



EUROPEAN CENTRAL BANK

BANKING SUPERVISION

## Amendments to the ECB Regulation on supervisory fees

Launch of a public consultation on  
changes to the ECB Regulation on  
supervisory fees and responses to  
feedback received from the public in  
2017

BANKENTOEZICHT

April 2019

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# Contents

<b>Introduction</b>	<b>2</b>
<b>1 Scope and rationale</b>	<b>3</b>
<b>2 Overview of the responses</b>	<b>5</b>
2.1 Summary	5
2.2 Criteria supporting the analysis of costs and benefits	5
2.3 Summary of main amendments to the framework	6
<b>3 Proposed amendments to the Regulation</b>	<b>8</b>
3.1 Levying supervisory fees ex post, after the closure of the ECB's financial year	8
3.2 Discount on the minimum fee component for smaller LSIs	10
3.3 Reuse of supervisory data for the calculation of the supervisory fee	12
<b>4 Other comments on the supervisory fee framework</b>	<b>16</b>
4.1 Scope	16
4.2 Fee factors	17
4.3 Cost of supervision	20
4.4 Role of the fee debtor	22
4.5 Clarifications on the methodology for the calculation of the individual supervisory fee	23
4.6 Invoicing and payment procedures	25
4.7 Language of the fee notice	26
4.8 Other comments	27
<b>5 Amendments proposed to the Regulation</b>	<b>28</b>

# Introduction

This document is intended to give an overview of the comments received during the public consultation on the review of the ECB Regulation on supervisory fees (ECB/2014/41)<sup>1</sup> (the “Regulation”) in 2017 and to present an assessment of those comments. Furthermore, it explains the amendments to the Regulation proposed by the ECB as a result of that consultation and launches a further public consultation on those proposed amendments.

The proposed amendments concern the ECB supervisory fee framework, without prejudice to the supervisory fees of the national competent authorities. Furthermore, the amendments proposed are without prejudice to changes in the wider legal framework governing the annual supervisory fee levied by the ECB, in particular Council Regulation (EU) No 1024/2013<sup>2</sup> (the Single Supervisory Mechanism (SSM) Regulation). Therefore, this document has no interpretative value and is not legally binding.

Comments are only expected on Part 5 of the document, namely the draft ECB Regulation amending the ECB Regulation on supervisory fees.

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<sup>1</sup> Regulation (EU) No 1163/2014 of the European Central Bank of 22 October 2014 on supervisory fees (ECB/2014/41) (OJ L 311, 31.10.2014, p. 23).

<sup>2</sup> Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

# 1 Scope and rationale

1. Article 30 of the SSM Regulation provides that “the ECB shall levy an annual supervisory fee on credit institutions established in the participating Member States and branches established in a participating Member State by a credit institution established in a non-participating Member State”.
2. The fee levied on a supervised entity is calculated in accordance with the arrangements established by the European Central Bank (ECB) in the Regulation.
3. Article 17 of the Regulation requires the ECB to conduct a review of the Regulation, in particular regarding the methodology and criteria for calculating the annual supervisory fees to be levied on each supervised entity and group, by 2017. On 2 June 2017 the ECB launched a public consultation to gather feedback and assess possible improvements. That public consultation ended on 20 July 2017.
4. The review focused on the methodology and criteria for calculating the annual supervisory fees to be levied on each supervised entity and group. The general provisions on the determination of expenditure incurred by the ECB in relation to the conduct of its supervisory tasks are required by Article 30(1) of the SSM Regulation and hence do not fall within the scope of the review.
5. Following the closure of the consultation, the ECB analysed all the comments received. This document contains the assessment of those comments. In the following sections and for each topic, short summaries of the comments precede the ECB’s assessment. For ease of understanding, references to specific provisions of the Regulation are based on the current Regulation, where applicable.
6. In drafting the amending Regulation and establishing the updated processes, the ECB also took into account the inputs from the national competent authorities (NCAs) via established fora, including the Supervisory Board.
7. During the internal analysis of comments, it became apparent that clarifications to the Regulation would be beneficial. These do not change the substance of the Regulation but enhance the transparency of the legal text.
8. While the methodology and the criteria for calculating the annual supervisory fees were generally supported, some changes were requested. In response to this, and having conducted a cost-benefit analysis, the ECB proposes the methodological amendments to the Regulation described in Part 3. The draft ECB Regulation amending the Regulation is available in Part 5. This document launches an open public consultation on the specific amendments proposed in Part 5.

9. It is expected that the amendments to the Regulation will enter into force for the calculation of the annual supervisory fees for the 2020 fee period. For the calculation of the supervisory fees for 2019 the ECB will follow the current calculation methodology and procedures.
10. Non-legislative changes related to the operationalisation of the processes which do not require an update of the methodology or the legal act are explained in Part 4. For the implementation of those that were accepted, the ECB is following a staggered approach, under which they will come into effect over successive fee cycles.

## 2 Overview of the responses

### 2.1 Summary

11. In the public consultation conducted from 2 June 2017 to 20 July 2017, a total of 13 submissions were received, comprising 73 comments. This represents a significant reduction in the number of submissions and individual comments compared to the public consultation that took place in 2014. Responses were submitted by eight banking associations, four supervised entities or groups and one other market participant. Although the general provisions on the determination of the expenditure incurred by the ECB for the conduct of supervisory tasks are outside the scope of the review, comments related to this topic were also received.
12. The comments of the respondents who agreed to have their feedback published are available on the [ECB Banking Supervision](#) website.

### 2.2 Criteria supporting the analysis of costs and benefits

13. **The cost-benefit analysis was performed using 2016, 2017 and 2018 supervisory fee data.** The estimates provided throughout this document are based on 2018 data and are subject to changes in the (i) total annual fee to be levied, (ii) the number of fee debtors, (iii) the applicable amounts of total assets and total risk exposure, and (iv) changes in each entity's own fee factors.
14. The evaluation criteria are reiterated below:
  - (a) **Meeting legal requirements:** In establishing the fee arrangements, the ECB implemented the provisions of the SSM Regulation setting out the main parameters of the annual supervisory fee. Compliance with the SSM Regulation and other relevant EU law must continue to be ensured.
  - (b) **Impact of the fee allocation:** In assessing the potential measures, two points were considered in particular: (i) the number of supervised entities and groups directly impacted by the provision analysed, and (ii) the impact on the distribution of costs among other entities within the same category.
  - (c) **Administrative impact on supervised entities and groups:** Costs arising from a potential additional administrative burden and the avoidance of unnecessary duplication in data reporting were taken into account.
  - (d) **Limiting the volatility of the annual fee:** The extent to which stability for the supervised entities and groups is ensured to minimise unexpected variations in the annual supervisory fee was assessed.

- (e) **Financial cost to the ECB:** The additional effort required by the ECB to implement and maintain the annual supervisory fee mechanism was considered, bearing in mind that additional costs to the ECB increase the supervisory fee to be levied.

