POSITION PAPER

ESBG response to the ECB consultation on the review of the Regulation on supervisory fees

ESBG (European Savings and Retail Banking Group)

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ESBG

Dear Sir/Madam,

Thank you for the opportunity to comment on the ECB consultation on the *review of the Regulation on supervisory fees*. We would like to share with you the following reflections that we hope will be taken into account by the ECB.

No	Article of the Regulation	Type of comment	Comment
1	1	*Amendment*	The current Regulation does not comprise any provisions on how to include the fee-paying entities in the review of costs. Thus, ESBG believes that establishing a committee that verifies that the fee level is reasonable and that the supervisory fees are spent in a proper and cost-effective manner should be considered. Bearing in mind that 100% of the funds are provided by the supervised entities, we believe that representatives thereof should be members of this committee. Hence, ESBG would like to propose to establish such a (supervisory) committee to monitor fees/budget in the future. The institutions should be represented here too. Previous ECB references to the budget responsibility of the ECB Council and the Budget Committee (BUCOM) are, in our view, insufficient, since these processes do not ensure any effective budget control involving external stakeholders. At present, external auditors and the European Court of Auditors become involved only for the downstream audit of the ECB budget. We do not agree with the ECB's hitherto objection that a supervisory board filled with representatives from the institutions contradicts Recital 75 SSM Regulation. An involvement of stakeholders exclusively in the budget and fee assessment does not mean any actual restriction of independence from the influence of the industry. Furthermore, it should be added that the two following principles regarding the calculation of the fees to be levied on institutions are of central importance: first, costs must be allocated fairly, based on who causes them to be incurred. Second, the principle of proportionality must be respected.
2	4(3)	*Amendment*	Pursuant to Article 4(3), the right to determine the fee debtor is to be reserved to the ECB without prejudice to Article 4(2). We believe that if the group is to nominate and notify the fee debtor according to the criteria set out in Article 4(2), there will be no need for the ECB to determine the debtor. Therefore, ESBG suggests amending Article 4(3) by providing that the ECB reserves the right to determine the fee debtor only if the group of fee-paying entities has not nominated and/or notified a debtor pursuant to Article 4(2) of the Regulation.

3	5(1)	*Amendment*	"The annual costs shall be the basis for determining the annual supervisory fees and they shall be recovered via the payment of such annual supervisory fees." We would like to point out that since November 2014 the ECB supervisory fees have meant an additional cost factor for all institutions. The supervisory costs attributable to, and distributable among, significant institutions have, when comparing fee periods, risen by approximately 35.4% in 2015/16 (calculated on a 12-month basis) and by about 9.5% between 2016/17. Because of the persistent low-interest rates environment, the regulators keep asking the institutions about securing alternative income sources and/or business models. Based on these considerations, we believe that the supervisory authorities could also consider making their contribution to positive business performance by moderating their own costs, now that the SSM structures have been established.
4	5(3)(a)	*Clarification*	Article 5(3)(a) states that the ECB shall take into account any fee amounts related to previous fee periods that were not collectible when determining the annual costs. However, this provision should not lead to the result that (partially) outstanding supervisory fees of institutions of the previous fee period would be invoiced to all institutions in the following fee period.
5	10(3)(a)(ii)	*Amendment*	According to Article 10(3)(a)(ii), the total risk exposure is considered zero in the case of a fee-paying branch. To avoid unbalanced fees, the weighting of total assets pursuant to Article 10(3)(e)(i) should be set at 100% instead of 50% in this case. For the purposes of legal certainty and clarity, we believe that all procedures and methods determining the annual supervisory fee should be as transparent as possible and described in detail in the Regulation.
6	10(3)(b) in conjunction with (4) sentence 1	*Amendment*	We are of the opinion that, as a first step, the ECB should ask the fee debtor whether the supervised group has, pursuant to Article 10(3)(b), decided that the assets of subsidiaries located in non-participating Member States and third countries, which are basically not to be taken into account, shall, contrary to the principle, on grounds of simplification and costs be taken into account. If this is the case, the submission at 1 July each year of the fee factors (total assets; RWA) by the fee debtors that have resolved this can, in ESBG's opinion, be waived. The fee factors are already known to the ECB from the FINREP/COREP reporting – cf. also the references in the templates. (Amendment to Article (10)(4) sentence 1). An additional report from the institutions and submission through the NCAs can in these cases be dropped. The step of quality assurance/verification through the PASOS system (ECB makes available; institution ensures quality) can be

