

PUBLIC CONSULTATION

DRAFT ECB REGULATION ON SUPERVISORY FEES

TEMPLATE FOR COMMENTS

Name of Institution/Company	Banco Santander	Country	Spain
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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 (a)	Amendment	<p>The Regulation lays down(a) the methodology for calculating the total amount of the annual supervisory fee to be levied by the ECB on supervised entities</p> <p>Comment: even if in the Rationale and Scope it is clarified that this Regulation will cover specifically the supervision activity of the SSM, article 1 may specify that this Regulation covers all the supervisory activities pursued by the SSM.</p>
Definitions	3	Amendment	<p>Inclusion of the term “third country” and its definition: “refers to a country which is not a Member State of the Union.”</p> <p>Comment: This inclusion is needed to ensure consistency within the framework (i.e. definitions</p>

			3.22 and 3.23; our proposed amendment for Article 5.5 on the concept of “fee debtor”)
Fee debtor	5.2	Clarification	Each group of fee-paying entities shall nominate the fee debtor for the whole group Comment: More clarity in the role of the fee debtor would be welcome.
	5.5	Amendment	<i>“In calculating the annual supervisory fee, subsidiaries established in non-participating Member States and third countries shall not be taken into account. In this respect, and in order to determine the fee factors of a group of fee-paying entities, the group shall provide sub-consolidated data for all subsidiaries and operations controlled by the parent undertaking in participating Member States.”</i> Comment: In the case of a group of fee-paying entities, the contribution to the total risk exposure from the subsidiaries established in third countries should be excluded in the calculation of the annual supervisory fee as provided under arts. 3.22 and 3.23. From an economic standpoint, there is no basis to apply a differential treatment between subsidiaries in non-participating Member States and those in third countries which would discriminate among freely-chosen business models and lead to non-level playing field implications that would hamper the unity of the Single Market.
Annual costs	6.2 b	deletion	<i>The amount of the annual costs shall be determined on the basis of the amount of the annual expenditure consisting of: (b) 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.</i> Comment: We do not share the rationale to assume the responsibility of any damages caused directly or indirectly by the ECB in its supervisory task



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Expenditure and costs	6.3 a	Clarification	<p>The proposed inclusion of fees from previous periods that were not collectible should be deleted.</p> <p>Comment: The insolvency and operating risk that should be borne by the ECB as the recipient of the fees would otherwise be shifted on to all supervised banks. The supervised banks will have no influence on action taken by the ECB to enforce its claims or pursue them in court and cannot be expected to bear any associated losses. This provision should also be deleted to avoid creating undesirable incentives in connection with the exercise of the ECB's supervisory powers.</p>
Estimating and determining annual costs	7	Clarification	<p>...The estimated annual costs shall serve as a basis for the calculation referred to in Article 13 (1) (a)</p> <p>Comment: ECB should give more information related to the breakdown of costs covering the SSM activities on an annual basis. Even if the SSM would have some sort of accountability vis-à-vis the European Parliament to increase transparency more information in this regard should be unveiled.</p>
Fee factors	10.3 (a) (i)	Clarification	<p>The fee factors at the highest level of consolidation within participating Member States shall be calculated on the following basis. (a) The fee factors used to determine the individual annual supervisory fee payable in respect of each supervised entity shall be the amount at the end of the calendar year of: (i) Total assets</p> <p>Comment: Total assets amounts are dependent on the implementation of IFRS or on the National GAAPS. It could happen that the treatment of certain accounts such as derivatives may imply big changes in those factors. As such these portfolios (i.e.: derivatives) will increase the supervisory burden of the SSM.</p>
Fee factors	10.3(a) (ii)	Amendment	<p>Total Risk Exposure (TRE) should not be the only indicator of risk profile.</p>



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			<p>Rationale</p> <p>Article 30.3 of Regulation 1024/2013 (SSM) states that “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”.</p> <p>Developing thereon, ECB draft Regulation on supervisory fees picks up Total Risk Exposure (TRE) as the only indicator of risk profile. However, risk profile is in our view a broader concept than TRE, and much more aligned with –and better represented by- the “general prudential requirements” defined in Article 1 of Regulation 575/2013 (CRR). These include, besides TRE, other relevant 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.</p> <p>Business models explain a significant part of the differences in risk weighted assets (RWA) among institutions. In general, the larger the banking book, the higher the RWAs (or alternatively the smaller the trading book, the smaller the RWAs). This outcome leads to the “illusion” that business models based on large banking books (i.e. large share of loans in the balance sheet) are riskier than those business models specialized in trading activities. However, no particular business model has been identified as particularly risky during recent financial crisis.</p> <p>According to the draft Regulation, fees will be based on ECB’s “expenditure in relation to its supervisory task”. Task which, in our opinion, will have to be mainly driven by the CRR /CRD IV package and therefore adopting its holistic approach to the risk profile assessment.</p>
Minimum fee percentage for	II.3 fee factors	Clarification	The minimum fee percentage for significant entities will be 10%. In each participating country, at least the three most significant credit institutions will be subject to direct supervision by the

significant entities	(43) Minimum fee percentage for significant entities		<p>ECB, irrespective of their total asset size. These credit institutions shall be small relative to other supervised entities in this category. For this reason, the ECB will halve the minimum fee component for the smaller significant institutions with total assets of €10bn or less.</p> <p>Comment: How will this waiver be offset? This amount will not be covered or it will be transferred to other institutions. If this is the case, how will the allocation of the extra cost be done?</p>
Cooperation with NCAs	Article 12(1)	Clarification	<p>The ECB will communicate the NCA before deciding on the final fee level to ensure that supervision remains cost effective and reasonable for all credit institutions and branches concerned.</p> <p>Comment: We basically welcome this provision, which is designed to ensure that fee levels are proportionate. We nevertheless see a need to clarify the legal consequences if it is determined that the fees set for some banks and branches are not reasonable and appropriate.</p> <p>If it is concluded that some individual fees should be reduced, there is no procedure at present for dividing the associated costs among other fee-paying banks. It also needs to be clarified that the procedure for the retrospective modification of a fee (which should be determined on the basis of defined, objective criteria) should not result in costs being divided among other banks at the ECB's discretion.</p>
Sanctions	16	Clarification	<p>In the event of a breach of this Regulation, in addition to the accrual of interest rate, the ECB may impose sanction</p> <p>Comment: More clarification in this regard would be appreciated</p>