## 2.3 Summary of main amendments to the framework

15. The ECB carried out an analysis of the costs and benefits to be expected from the implementation of the comments received, considering a predefined set of criteria set out in the [consultation document](#) that launched the public consultation in 2017. On the basis of this analysis, amendments to the Regulation are being proposed. They address specific matters in the fee framework, while continuing to ensure that the core principles of simplicity, fairness and proportionality are maintained.
16. Since the consultation, the ECB has implemented quick wins by updating the dedicated Supervisory fees section of the ECB Banking Supervision website with a focus on (i) the provision of tools for better estimation of the supervisory fee payable by supervised entities and groups ([Estimate your fee](#)), and (ii) more detailed content explaining the calculation of the total amount of annual fees and its split between significant institutions (SIs) and less significant institutions (LSIs) ([Total annual fees](#)).
17. The proposed changes can be summarised in the following main themes:
18. **Levying supervisory fees ex post.** With this change, supervisory fees will no longer be levied on the basis of estimated supervisory costs. Instead, the fees will be calculated using the actual annual costs of European banking supervision, i.e. after the closure of the fee period. This change comes at no additional cost to the fee debtors. The benefits for fee debtors stem from (i) the elimination of the carry-forward of surpluses and deficits between the amount estimated to perform supervisory tasks and the actual costs incurred, and (ii) the facilitation of more favourable timing for critical processes, such as the period for comments on the fee factors and the payment of the fees.
19. **Discount on the minimum fee component for smaller less significant institutions.** A discount for LSIs with total assets below €500 million is proposed. Roughly 50% of LSIs would benefit from this discount, effectively reducing their fees by between 7% and 50%. The supervisory fees for LSIs that do not benefit from the discount would moderately increase by approximately 3%.
20. **Reuse of supervisory data available at the ECB.** By abolishing the separate provision of fee factors, efficiency gains are expected for more than 90% of supervised entities and groups. This can be achieved by reusing supervisory data already available at the ECB for the calculation of the supervisory fee payable. As fee factors cannot be derived from the supervisory data for supervised groups that exclude assets of subsidiaries in non-participating

Member States and third countries in the calculation of their fee or for branches that are not required to report supervisory financial information pursuant to Regulation (EU) 2015/534<sup>3</sup>, those institutions will have to continue providing fee factors via a dedicated process.

21. **Language versions of the fee notice.** While the development and maintenance of a new dedicated process will increase the financial costs to the ECB, it is understood that fee debtors will benefit from having the opportunity to receive their fee notices in the languages of the Member States in which the supervised entities and groups are established. Therefore, the ECB intends to issue the fee notices in all official languages of the EU.
22. **Amending the requirement to submit auditor verifications for total assets data of branches.** For the majority of fee-paying branches, which represent around 6% of all fee-paying entities, the obligation to provide auditor verification of total assets data of the branch for the purpose of the ECB supervisory fee is disproportionate to the supervisory fee payable. Therefore, it is proposed to allow fee-paying branches to submit a management letter signing off their fee factor in lieu of an auditor's statement.

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<sup>3</sup> Regulation (EU) 2015/534 of the European Central Bank of 17 March 2015 on reporting of supervisory financial information (ECB/2015/13) (OJ L 86, 31.3.2015, p. 13).



## 3 Proposed amendments to the Regulation

23. In response to the comments, the ECB is proposing amendments to the fee methodology, taking into account the experience gained since its adoption in 2014, the availability of supervisory data, and changes in the population of supervised entities and groups. In considering the changes to the fee arrangements, the ECB has aimed at reinforcing the principle of fairness and proportionality for all supervised entities and groups, as well as strengthening the efficiency and transparency of the ECB supervisory fee framework.
24. During the internal analysis of comments and while drafting the amendment to the Regulation, it became apparent that it would benefit from some editorial clarifications. These do not change the substance of the Regulation, but enhance the transparency of the legal text. For example in the draft amendment, Articles 5, 6 and 9 have been combined, making the text related to the determination of the total annual fee clearer and avoiding repetition.
25. As mentioned in Article 10(3)(b) of the Regulation, the methodology and procedures for the calculation and collection of data on fee factors, total assets (TA) and total risk exposure (TRE), are established by the ECB and published on the ECB Banking Supervision website. Although the Regulation sets out the key variables used to establish the fee factors, Decision (EU) 2015/530<sup>4</sup> (the Fee Factors Decision) lays down more detailed procedures.
26. The ECB will amend the Fee Factors Decision to align it with the amendments to the Regulation. It is envisaged that the amended Fee Factors Decision will be adopted together with the amended Regulation.

### 3.1 Levying supervisory fees ex post, after the closure of the ECB's financial year

27. *Following the internal analysis of comments, the ECB proposes to start levying supervisory fees ex post, i.e. after the closure of the financial period, once the actual costs incurred by the ECB for banking supervision are known. This approach is already established practice in some euro area countries.*
28. Ex post invoicing means that the calculation of individual annual supervisory fees per fee debtor would take place in the first half of the following year, on the basis of actual costs incurred for banking supervision. To maintain transparency

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<sup>4</sup> 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) (OJ L 84, 28.3.2015, p. 67).

and to facilitate the internal budget procedures of the fee debtors, the ECB would continue to publish an estimate of annual supervisory cost. The annual estimate of supervisory costs is intended to be included in the ECB Annual Report on supervisory activities, which is published in March each year, in the chapter on “Reporting on budgetary consumption”.

29. At present, the ECB takes advance payments in respect of the annual supervisory fee, i.e. before the actual annual costs are known, by charging estimated annual costs based on the ECB's budget for supervisory tasks.
30. An adjustment is subsequently made for the difference between the estimated and actual annual costs for the year in the annual supervisory fee of the following year, i.e. it takes into account any surplus or deficit arising from the difference between the costs estimated in April of each year and the actual costs at the year end.
31. The calculation of the annual supervisory fees payable per individual entity usually takes place in the third quarter of each year, and the invoicing takes place in the fourth quarter, taking into account the changes in the supervisory status of the supervised entities registered and validated by the ECB as at the cut-off date (in 2018 the cut-off date was the end of July). For changes validated after that date, an additional fee is levied or a refund is issued on an ad hoc basis.

### Reference date for fee factors

32. Under the new process, the reference date for the applied fee factors (total assets and total risk exposure) would remain 31 December of the year preceding the fee period for which the fee is levied. For example, the fees payable for the 2020 fee period will be determined and invoiced in the first half of 2021 based on fee factors with a reference date of 31 December 2019.
33. This would allow additional time for fee factor data validation based on financial reporting (FINREP) and common reporting (COREP), in particular the processing of resubmissions following auditor verification, where applicable. Keeping the same reference date is consistent with the proposed change to allow the reuse of data available at the ECB for the determination of the fee factors (see Part 3.3).
34. The amended Regulation is expected to enter into force in 2019 and be applied for the 2020 fee period. Thus 2020 would be a transitional year in which no supervisory fees are invoiced to the fee debtors.

### Cut-off date for inclusion of changes to the fee debtor list

35. Changing the timing of the levying of annual fees would permit the supervisory fees to be calculated using a list of fee debtors that takes into account relevant

events that occur in the year for which the fees are levied. Such events may include new authorisations, withdrawals of authorisations, changes in supervisory status, and mergers and acquisitions.

36. Therefore, for the calculation of the fees for 2020 (to be invoiced in 2021), the ECB would take into account changes in the fee debtor population for the majority of the 2020 fee period.
37. A practical benefit of this change would be that the timing of critical processes could be more favourable, e.g. avoiding the peak summer holidays for the fee factor review by supervised entities. The intention is to make the fee factors available on the online portal in the last quarter of the fee period, leaving more time for fee debtors to comment.
38. It should be noted, however, that although ex-post invoicing is expected to reduce the need for recalculation of past fees, recalculations may still take place given the unavoidable time difference between changes in status occurring and the notification of decisions on such changes..
39. It is also proposed to move the deadline for fee debtors to submit their fee debtor notification form and updated contact details from 1 July to 30 September in the respective fee period (for other fee debtor-related comments, please refer to Part 4.4 “Role of the fee debtor”).
40. While the collection of fees will take place ex post, actual costs and income will continue to be recognised in the ECB’s financial statements with reference to the relevant financial year in accordance with the applicable accounting standards.

