Template for comments

Public consultation on amendments to the supervisory fees framework (2019)

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General comments

The page numbers that are listed in the comment section of the excel file refer to the page numbers of the consolidated version of the .Regulation, incorporating the changes of the draft regulation into Regulation (EU) No 1163/2014 of the European Central Bank
.The column “type of comment” refers to the change proposed by EBF that should be made to the draft regulation
,We view the ECB’s intention to levy fees ex post as a positive development (Amendments to the ECB Regulation on supervisory fees .(paragraph 3.1
Likewise, we welcome the ECB’s initiative to reuse data from FINREP and COREP reporting to calculate the supervisory fees (paragraph .(3.3
The EBF notes that the share of total supervisory contributions paid by LSI’s has decreased to 9% over the years. It is important that this appropriately reflects the actual costs incurred by the ECB in its overall supervisory role on this segment of the banking sector. This .includes horizontal tasks provided by DG MS4 and other specialised services such as macroprudential, statistical and legal services
External controls: The banks have taken note of the discussion between the ECB and the European Court of Auditors (ECA) on the scope of the ECA’s audit rights. The banks take note of the ECA’s call to make it possible that it has full access to ECB documents for audits related to banking supervision. In addition, as the banks cover the entire expenditure of the SSM they consider that a system be put in place in which more transparency is given on the SSM’s expenditure and in which the fee-paying entities are able to give non-binding .advice on the ECB’s draft budget
The ECB appears to protest the suggestion that it be subject to a committee or other oversight structure to monitor the amount of supervisory fees, and the budget of ECB Banking Supervision (paragraph 4.3, section 99, 100 and 101). The ECB suggests that such oversight would hamper its independence and cites recital 77 of the SSM Regulation, which states that the ECB’s resources should be obtained in a way that ensures the ECB’s independence from undue influence by the NCAs and market participants. The EBF members (i.e. the European Court of Justice)acknowledge the independence of the ECB but consider that a number of independent EU institutions as well as NCAs that participate in the SSM are also subject to budgetary limitations. Moreover, the provisions of the SSM Regulation do

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Please enter all your feedback in this list.
When entering feedback, please make sure that:
- **each comment deals with a single issue only;**
- **you indicate the relevant article/chapter/paragraph, where appropriate;**
- **you indicate whether your comment is a proposed amendment, clarification or deletion.**

Deadline:	6 June 2019

ID	Article of the Regulation	Page	Type of comment	Detailed comment	Concise statement as to why your comment should be taken on board	Name of commenter	Personal data

1	Article 5 (2), second paragraph, of Regulation (EU) No 1163/2014 of the European Central Bank	7 (consolidated regulation	Deletion	The EBF would like to maintain Article 5 (2), second paragraph, of Regulation (EU) No 1163/2014 of the European Central Bank and thereby delete the change proposed in the ECB draft regulation. In point 2 the first paragraph is unchanged: "The amount of the annual costs shall be determined on the basis of the amount of the annual expenditure consisting of any expenses incurred by the ECB in the relevant fee period that are directly or indirectly related to its supervisory tasks". However, the next paragraph is omitted: “The total amount of the annual supervisory fee shall cover, but not exceed, the expenditure incurred by the ECB in relationship to its supervisory tasks in the relevant fee period". The proposed deletion of this part of Article 5 (2) seems to suggest that annual expenses incurred by the ECB remain the basis for the annual supervisory costs the ECB will charge to the sector, but that in the future the ECB can exceed these costs. For instance, in the case of the contribution to the Single Resolution Fund, covered deposits are the basis for determining the annual target but a factor of 1,15 is applied to increase the target. By omitting this paragraph, the ECB seems to suggest a similar action is possible in this case. Although article 30 (1) of Regulation (EU) No 1024/2013 (the SSM Regulation) also states that the ECB fees shall not exceed the expenditure relating to the ECB’s tasks under articles 4-6 of the SSM Regulation, the members of the EBF do see merit in reiterating this important principle in the consulted regulation.	The proposal to delete the second paragraph of article 5 (2) suggests there is a possibility to increase the annual supervisory fees to a level that could be higher than the expenditure incurred by the ECB. This is not in line with article 30(1) of the SSM Regulation.	Bornemann, Lukas	Publish

