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### **Public consultation on the review of the ECB Regulation on supervisory fees**

Dear Sir or Madam,

We highly appreciate the opportunity to provide input to the referenced consultation paper for a review of the ECB Regulation on supervisory fees.

The Association of Foreign Banks in Germany represents the interests of currently more than 200 foreign banks and other financial services institutions which operate in Germany via subsidiary or branch. Almost all member institutions are therefore part of a cross-border banking group. The Association therefore also represents the interests of several branches established in a participating Member State by a credit institution established in a non-participating Member State.

Although ECB only expects comments on Part III (Determining the annual supervisory fee) and Part V (Invoicing) of the current valid version of the ECB Regulation No 1163/2014 dated 22 October 2014 on supervisory fees (ECB/2014/41), we would like to propose an amendment that is related to the above-mentioned branches and their treatment acc. to Decision (EU) 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).

We hope to give constructive input for the amendment of the Regulation in the following annex and have no objections to the disclosure of our comments. For further information or if you have any questions please do not hesitate to contact us.

Kind regards

Markus Erb

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Representation of interests of  
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**Proposals of the Association of Foreign Banks in Germany for amending Regulation (EU) No 1163/2014 of the European Central Bank of 22 October 2014 on supervisory fees (ECB/2014/41)**

**A) Consideration of proportionality aspects concerning the requirement of audited fee factor data of fee-paying branches**

As outlined by ECB in the introductory remarks in Part 2 of the consultation paper, there is a main exception of the general assumption that most figures of the supervised entities being used for the fee factors calculation are already audited: the branches established in a participating Member State by a credit institution established in a non-participating Member State (later on: fee-paying branches in accordance to Art. 2 No 7 of Regulation (EU) No 1163/2014) are obliged to submit statistical data in accordance with the relevant financial reporting framework (cf. to Regulation (EU) No 1071/2013 of the European Central Bank). This is detailed in Art. 7 para. 2 lit. c of the Decision (EU) 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 those statistical data on branches are typically not required to be audited for other accounting or reporting purposes, the ECB requires a single auditor's verification of the financial accounts of the fee-paying branch.

On the one hand, it is of course appropriate to request verification for fee factor data in order to ensure the integrity of the calculation. On the other hand, no special rule that takes into account any proportionality aspects had been foreseen by the ECB in this context. For example, our Association was informed from several affected fee-paying branches that, in the end, the costs for mandating an external auditor for the above-mentioned verification of financial accounts often exceed the latter amount of the payable ECB supervisory fee. This may be the case of fee-paying branches whose total amount of assets is comparably low. The final result, namely the spending of auditing costs that exceed the supervisory fee, is not proportionate and should therefore be alleviated by a certain exception rule for smaller fee-paying branches.

As you know, in the field of regulatory FINREP reporting to the ECB within the SSM, the supervised branches established in a participating Member State by credit institutions established in a non-participating Member States are then excluded from the reporting of supervisory financial information if the total value of their assets is below three billion Euros. This provision in Art. 13 para. 7 lit. b as well as Art. 14 of Regulation (EU) 2015/534 of the ECB dated 17 March 2015 on reporting of supervisory financial information (ECB/2015/13) enables a more proportionate regulation and should be taken into account for the above-mentioned exception rule for smaller fee-paying branches.

We propose that only those fee-paying branches whose total value of assets exceeds three billion Euro are obliged to submit an auditor's verification of the financial accounts to the ECB for the supervisory purposes. Additionally, in the case of fee-paying branches whose total value of assets is below three billion Euros should only submit a verification if it is requested by the

ECB due to certain circumstances with regards to the single case. This may be e. g. a change of status (cf. Art. 7 para. 2 of Regulation (EU) No 1163/2014) or other important circumstances the competent national competent authority (NCA) gains knowledge of within its day-to-day supervision.

**PROPOSAL: Art. 10 para. 3 lit. e shall become the new lit. f and a new lit. e shall be inserted with the following phrasing:**

**“(e) 1Fee-paying branches whose total value of assets is below three billion Euro are generally excluded from the mandatory submission of an auditor’s verification of their financial accounts. 2The European Central Bank requests only on a case-by-case basis verifications from these branches after consultation with the competent NCA.”**

**B) More proportionality regarding the calculation of the annual supervisory fee payable by less significant entities**

The methods for the calculation of the annual supervisory fees are generally outlined in Art. 10 para. 6 of Regulation (EU) No 1163/2014. With regards to the minimum fee payable by less significant entities (as well as by less significant supervised groups), it is stated in Art. 10 para. 6 lit. b sent 5 of Regulation (EU) No 1163/2014 that for this category the fixed percentage is 10 %.

From our point of view, it should lead to a more proportionate and adequate distribution of the supervisory cost burdens if the category of less significant supervised entities and less significant supervised groups is furthermore divided in two sub-groups. Deducted from the whole population of supervised less significant supervised entities and less significant supervised groups, those less significant entities whose total value of assets is below three billion Euros (cf. the above-mentioned exception rule in Regulation (EU) 2015/534) should apply a divergent fixed percentage to calculate their minimum fee: 5 %.

This should especially relieve smaller entities which, on the one hand, may be immoderately burdened by the current amounts of the ECB supervisory fee and, on the other hand, might only play a minor role in the overall supervision of the banking community in the SSM because of their comparably low amount of assets.

**PROPOSAL: Art. 10 para. 6 lit. b sent 5 of Regulation (EU) No 1163/2014 should be amended and a new sentence 6 should be inserted afterwards with the following phrasing:**

**“5For the category of less significant supervised entities and less significant supervised groups, the fixed percentage is in general 10 %. 6In deviation from this provision, the fixed percentage is 5 % if the less significant supervised entity’s total value of assets is below three billion Euros.”**