## 3.2 Discount on the minimum fee component for smaller LSIs

41. *The introduction of a discount on the minimum fee component for smaller LSIs was suggested in the responses to the public consultation. Some respondents suggested that the discount should be applied for LSIs with total assets of €3 billion or less, while others supported a threshold of €500 million. One respondent called for the introduction of a fixed amount to be paid as a minimum fee component. Others suggested that the minimum fee component should be abolished, or calculated without making a distinction between SIs and LSIs.*
42. With the aim of granting additional relief to smaller LSIs, the ECB supports the introduction of a discount on the minimum fee component for LSIs with total assets of €500 million or less.
43. The minimum fee component represents the minimum supervisory effort to be expended on SIs and LSIs which, in turn, justifies the differentiation between the two categories. It is set in Article 10(6) of the Regulation at 10% of the overall fee levy for each of the two categories. Smaller SIs already benefit from

a discount on the minimum fee component, under which, for those entities with total assets of €10 billion or less, the minimum component is halved.

44. Since the establishment of the fee methodology there has been more than a 15% reduction in the number of fee debtors at the highest level of consolidation in the LSI population. The fact that the minimum fee component is calculated using the number of entities in the LSI population as the denominator has led to an inevitable increase in the minimum component payable, owing to a decrease in the total number of fee debtors. Together with the increase in the overall fee, this has led to an increase in the minimum fee component payable of more than 60% between 2015 and 2018.
45. The proposed discount would effectively reduce the fees payable by smaller LSIs by between 7% and nearly 50%. The change would mean that approximately 100 LSIs would pay a fee below €1,100.<sup>5</sup> The number of fee debtors paying fees lower than €2,000 would increase by 320% to nearly 470. The table below provides an example of possible developments in individual fees.

EUR	TA	TRE	Fee for 2018	Estimated fee after discount
Entity A	6,250,000	1,800,000	1,720	880
Entity B	165,000,000	60,000,000	2,970	2,120
Entity C	20,000,000,000	13,000,000,000	213,640	219,530

46. The financial impact on the entities in the LSI population that do not benefit from the discount is expected to be moderate. It is estimated that the supervisory fees for those LSIs would increase by up to 3%, or less than €10,000, based on 2018 data.
47. In its assessment, the ECB has also taken into account the operational efficiency and the low financial cost to the ECB of this change. Because it mirrors the methodology used for SIs, no system developments would be required.
48. The variable fee component for LSIs would be calculated following the same approach as for SIs:
- Once LSIs eligible for the discount have been identified, their minimum fee component will be halved.
  - The variable component for LSIs will be increased by the total amount of the discounts applied to LSIs.

<sup>5</sup> As explained in Part 2.2, the numbers in this section serve only as examples as they are based on 2018 data.

(c) The variable fee component for LSIs will be allocated to LSI fee debtors on the basis of their fee factors.

49. The proposal to introduce the discount on the minimum fee component for LSIs with total assets of €3 billion or less is not considered sustainable. Nearly 90% of the LSIs would fall into this category, leading to an overall increase in the supervisory fee of those toward the upper boundary (i.e. those with total assets close to but below €3 billion) that would exceed the discount applied. Hence the decision to accept the proposal for a threshold of €500 million.
50. The current level of the minimum fee component is 10% of the total amount to be levied for the respective category (SIs or LSIs). It is not considered suitable to determine a fixed value for the minimum fee component, as it would introduce an additional variable in the calculation methodology which would need to be determined on an annual, or at least periodic, basis.

### 3.3 Reuse of supervisory data for the calculation of the supervisory fee

51. *A number of respondents suggested a change in the procedure for the collection of the fee factors by reusing supervisory information from the FINREP and COREP reporting. The facility allowing fee debtors to view their fee factor data on the supervisory fees online portal before they are used to determine the supervisory fees payable was seen as a check that should remain.*
52. In view of the benefits this will bring to the overall collection process, these comments are accepted.
53. Currently, supervised entities and groups submit the value of their TA and TRE to the ECB annually via the NCAs for the determination of the supervisory fee payable.
54. It is proposed to discontinue the dedicated collection of fee factors for the vast majority of fee debtors and instead reuse supervisory data reported to the ECB via the NCAs on the basis of Regulation (EU) No 680/2014<sup>6</sup> and Regulation (EU) 2015/534 for the calculation of supervisory fees.
55. While the change in the fee factors process will reduce the reporting burden for more than 90% of the supervised entities and groups, it is not feasible for:
- (a) supervised groups that exclude assets of subsidiaries established in non-participating Member States<sup>7</sup> for the purpose of calculating their

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<sup>6</sup> Commission Implementing Regulation (EU) No 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council (OJ L 191, 28.6.2014, p. 1).

<sup>7</sup> See recital 77 of the SSM Regulation.

supervisory fee (thereby reducing their supervisory fee payable), as the ECB would not have these data available from other sources;

- (b) fee-paying branches established in participating Member States by credit institutions established in non-participating Member States which are not required to report supervisory financial information pursuant to Regulation (EU) 2015/534. Nonetheless, such branches will also have the possibility to determine their total assets fee factor on the basis of the total value of assets calculated for prudential purposes or as determined on the basis of the most recent audited annual accounts prepared in accordance with International Financial Reporting Standards (IFRS) or applicable national accounting laws or as determined in accordance with Article 51(5) of Regulation (EU) No 468/2014 (ECB/2014/17)<sup>8</sup>.

These two categories would need to continue submitting their fee factor data separately to the ECB via their NCAs in line with the current approach. The timelines for the submission of fee factors data to the ECB via the NCAs will be established in the updated Fee Factors Decision.

- 56. The workload at the ECB is expected to increase, as additional measures to implement new procedures and ensure data quality will be required. However, the new process would eliminate a verification step currently in place in which figures provided by fee-paying entities are checked against those already available at NCAs and the ECB. This verification step uncovers quality issues, resulting in a significant number of resubmissions of supervisory data to the ECB.
- 57. Furthermore the success of this new process is highly dependent on the compliance of the supervised entities and groups with the provisions of Article 3(4) and (5) of Regulation (EU) No 680/2014, under which audited figures and other corrections have to be submitted to the competent authorities in a timely manner.
- 58. The respondents see the facility to check the fee factors applied for the calculation of the supervisory fee, as provided for in Article 4(2) of the Fee Factors Decision, as a valuable measure and this will remain in the updated collection process. Its duration will be extended to allow fee debtors extra time to comment on their fee factors, should they consider them incorrect.
- 59. The ECB relies on a single reference date (31 December of the previous fee period) for the fee factors, as specified in Article 10 of the Regulation. As the ECB envisages the reuse of existing supervisory data, and in view of the amended timing of the supervisory fee invoicing (see Part 3.1), it is also proposed to extend the fee factors process to include fee debtors established on or after the reference date.

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<sup>8</sup> Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17) (OJ L 141, 14.5.2014, p. 1).