2	Article 6 of Regulation (EU) No 1163/2014 of the European Central Bank	7 (consolidated regulation)	Amendment	Article 6 is not deleted but amended as follows: "Estimating and determining the annual costs 1.Without prejudice to its reporting obligations under Regulation (EU) No 1024/2013, the ECB shall, within the end of September of each calendar year, calculate and publish: 1. (a) the estimated annual costs and other relevant data (aggregate fee factors values for each category of supervised entities, number of fee debtors, number of fee debtors for which the minimum fee component is halved) needed for each institution to estimate the supervisory fee in respect of the current fee period. (b) a three-year forecast of supervisory expenditures for the following fee periods, with obviously non-binding assumptions of fees for each institution, given the multiannual horizon and the level of details required by supervised entities for their business plan analyses within the SREP process. 2. (a) The estimated annual costs for the following calendar year will follow the structure and presentation set out for the other Union institutions in Regulation (EU) No 2018/1046. (b) The estimated annual accounts will be submitted for advice to representatives of supervised entities and supervised groups, before they are published but ultimately on 30 June. The advice of the supervised entities and the supervised groups, which is non-binding, will be published on the website of the ECB." In article 6 of the supervisory fees framework it was stated that the ECB would calculate by the end of each calendar year the estimated annual costs for the following year. This has been deleted, together with article 9, because the fees will be levied ex-post and will be based only on the basis of the actual costs and in article 5 it is stated that four months after the fee period, the total amount of annual supervisory fees will be published. As a result, no mention of any costs estimation activity by ECB is maintained within the Regulation and the amount of the total fee will only be known 4 months after the end of each fee period, making it more difficult for the supervised entities, on the one	Even if the ex-post invoicing of the fees is implemented, since the ECB shares the view of a mid-year publication of supervisory costs estimate for the current fee period and a mid-term forecast of its budget (as reported in the consultation document), we propose that article 6 of the current regulation (ECB/2014/41) is not deleted but amended coherently with the aim of facilitating the budget and business plan process of the supervised entities. Furthermore, improving transparency in line with the general EU framework would not hamper the ECB's independence to spend its budget as it deems prudent. We therefore propose amendments which would improve accountability of the ECB vis-à-vis all external stakeholders.	Bornemann, Lukas	Publish

3	Article 8 of Regulation (EU) No 1163/2014 of the European Central Bank	8 (consolidated regulation)	Clarification	The EBF would like to request a clarification with regard to the allocation of the costs that are associated with the horizontal tasks provided by DG MS4 and other specialised services such as the work performed by the Secretariat to the Supervisory Board, macroprudential tasks, statistical services and dedicated legal services, which concern both SIs and LSIs regardless of the relative intensity of direct and indirect supervision. In our view, the allocation of the costs related to such transversal services, which concern SIs and LSIs alike, should be based on other indicators such as total assets and / or total risk exposure. While LSI relative share of total assets and total RWA have slightly increased since the creation of the SSM, and account for a share between 20% (relative share of LSIs in terms of total assets) and 25.5% (relative share of LSIs in terms of RWAs) their share in ECB total supervisory fees income has kept on decreasing to about 9%.	To make the contribution of SIs and LSIs more in line with the actual cost incurred by the ECB in its overall supervisory role (including horizontal tasks and specialised services) via a change in the current methodology which consists in prorating horizontal tasks and specialised services costs for SIs and LSIs based on the relative cost of direct and indirect supervision.	Bornemann, Lukas	Publish