			retained [cf. Article (4)(2) Decision 2015/530 of the ECB of 11 February 2015 on the methodology and procedures for the determination and collection of data regarding fee factors used to calculate annual supervisory fees (ECB/2015/7)]. In one Member State the NCA is, for the first time, on grounds of efficiency, providing institutions obliged to report with the use of a reporting template pre-completed by the regulator in order to enable them to collect the fee factors in 2017. This procedure is however not carried out in the whole SSM. Simplifications in the reporting process and an EU-wide implementation are desirable. ESBG suggests, therefore, to let the step of quality assurance/verification through PASOS (ECB makes available; institution ensures quality) for the procedure provided by the NCA and proposed by us lapse [cf. Article 4(2) Decision 2015/530 of the ECB of 11 February 2015 on the methodology and procedures for the determination and collection of data regarding fee factors used to calculate annual supervisory fees (ECB/2015/7)], as agreement on the relevant data has already been reached by other means.
7	10(4) Sentence 3 and (6)(c)	*Amendment*	"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."[…] The variable fee component is allocated to individual fee debtors in each category according to each fee debtor's share of the sum the weighted fee factors of all fee debtors as determined pursuant to paragraph 3. Experience has shown that the ECB has posted the sum of all fee debtors' assets and the sum of the total risk exposure of all fee debtors initially on the English website and later dates on the other websites. We suggest posting the information on the respective sites at the same time and/or cross-referencing them.
8	10(6)(b)	*Amendment*	Pursuant to Article 10(6)(b), the minimum fee component is halved for significant supervised entities/groups with total assets of EUR 10 billion or less. This possibility, however, is not provided to less significant supervised entities and less significant supervised groups. In light of the principle of proportionality, the minimum fee component should also be halved for less significant supervised entities and groups under certain circumstances (for instance, for credit institutions with total assets of EUR 500 million or less). As an alternative, the minimum fee component could also be distributed without differentiating between significant and less significant supervised entities or groups, and calculating the

			individual fee by its total assets. Furthermore, balance sheet and off balance sheet items should be taken adequately into account when calculating the minimum fee components.
9	10(6)(b)	*Clarification*	"[…] For significant supervised entities and significant supervised groups with total assets of EUR 10 billion or less, the minimum fee component is halved." It would be reasonable to assume that the remaining 50% will increase/make the basis of assessment more expensive for the variable fee component. If this is the case, clarification would be desirable at this point.
10	10(6)(b)	*Clarification*	"[…] 10 %. This amount is split equally among all fee debtors…" To estimate the ECB supervisory fee for the factor "all fee debtors", the ECB advises referring to the current list of supervised institutions. With regard to the determination of the ECB supervisory fee, it is not transparent what number of institutions on which reference date (31 December of the preceding year analogous to the assets/risk exposure or 1 July according to the current fee debtor return or a yearly average) the ECB uses as a basis to determine the ECB supervisory fee. ESBG would appreciate if this could be clarified.
11	12(1)	*Clarification*	"A fee notice shall be issued annually by the ECB to each fee debtor." The ECB's notice contains information on: - the level of the minimum fee component, - the level of the variable fee component, - the fee period, - the category "significant" or "less significant", - a reference to the location showing all the supervisory fees to be levied, - the total assets and the total risk exposure. The notice contains no enclosures/detailed explanations of the calculation/determination (analogous to tax notices or contributions to the resolution fund). In ESBG's opinion, there is a lack of transparent derivation/transition to the fee components with due regard to information on the number of supervised institutions (minimum fee component), the basis of assessment for determining the variable fee components [cf. remarks on Article 10(4)], and the total assets of subsidiaries in

			non-participating Member States and third countries that were definitively excluded.
12	15	*Clarification*	In ESBG's opinion any proceeds from penalties imposed by the ECB pursuant to this Regulation should only go into the budget of the SSM and not into the general ECB budget.
13	General remarks		We would be curious to know the reason why, for the calculation of the ECB supervisory fee, the ECB does not lay down transparent parameters accessible to all and, if need be, make adjustments/customisations retroactively/at the next payment/settlement date. The institutions' budget processes could fall between April and October. The institutions would not have to provide any extra factors. The NCAs would be relieved. On both the English and the German websites there is shown a 'simplified' fee debtor notification form under the heading "fee debtor". Clarification as to when the simplified form is to be used would be helpful.

About ESBG (European Savings and Retail Banking Group)

ESBG brings together nearly 1000 savings and retail banks in 20 European countries that believe in a common identity for European policies. ESBG members represent one of the largest European retail banking networks, comprising one-third of the retail banking market in Europe, with 190 million customers, more than 60,000 outlets, total assets of €7.1 trillion, non-bank deposits of €3.5 trillion, and non-bank loans of €3.7 trillion. ESBG members come together to agree on and promote common positions on relevant regulatory or supervisory matters.

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