60. Under the current methodology, the ECB calculates only a minimum fee component for such entities, owing to the unavailability of data as at the reference date. For changes that occur after the reference date of 31 December, but before 1 October of the fee period, the ECB proposes to determine the variable fee component on the basis of the next available quarterly supervisory reporting data. This change would affect a limited number of newly established fee debtors (based on past experience, this is expected to be in the region of 20 entities).
61. For example, under the current procedure, if a newly established credit institution at the highest level of consolidation within participating Member States were authorised on 10 February 2019, no fee factors would be available, as the institution was not yet established on the reference date (i.e. 31 December 2018). Therefore, the annual supervisory fee for the 2019 fee period for this entity would be calculated using only the minimum fee component for the number of full months within the fee period for which the institution is a supervised entity,<sup>9</sup> i.e. the ten months from March 2019 to December 2019 inclusive.
62. Under the proposed change, in addition to the minimum fee component, the ECB would take into account the TA and TRE reported by the institution in the supervisory reporting at the end of March 2019 and use them for the calculation of a variable fee component for all the months for which a supervisory fee is payable by the fee debtor (in this example, the ten months from March 2019 to December 2019). The fee debtor would then enter the standard process as of 2020.
63. The same methodology will apply in the case of a new branch established in a participating Member States by a credit institution established in a non-participating Member State which is required to report supervisory financial information pursuant to Regulation (EU) 2015/534. Branches that are not required to report supervisory financial information pursuant to Regulation (EU) 2015/534 shall submit these data to the ECB via NCAs in accordance with procedures established by the ECB.
64. For entities established after the 1 October, the supervisory fee charged will consist of a minimum fee component for the number of full months supervised.
65. The changes to the process for the determination and the collection of the fee factors will be implemented by amending the Fee Factors Decision.
66. *One respondent suggested extending the period subject to supervisory fees to include the month in which supervision ceases.*
67. Currently, when a supervised entity ceases to exist (e.g. due to the withdrawal of its licence or the closure of a supervised branch), the supervisory fee is

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<sup>9</sup> See Article 7(1) of the Regulation.

calculated by reference to the number of full months in which the supervised entity or group was supervised.

68. This is similar to the approach applied in the case of newly authorised fee debtors, under which the ECB charges a fee for each full month of supervision. As this approach is considered fair and proportionate, the suggestion is not accepted.



## 4 Other comments on the supervisory fee framework

69. The following sections contain the ECB's evaluation of comments received in relation to feeing processes which do not require an update of the Regulation.

### 4.1 Scope

70. *One respondent expressed the view that the ECB should not levy supervisory fees on entities that are not under its direct supervision (i.e. LSIs). It was highlighted that these entities already pay annual supervisory fees to their NCAs.*
71. The ECB has been given the task of indirect supervision of LSIs, which entails costs. Therefore, these entities should be charged supervisory fees.
72. Article 30 of the SSM Regulation provides that the ECB shall levy an annual supervisory fee to cover the expenditure incurred in relation to the tasks conferred on it under Articles 4 to 6 of the SSM Regulation. These articles also cover the indirect supervision of LSIs.
73. In addition, recital 77 of the SSM Regulation clarifies that, in order to ensure the ECB's independence from undue influences, the cost of supervision should be borne by the entities subject to it. Under Article 6 of the SSM Regulation, the ECB has been given responsibility for the effective and consistent functioning of the SSM and the exercise of oversight over the functioning of the mechanism, based on the distribution of responsibilities between the ECB and NCAs. Furthermore, the ECB has been given the task of macroprudential supervision in respect of SIs and LSIs. Accordingly, fees are also levied on LSIs which are indirectly supervised by the ECB and cover expenditure incurred by the ECB in relation to the tasks conferred on it by the SSM Regulation.
74. According to Article 30(5) of the SSM Regulation, the ECB's supervisory fees are without prejudice to the right of NCAs to levy fees in accordance with national law.
75. *Another respondent suggested including financial holding companies and mixed financial holding companies within the scope of the Regulation. The same respondent called for clarification on the aspect that the annual supervisory fees are calculated by the ECB only at the highest level of consolidation.*
76. According to Article 30(1) of the SSM Regulation, the ECB may levy an annual supervisory fee only on credit institutions established in participating Member States and branches established in participating Member States by credit institutions established in non-participating Member States.

77. The ECB is obliged by Article 30(3) of the SSM Regulation to calculate the fee at the highest level of consolidation within participating Member States. The highest level of consolidation within participating Member States also includes financial and mixed financial holding companies established in participating Member States.

## 4.2 Fee factors

### Exclusion of the assets of entities established in non-participating Member States and third countries

78. *One respondent suggested an amendment of the Regulation in order not to allow the reduction of the annual fee by shifting risk-weighted assets across national borders either temporarily on the reporting date or permanently.*
79. In order to maintain simplicity in the reporting of fee factors and limit the administrative burden on fee-paying entities, this suggestion is not supported.
80. Article 30(3) of the SSM Regulation establishes that the fees shall be calculated at the highest level of consolidation within participating Member States. Furthermore, recital 77 of the SSM Regulation specifies that the calculation of fees should exclude any subsidiaries established in non-participating Member States. Accordingly, as a general rule supervised groups should exclude assets of subsidiaries located in non-participating Member States and third countries.<sup>10</sup> However, the costs of producing the necessary data may be high. For this reason, supervised groups are given the option to pay a fee calculated on the basis of data provided at the highest level of consolidation within the participating Member States, including subsidiaries established in non-participating Member States, even if this calculation might result in a higher fee.
81. It is noted that mitigating the distortion of fee factors resulting from the shifting of assets across national borders would be possible but would come at additional cost, either in the form of an additional reporting burden on the fee-paying entities (more frequent reporting, or more complex reporting based on a holding period instead of point-in-time reporting, and more complex procedures for verifying the data), or in the form of restrictions to the current policy allowing the exclusion of subsidiaries in non-participating Member States and third countries, which would not be consistent with recital 77 of the SSM Regulation.
82. *Another respondent suggested that assets of branches established in non-participating Member States and third countries could be excluded for the calculation of the supervisory fee in the same way as those of subsidiaries established in such countries.*

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<sup>10</sup> Article 10(3)(c) of the Regulation.

83. Article 30(3) of the SSM Regulation establishes that the fees shall be calculated at the highest level of consolidation within participating Member States. Accordingly, assets of branches established in non-participating Member States and third countries by credit institutions established in participating Member States need to be included for the calculation of supervisory fees.

### Determination of fee factors

84. *Several respondents made suggestions regarding the methodology for the determination of fee factors. The suggestions were to:*
- (a) *include additional fee factors for the determination of the annual supervisory fee, such as the number of jurisdictions in which the entity is active, the number of legal entities within a consolidated group, or differentiated efforts depending on the prevailing risk category expressed in the capital charge;*
  - (b) *exclude promotional loans from TA;*
  - (c) *calculate TRE under the standardised method (as opposed to the internal model);*
  - (d) *adjust the TRE fee factor by a coefficient determined by the ratio of the entity's P2R+P2G<sup>11</sup> rate to the average P2R+P2G rate of the relevant group.*
85. A common characteristic of these suggestions is that they raise issues concerning data availability, reliability or objectivity and are therefore not accepted.
86. The SSM Regulation specifies that supervisory fees must be based on objective criteria related to a supervised entity's importance and risk profile, including its risk-weighted assets. When selecting the best measures for these criteria, the ECB has sought to minimise the administrative and operational burden on all supervised entities. The measures chosen of TA and TRE are already part of the supervisory reporting framework, are well defined and, for the vast majority of supervised entities, audited.
87. Deviating from these robust measures would potentially introduce high implementation costs for both the ECB and fee debtors, such as data verification by independent third parties.
88. Moreover, the suggested changes would limit the potential for the ECB to implement the streamlining of the data collection process (explained in Part 3.3), as for some measures a dedicated reporting framework would be required.