4	Article 9 of Regulation (EU) No 1163/2014 of the European Central Bank	9 (consolidated regulation)	Amendment	Article 9 is not deleted but amended as follows: “Total amount of annual supervisory fees 1. The total amount of annual supervisory fees of the ECB will not increase with more than the average of the ceilings of article 312 (3) of the Treaty on the Functioning of the EU. 2. For the purpose of calculating the maximum increase of the total amount of supervisory fees, the estimated budget for 2019 is taken as the reference budget.” Limitation of the consultation as to how the fees are calculated without having regard for the size of the fees, reduces the review of the Regulation at hand to a predominantly administrative exercise, only amending procedural concepts and leaving out substantive concepts. This approach does not do justice to the fact that the Regulation under review is not solely based on art. 30(2) of the SSM Regulation, but finds its legal basis in the whole of art. 30 of the SSM Regulation. Where art. 17 (2) of the Regulation under review states that the methodology and criteria for calculation of the annual supervisory fees in particular are subject to review, there is no reason to restrict this consultation exclusively to the methodology for calculation of the fees. As the size of the annual expenditure of the ECB has more than doubled in less than five years while NCAs related expenditure has not decreased, EBF members consider a broader scope of the consulted regulation due and legitimate. While EBF members recognize that financial markets participants benefit from ECB supervision, they also consider that some assurance that the ECB expenditure develops in an orderly manner and within the limits of fee-paying entities’ resources is reasonable. As the ECB considers that its expenditure is currently stable, we propose that the expenditure does not increase with more than the average of the ceilings of the EU multiannual framework. The draft budget of 2019 could be taken as the reference budget, which would run in line with the setting of the new EU multiannual framework which is expected to be agreed in 2019.	The goal of this amendment is to ensure that, starting from a stable level, the fees develop within reasonable limits, and taking into account also the fee paying institutions’ resources.	Bornemann, Lukas	Publish

5	Article 11 of Regulation (EU) No 1163/2014 of the European Central Bank	12 (consolidated regulation)	Amendment	Article 11 is amended as follows: “Cooperation with NCAs 1.The ECB shall communicate with the NCAs before deciding on the final fee level to ensure that supervision remains cost-effective and reasonable for all credit institutions and branches concerned. For this purpose, the ECB shall develop and implement an appropriate channel of communication in cooperation with the NCAs. 2. The NCAs shall report to the ECB the actual budget they have allocated to their tasks under articles 4 to 6 of Regulation (EU) No 1024/2013. The ECB shall publish and separately identify the NCAs expenditures for the related tasks in the annual report referred to in Article 20 of Regulation (EU) No 1024/2013. 3. The NCAs shall assist the ECB in levying fees if the ECB so requests. 4.In the case of credit institutions in a participating non-euro area Member State whose close cooperation with the ECB is neither suspended nor terminated, the ECB shall issue instructions to the NCA of that Member State regarding the collection of fee factors and invoicing of the annual supervisory fee.” The ECB’s statement that it has no influence on the size of national supervisory costs (paragraph 4.3, section 109 and 110) stands in contrast with the organisation of the SSM, which is a system that depends on the cooperation between NCAs and the ECB. For example, the ECB requires the NCAs to assist the ECB when carrying out on-site inspections or prepare decisions. The NCAs have to act on the ECB’s instructions and in turn need to make resources available. Furthermore, article 11 (1) of the consulted text states “The ECB shall communicate with the NCAs before deciding on the final fee level to ensure that supervision remains cost-effective and reasonable for all credit institutions and branches concerned. For this purpose, the ECB shall develop and implement an appropriate channel of communication in cooperation with the NCAs.” The ECB therefore explicitly has a role, jointly with the NCAs, in ensuring that supervisory costs remain in check. Therefore, in our view, to state that the	This amendment would improve the transparency and clearly show how the costs are shared between NCAs and the ECB. Ultimately this would contribute to the accountability of all SSM participants.	Bornemann, Lukas	Publish
6						Bornemann, Lukas	Publish
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