leverage, and public disclosure. Additionally, CRD IV sets out some requirements related to buffers, Pillar 2, and corporate governance which should be also taken into account when assessing an entity's risk profile.
Fee factors	Article 10(3)(b)	Amendment	The proposed weighting scheme gives a large weight on the size of the balance sheet. This may lead to a situation where the actual fee exceeds the level which is justified by the risks of a bank and the supervisory measures needed in its supervision. This problem can be mitigated by treating derivative liabilities on the basis that full recognition is given to counterparty netting rights positions in calculating total assets (as it is done e.g. in the calculation of the MREL and the Leverage Ratio). Netting of derivatives would also be in line with the treatment referred into part II.3 item (34) of the proposal, which states that "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".
Fee factors	Article 10(3)	Clarification / amendment	<p>According to the proposal, the fee factors are calculated at the highest level of consolidation within participating Member States. The part II.1 item (17) of the proposal states that <i>All subsidiaries of this supervised entity are considered as belonging to the same supervised group.</i></p> <p>It should be clarified that the group perimeter must be the prudential perimeter of banks, i.e. excluding insurance companies for financial conglomerates. Since the ECB has no supervisory powers in relation to insurance companies as part of the conglomerate (as stated in Council regulation 1024/2013 and Article 127 (6) of the Treaty on the Functioning of the European Union), insurance part should not be used as fee calculation basis for fee calculation. This would also ensure same treatment between insurance-led and a bank-led conglomerates.</p> <p>It is important to exclude intragroup assets/liabilities to avoid double counting of supervisory fees (the amount of assets could be used as a supervisory fee factor in non-participating country). The calculation should therefore eliminate the intragroup liabilities between participating part and non-</p>



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			participating part of the group.
Fee calculation	Article 10(4)	Clarification	A provision should be included specifying the legal consequences and procedure to verify data provided by banks as the fee factors. The mistakes made in calculation of fee base will have strong impact on level of fee paid by all banks.
Fee notice	Article 13	Clarification	The annual deadline for decision made concerning the final fee level should be included in regulation. This decision will help the banks to estimate the fee level and to prepare the payment.
Fee notice	Article 14	Amendment	The principle that the fee is due within 30 days of the fee notice being issued is too short. Including the modern form of communication there is risk that real time left for banks to make the payment will be much shorter. The proposed period should be longer or should be due within 30 days of fee notice delivery.
Fee notice	Article 15(2), second option under (a)	Deletion	The option “or by other comparable means of communication” should be deleted. This is too unspecific a term to include in a legal provision designed to ensure receipt of the fee notice. Given the other notification methods listed, moreover, one wonders what further means might conceivably be left.
Sanctions	Article 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.