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<sup>11</sup> P2R: Pillar 2 requirement; P2G: Pillar 2 guidance.

## Fee factors for fee-paying branches

89. *A respondent suggested that the TRE should be required from fee-paying branches and considered in the calculation of the annual supervisory fee. A few respondents suggested amending the weight of fee factor TA for fee-paying branches to 100%.*
90. These suggestions are not supported, as it is assessed that the general unavailability of data and the substantial financial costs to estimate the data would be disproportionate when measured against the objective criteria of the importance and risk profile of the entities concerned.
91. The TRE fee factor is generally not available for branches. Therefore it would be an overly burdensome requirement for those entities to estimate a TRE value. Moreover, as these entities are not required to provide these data under the harmonised reporting statistical data frameworks, it would also be difficult and costly for the ECB to validate the data.
92. In 2018 the ECB levied fees on fewer than 200 fee-paying branches. While they are a sizeable minority, it should be acknowledged that the vast majority of them are LSIs with total assets below €3 billion. The increase in the costs to the fee-paying branches and the ECB associated with these suggestions is considered disproportionate in view of the overall annual fees collected from these entities, which amounted to approximately 1% of the total collected in 2018.
93. The use of TA weighted at 50% as a single fee factor for branches is considered to be in line with the proportionality of supervisory activities.
94. *A suggestion was received for fee-paying branches to be generally excluded from the mandatory submission of an auditor's verification of their financial accounts, as such statistical data on branches are typically not required to be audited for other accounting or reporting purposes. The respondent explained that the cost of obtaining such verification often exceeded the fee levied.*
95. In accordance with the principle that the costs of providing the required data should not be disproportionate to the fees levied, the ECB proposes to amend this requirement in the updated Fee Factors Decision. Fee-paying branches would be required to submit management letters signing off the total assets to be used for the calculation of the annual supervisory fee. Such management letters will be required from all fee-paying branches, irrespective of whether the total assets fee factor has been determined on the basis of total value of assets reported for prudential purposes, most recent annual accounts prepared in accordance with IFRS or applicable national accounting laws or the total value of assets as determined in accordance with Article 51(5) of Regulation (EU) No 468/2014 (ECB/2014/17).

96. Under the current legal framework, fee-paying branches are obliged to submit their TA on the basis of statistical data reported pursuant to Regulation (EU) No 1071/2013<sup>12</sup>, under which the reported data are required to be certified by an auditor carrying out appropriate verification of the branch's financial accounts.
97. It is considered that with this amended procedure the integrity of the fee calculation process will continue to be ensured while contributing to the fairness of the supervisory framework.

### 4.3 Cost of supervision

98. The recovery of expenditure incurred by the ECB for the conduct of its supervisory tasks is provided for in Article 30 of the SSM Regulation. Although the cost of supervision was outside the scope of the public consultation conducted in 2017, the ECB received a number of comments in this respect. As the review of the Regulation is not meant to change the SSM Regulation, any proposed amendments need to be consistent with the provisions of the SSM Regulation.
99. *A few respondents suggested the establishment of a committee or other oversight structure to monitor the amount of the supervisory fees and the budget of ECB Banking Supervision. In parallel, a few respondents called for moderation of the costs of the ECB and limiting the reliance on external consultants.*
100. The SSM Regulation sets out in detail the ECB's reporting, auditing and communication obligations in respect of supervisory fees and explicitly mentions concerns about the independence of its supervisory function<sup>13</sup> when it comes to resources. Recital 77 of the SSM Regulation reiterates the importance of independence, stating that the ECB's resources should be obtained in a way that ensures the ECB's independence from undue influences by NCAs and market participants.
101. The ECB is fully committed to the prudent, effective and efficient use of its resources. The established governance structure was set out in Part D.3.1 of the [feedback statement](#) published after the consultation on the draft Regulation in 2014.
102. *One respondent suggested that each year the ECB should publish detailed information on the use of its resources, the associated costs and the attribution of those costs to SIs and LSIs. Other respondents called for a mid-term forecast of the budget of the ECB.*

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<sup>12</sup> Regulation (EU) No 1071/2013 of the European Central Bank of 24 September 2013 concerning the balance sheet of the monetary financial institutions sector (recast) (ECB/2013/33) (OJ L 297, 7.11.2013, p. 1).

<sup>13</sup> Recitals 75 and 77 of the SSM Regulation.

103. The ECB partially accepts these comments.
104. In response to the feedback received in the 2017 consultation regarding transparency on the ECB's use of supervisory resources and the split of the total fee between SIs and LSIs, the ECB has further strengthened its reporting on budgetary and feeing-related aspects in the [ECB Annual Report on supervisory activities](#) and on the [ECB Banking Supervision website](#).
105. These measures include a more detailed breakdown of the costs underlying the supervisory fees and explanations of the main drivers of cost increases on the [Total annual fees](#) page of the website. New detailed content on the supervisory costs was also introduced in the [ECB Annual Report on supervisory activities](#). The costs are reported per supervisory activity, showing year-on-year development. While the content of the website is updated in parallel with the publication of the annual decision on the total amount to be levied for the current fee period at the end of April, the ECB Annual Report on supervisory activities, which is published in March of each year, focuses on the actual figures for the past fee period. Together, these two channels provide a comprehensive picture of the planned and actual costs of European banking supervision, thereby facilitating better understanding among supervised entities and groups.
106. The ECB shares the view that a mid-term forecast of the budget would be helpful in the context of feeing procedures. Although expenditure on regular tasks has stabilised, the current situation is still characterised by extraordinary tasks (e.g. Targeted Review of Internal Models) and unforeseen developments (e.g. Brexit). Accordingly, the provision of a mid-term forecast will be kept under consideration for future reporting.
107. In this context, the ECB's track record on providing reliable estimates should also be considered. For example, the projections outlined in the [public consultation document in May 2014](#) were confirmed by actual developments (e.g. that the split between SIs and LSIs would be around 85% to 15% and that the average fees would be between €0.7 million and €2.0 million for SIs and between €2,000 and €7,000 for LSIs).
108. If the proposal to move to ex post invoicing of supervisory fees (Part 3.1) is implemented, the ECB will continue publishing an estimate of the total annual costs each year in the ECB Annual Report on supervisory activities. While the annual supervisory fees payable are proposed to be allocated in the first half of the following year on the basis of the actual costs, this estimate will serve as a basis for the fee debtors to calculate their financial provisions following the steps set out on the [Estimate your fee](#) page of the ECB Banking Supervision website.
109. *One respondent expressed the expectation of a reduction in supervisory fees at the national level, since some tasks had been transferred from the NCAs to the ECB.*

110. Article 30(5) of the SSM Regulation states that the provisions on supervisory fees are without prejudice to the right of NCAs to levy fees. Therefore, the ECB has no influence on the size of national supervisory fees or on which supervisory costs are charged to supervised entities and groups at the national level.
111. *Two respondents called for clarification about the inclusion of the non-collectible fees for previous fee periods in the calculation of the annual costs. A view was expressed that these fees should not increase the supervisory fees of all institutions.*
112. ECB is required to cover expenditure incurred in relation to its supervisory tasks as outlined in Article 30(1) of the SSM Regulation. Excluding non-collectible fees would not be consistent with that provision.
113. The ECB is committed to ensuring a sound invoicing procedure and has a number of tools at its disposal to follow up non-payment. These include a thorough dunning procedure and a legal follow-up if collection is unsuccessful. Late payment interest accrues on a daily basis from the due date.
114. The ECB is generally successful in collecting its supervisory fees, with collection rates of over 99%. So far only small amounts are outstanding and the related follow-up procedures have not yet been exhausted. The income receivable from late payment interest reduces the overall fee to be levied in a given year.
115. Fees are considered not collectible in line with applicable accounting standards. Thus fees that have not been paid by supervised entities and groups will be considered not collectible at the time they are written off. The amount written off will be added to the next annual supervisory fee, as provided for in Article 5(3)(a) of the Regulation. If the fee is subsequently paid, the amount received will be used to reduce the annual supervisory fee in the subsequent year.

#### 4.4 Role of the fee debtor

116. *A few respondents suggested a clarification in Article 4 of the Regulation with respect to the nomination of the fee debtor by the ECB. Although the right of the ECB to determine a fee debtor is understood, the respondents propose that this right be limited to cases where the group of fee-paying entities has failed to nominate the fee debtor.*
117. The ECB needs to have the right to unilaterally determine the fee debtor in exceptional cases. Examples of exceptions include, but are not limited to, the fee debtor failing to meet its obligations to the ECB, and the group failing to nominate a fee debtor on time. Therefore no change is proposed to Article 4. The fee debtor is individually responsible for paying the supervisory fee for all

the supervised entities of the group, and there is no joint liability of supervised entities within the group in respect of the obligation to pay the supervisory fee.

118. The ECB exercises this right judiciously. To date, it has been used only twice, for the calculation of supervisory fees in 2015 when the entities concerned had failed to nominate a fee debtor.
119. *Two respondents call for clarification on when the simplified fee debtor nomination form should be used, as opposed to the standard fee debtor nomination form.*
120. The simplified fee debtor notification form will no longer be needed under the proposed fee debtor nomination procedure.
121. All fee-paying institutions that are part of a supervised group must nominate a single fee-paying entity that will act as the fee debtor on behalf of the whole group. Groups nominate the fee debtor by sending a standard fee debtor notification form to the ECB by post. It is only valid if:
- (a) it states the name of the group covered by the notification;
  - (b) it is signed by the fee debtor on behalf of all supervised entities of the group;
  - (c) it reaches the ECB by 30 September of the fee period at the latest (in order to be taken into account for the issuance of the fee notice in respect of that fee period).
122. Before the commencement of each supervisory fees cycle, supervised groups are required to submit (i) any changes in the nominated fee debtor, and (ii) where applicable the explicit consent of newly joined subsidiaries to the nominated fee debtor. Under the current provisions they should do this by 1 July of each year at the latest. To be consistent with the move to ex post invoicing, it is proposed that this deadline be moved to 30 September of each year.
123. Article 13(1) of the Regulation stipulates that the fee debtor is responsible for keeping the contact details for the issuance of the fee notice up to date and shall communicate to the ECB any changes in these details .

## 4.5 Clarifications on the methodology for the calculation of the individual supervisory fee

### Minimum fee component

124. *A few respondents suggested that, for the estimation of the minimum fee component by the supervised entities, the ECB should clarify the reference date for the number of fee debtors included in the calculation.*



125. The average number of fee debtors considered in the supervisory fee calculation has already been made available and can be found on the [Estimate your fee](#) page of the ECB Banking Supervision website.
126. Fee debtors can follow the algorithm available on the page to estimate their fee more accurately. For convenience, sample equations are also provided in which entities can substitute their own fee factor data to estimate their supervisory fee payable. The ECB intends to refresh the data on the page each year around the time the annual fee notice is issued to facilitate the fee debtors' estimations.
127. The ECB calculates the supervisory fee on a monthly basis to take into account changes in the population of supervised entities and groups as a result of newly authorised institutions, withdrawals of licences and changes in supervisory status from significant to less significant or vice versa.
128. However, the ECB advises caution; no fee estimate can be exact, because the number of supervised entities and groups and, accordingly, the number of fee debtors is continually changing. In addition, retroactive corrections could be made to supervisory fees if a bank's situation changes after the cut-off date for the annual calculation of the supervisory fees.
129. *One respondent suggested that the ECB should publish a downloadable Excel file containing key information for all market participants, such as name, supervisory status, total assets and risk-weighted assets.*
130. For confidentiality reasons the ECB is not in a position to publish data on individual banks. It is, however, noted that the comment was made in the context of improving the estimation of the supervisory fee payable, which the EC has addressed in the measures mentioned above.

## Variable fee component

131. *A few respondents called for clarification on whether the discount for smaller SIs with total assets below €10 billion implied an increase in the variable fee component.*
132. In response to these comments, the ECB has included an explanation on the [Estimate your fee](#) page of the ECB Banking Supervision website.
133. It is confirmed that the amount of the discount for smaller SIs is added to the amount to be recovered via the variable fee component. This follows from Article 10(6)(c) of the Regulation, which states: "The variable fee component is the difference between the total amount of the annual supervisory fees for each category of supervised entities [...] and the minimum fee component for the same category."
134. The technical steps followed in the process are also applied to the discount on the minimum fee component for smaller LSIs, as specified in Part 3.2.

## Other

135. *One respondent suggested considering dedicated fees for specific/non-recurrent tasks and distributing only the remaining cost among all supervised entities.*
136. Article 30(3) of the SSM Regulation clearly specifies the objective criteria on which the supervisory fees are based, namely importance and risk profile, including risk-weighted assets.
137. In addition, defining a list of tasks for which specific fees could apply, maintaining a complex costing methodology and establishing a separate invoicing process to cater for such fees would involve a considerable administrative burden, the costs of which would need to be added to the total amount to be levied.

## 4.6 Invoicing and payment procedures

138. *One respondent called for a reduction in the interest rate on late payments from, currently, the ECB's main refinancing rate plus 8 percentage points to a fixed interest rate of no more than 6% or, preferably, a variable rate with an add-on of 2%. Another respondent suggested increasing the payment terms for supervisory fees from 35 days to 45 days.*
139. These comments are not supported.
140. The current rate, i.e. the ECB's main refinancing rate plus 8 percentage points, is based on Directive 2011/7/EU<sup>14</sup>, which specifies that statutory interest payable shall be equal to the sum of the reference rate and at least 8 percentage points. While it is acknowledged that the Directive is aimed at combating late payments in commercial transactions and therefore not directly applicable to the collection of supervisory fees, it is considered an appropriate guide for determining the late payment interest rate in the Regulation.
141. It should also be borne in mind that interest received on late payments is used to reduce the annual supervisory fees levied in subsequent periods.
142. As outlined in the [feedback statement](#) to the consultation on the initial draft of the Regulation in 2014, the ECB considers 30 days sufficient for each bank to process and pay the invoices. Five additional days have been granted to ensure that the fee debtors have the full 30 days to process payments. Bearing in mind that the invoices are issued via an online portal and notified by email, the bulk of the five additional days can be used for the fee debtor's internal processes. Experience also shows that only a small number of banks have difficulties in

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<sup>14</sup> Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions Text with EEA relevance (OJ L 48, 23.2.2011 p. 1).

adhering to this deadline. Therefore, the suggestion to allow 45 days is rejected.

143. *Another set of comments suggested the inclusion of additional information in the fee notice with a view to improving understanding of the levied supervisory fee payable.*

144. This comment is partially accepted.

145. As regards the means for transmitting additional information, it is believed that the ECB Banking Supervision website is the best channel for reaching out to the public. Consequently, the ECB has enhanced the information available on the website so that the supervisory fee can be estimated more accurately.

## 4.7 Language of the fee notice

146. *One respondent called for the fee notice to be issued in the language of the Member State in which the supervised entity is established, acknowledging that the ECB already provides translated versions of the fee notice on the ECB Banking Supervision website.*

147. This comment is supported.

148. The ECB currently issues fee-related correspondence in English, providing convenience translations of all mass communications to the supervised entities and groups, including the fee notice.

149. The provision of the fee notice in English can be burdensome for smaller LSIs with limited staff resources. Taking this into account, the ECB is considering a solution to facilitate the issuance of the fee notice in all official languages of the EU.

150. A change to the current practice would increase the operational burden on the ECB (for the required one-off IT and business developments and the ongoing maintenance effort). Fee debtors will have the opportunity to express their language preferences via a dedicated process. The ECB will issue a special communication to fee debtors to initiate the collection of preferences, and to provide information on the details and the operational aspects of the updated process.

151. The new process is expected to enter into operation at the same time as the ex post invoicing, i.e. for the fee notices for 2020 (invoiced in 2021).

## 4.8 Other comments

152. *Two respondents called for clarification that income received from the penalties imposed by the ECB pursuant to this Regulation would only go into the budget of ECB Banking Supervision, and not into the general ECB budget.*
153. The stance of the ECB concerning this matter has remained unchanged since 2014. The inclusion of income received from pecuniary sanctions in the budget of ECB Banking Supervision is considered inappropriate for the following reasons:
- (a) The SSM Regulation does not provide a legal basis to reduce fees by income arising from sanctions. Article 30(1) of the SSM Regulation specifies that expenditure incurred must be recovered through fees, but does not provide for a reduction on account of pecuniary income received.
  - (b) The purpose of pecuniary sanctions is to penalise supervised entities and groups following a breach of supervisory obligations. Reducing fees by the income derived from sanctions would mean that supervised entities and groups (including those on which sanctions are imposed) obtain a benefit from wrongdoing.
  - (c) The ECB has agreed on equal treatment for damages paid by the ECB and income derived from sanctions, meaning that neither damages payable to third parties nor sanctions payable to the ECB will influence the supervisory fee.
154. *A few other respondents called for simultaneous publication of feeing-related information on all the different language versions of the ECB Banking Supervision website.*
155. The ECB agrees and does endeavour to publish all language versions simultaneously. The feeing section of the ECB Banking Supervision website is an essential tool to communicate relevant and up-to-date information to fee debtors. The content of the section is updated on a regular basis, taking into account the questions received from supervised entities and groups via the dedicated mailbox and the supervisory fees helpline.



EUROPEAN CENTRAL BANK

EUROSYSTEM

EN

ECB-PUBLIC

**REGULATION (EU) YYYY/[XX\*] OF THE EUROPEAN CENTRAL BANK**  
**of [date Month XXXX]**  
**amending Regulation (EU) No 1163/2014 on supervisory fees**  
**[(ECB/YYYY/XX)]**

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions<sup>1</sup>, and in particular the second subparagraph of Article 4(3), Article 30 and the second subparagraph of Article 33(2) thereof,

Having regard to the public consultation and to the analysis carried out in accordance with Article 30(2) of Regulation (EU) No 1024/2013,

Whereas:

Regulation (EU) No 1163/2014 of the European Central Bank (ECB/2014/41)<sup>2</sup> lays down the arrangements for calculating the total amount of the annual supervisory fees to be levied in respect of supervised entities and supervised groups; the methodology and criteria for calculating the annual supervisory fee to be borne by each supervised entity and each supervised group; and the procedure for the collection by the ECB of the annual supervisory fees.

- (1) Article 17(2) of Regulation (EU) No 1163/2014 (ECB/2014/41) requires the ECB to conduct a review of that Regulation, in particular regarding the methodology and criteria for calculating the annual supervisory fees to be levied on each supervised entity and supervised group, by 2017.
- (2) On 2 June 2017 the ECB launched an open public consultation aimed at collecting comments from interested parties with a view to assessing possible improvements to Regulation (EU) No 1163/2014 (ECB/2014/41). The public consultation ended on 20 July 2017.
- (3) Taking into account the responses received, the ECB reviewed Regulation (EU) No 1163/2014 (ECB/2014/41) and concluded that the Regulation should be amended.

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<sup>1</sup> OJ L 287, 29.10.2013, p. 63.

<sup>2</sup> Regulation (EU) No 1163/2014 of the European Central Bank of 22 October 2014 on supervisory fees (ECB/2014/41) (OJ L 311, 31.10.2014, p. 23).

- (4) In particular, the ECB has decided to no longer require advance payment of the annual supervisory fees. The fees should be levied only after the end of the relevant fee period when the actual annual costs have been determined. The reference date for the fee factors should, as a general rule, remain 31 December of the preceding fee period to allow sufficient time for fee factor validation.
- (5) For the vast majority of fee debtors, the ECB already receives the information on total assets and total risk exposures pursuant to Commission Implementing Regulation (EU) No 680/2014<sup>3</sup> and Regulation (EU) 2015/534 of the European Central Bank (ECB/2015/13)<sup>4</sup>. This information is readily available for use in the calculation of their annual supervisory fee. The dedicated collection of the fee factors for such fee debtors should therefore cease.
- (6) Furthermore, the ECB has decided to reduce the supervisory fees to be paid by less significant supervised entities and less significant supervised groups with total assets of EUR 500 million or less. To this end, the minimum fee component for these supervised entities and supervised groups should be halved.
- (7) Moreover, experience gained with the application of Regulation (EU) No 1163/2014 (ECB/2014/41) since 2014 has shown that some clarifications and technical amendments to that Regulation are appropriate.
- (8) It is necessary to provide for transitional arrangements in respect of the 2020 fee period, since that year will be the first fee period for which the ECB no longer requires advance payment of the annual supervisory fee.
- (9) Therefore, Regulation (EU) No 1163/2014 (ECB/2014/41) should be amended accordingly,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

#### **Amendments**

Regulation (EU) No 1163/2014 (ECB/2014/41) is amended as follows:

1. Article 2 is amended as follows:
  - (a) point 9 is deleted;
  - (b) points 12 and 13 are replaced by the following:
    - '12. "total assets" means:
      - a) for a supervised group, the total value of assets as determined in accordance with Article 51 of Regulation (EU) No 468/2014 (ECB/2014/17), excluding

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<sup>3</sup> Commission Implementing Regulation (EU) No 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council (OJ L 191, 28.6.2014, p. 1).

<sup>4</sup> Regulation (EU) 2015/534 of the European Central Bank of 17 March 2015 on reporting of supervisory financial information (ECB/2015/13) (OJ L 86, 31.3.2015, p. 13).

assets of subsidiaries established in non-participating Member States and third countries unless otherwise decided by a supervised group pursuant to Article 10(3)(c);

- b) for a fee-paying branch, the total value of assets as reported for prudential purposes. Where the total value of assets is not required to be reported for prudential purposes, total assets means the total value of assets as determined on the basis of the most recent audited annual accounts prepared in accordance with International Financial Reporting Standards (IFRS) as applicable within the Union in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council (\*) and, if those annual accounts are not available, the annual accounts prepared in accordance with applicable national accounting laws. For fee-paying branches that do not prepare annual accounts, total assets means the total value of assets as determined in accordance with Article 51(5) of Regulation (EU) No 468/2014 (ECB/2014/17);
- c) for two or more fee-paying branches that are deemed to be one branch in accordance with Article 3(3), the sum of the total value of assets as determined for each fee-paying branch respectively;
- d) in all other cases, the total value of assets as determined in accordance with Article 51 of Regulation (EU) No 468/2014 (ECB/2014/17);

\* Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p. 1).

13. “total risk exposure” means:

- a) for a supervised group, the amount as determined at the highest level of consolidation within the participating Member States and calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 of the European Parliament and of the Council (\*\*), excluding the risk exposure amount of subsidiaries established in non-participating Member States and third countries unless otherwise decided by a supervised group pursuant to Article 10(3)(c);
- b) for a fee-paying branch and two or more fee-paying branches that are deemed to be one branch in accordance with Article 3(3), zero;
- c) in all other cases, the amount as calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013.

\*\* Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).’;

2. Article 4 is amended as follows:

- (a) in paragraph 1, point (c) is replaced by the following:
  - ‘(c) determined in accordance with the provisions of paragraph 2, in the case of a group of fee-paying entities.’;

- (b) paragraph 2 is replaced by the following:
- ‘2. Without prejudice to the arrangements within a group of fee-paying entities with respect to the allocation of costs, a group of fee-paying entities shall be treated as one unit. Each group of fee-paying entities shall nominate the fee debtor for the whole group and shall notify the identity of the fee debtor to the ECB. The fee debtor shall be established in a participating Member State. Such notification shall be considered valid only if:
- (a) it states the name of the group covered by the notification;
- (b) it is signed by the fee debtor on behalf of all supervised entities of the group;
- (c) it reaches the ECB by 30 September of each year at the latest, in order to be taken into account for the issuance of the fee notice in respect of that fee period.
- If more than one notification per group of fee-paying entities reaches the ECB in time, the notification received by the ECB closest to but prior to the deadline shall prevail. If a supervised entity becomes part of the supervised group after the ECB has received a valid fee debtor notification, unless the ECB is otherwise informed in writing, that notification shall be deemed to be signed also on its behalf.’;
3. Article 5 is amended as follows:
- (a) in paragraph 2, the second sentence is deleted;
- (b) the following paragraph (4) is added:
- ‘4. Within four months after the end of each fee period, the total amount of the annual supervisory fees for each category of supervised entities and supervised groups for that fee period shall be published on the ECB’s website.’;
4. Article 6 is deleted;
5. Article 7 is amended as follows:
- (a) the heading is replaced by the following:
- ‘New supervised entities, entities that are no longer supervised or change of status’;**
- (b) paragraph 2 is replaced by the following:
- ‘2. Where, following an ECB decision to such effect, the ECB assumes direct supervision of a supervised entity or a supervised group pursuant to Article 45 of Regulation (EU) No 468/2014 (ECB/2014/17), or direct supervision of a supervised entity or a supervised group by the ECB ends pursuant to Article 46 of Regulation (EU) No 468/2014 (ECB/2014/17), the annual supervisory fee shall be calculated on the basis of the number of months for which the supervised entity or the supervised group was directly or indirectly supervised by the ECB at the last day of the month.’;
6. Article 9 is deleted;
7. Article 10 is amended as follows:
- (a) in paragraph 3, point (a) is replaced by the following:



- ‘(a) The fee factors used to determine the annual supervisory fee payable in respect of each supervised entity or supervised group shall be the amount at the reference date of:
- (i) total assets; and
  - (ii) total risk exposure.’;
- (b) in paragraph 3, point (b) is deleted and the following points (ba), (bb), (bc) and (bd) are inserted:
- ‘(ba) The fee factors shall be determined for each fee period on the basis of data reported by supervised entities for prudential purposes with a reference date of 31 December of the preceding fee period.
- (bb) Where a supervised entity prepares annual accounts, including consolidated annual accounts, based on an accounting year which deviates from the calendar year, the reference date for the total assets shall be the accounting year-end corresponding to the previous fee period.
- (bc) Where a supervised entity or a supervised group is established after the relevant reference date specified in points (ba) or (bb) but before 1 October of the fee period for which the fee is determined and consequently no fee factors with that reference date exist, the reference date for the fee factors shall be the end of the quarter closest to the relevant reference date specified in points (ba) or (bb).
- (bd) For fee debtors which are not subject to mandatory reporting for prudential purposes or which exclude assets and the risk exposure amount of subsidiaries established in non-participating Member States and third countries in accordance with point (c), the fee factors shall be determined on the basis of information reported by them separately for the purpose of calculating the supervisory fee. Those fee debtors shall submit the fee factors to the NCA concerned with the relevant reference date as determined under points (ba), (bb) or (bc) in accordance with an ECB decision.’;
- (c) in paragraph 3, point (c) is replaced by the following:
- ‘(c) For the purpose of the calculation of fee factors, supervised groups should – as a rule – exclude assets and the risk exposure amount of subsidiaries established in non-participating Member States and third countries. Supervised groups may decide not to exclude such assets and the risk exposure amount for the determination of fee factors.’;
- (d) paragraph 4 is replaced by the following:
- ‘(4) 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.’;
- (e) paragraph 5 is replaced by the following:
- ‘(5) In the event that a fee debtor fails to provide the fee factors, the ECB shall determine the fee factors in accordance with an ECB decision.’;
- (f) in paragraph 6, point (b) is replaced by the following:

- (b) The minimum fee component is calculated as a fixed percentage of the total amount of the annual supervisory fees for each category of supervised entities and supervised groups, as determined in accordance with Article 8.
  - (i) For the category of significant supervised entities and significant supervised groups, the fixed percentage is 10 %. This amount is split equally among all fee debtors. For significant supervised entities and significant supervised groups with total assets of EUR 10 billion or less, the minimum fee component is halved.
  - (ii) For the category of less significant supervised entities and less significant supervised groups, the fixed percentage is 10 %. This amount is split equally among all fee debtors. For less significant supervised entities and less significant supervised groups with total assets of EUR 500 million or less, the minimum fee component is halved.’;
- (g) in paragraph 6, point (c), the words ‘Articles 8 and 9’ are replaced by ‘Article 8’;
- (h) in paragraph 6, the last subparagraph is replaced by the following:
 

‘On the basis of the calculation performed in accordance with this paragraph and of the fee factors determined in accordance with this Article, the ECB shall decide on the annual supervisory fee to be paid by each fee debtor. The annual supervisory fee to be paid will be communicated to the fee debtor via the fee notice.’;
- 8. Article 12(1) is replaced by the following:
 

‘1. A fee notice shall be issued annually by the ECB to each fee debtor within six months after the start of the following fee period.’;
- 9. in Article 13(1), the second sentence is deleted;
- 10. Article 16 is deleted;
- 11. Article 17 is amended as follows:
  - (a) the heading is replaced by the following: ‘Reporting’;
  - (b) paragraph 2 is deleted;
- 12. the following Article 17a is inserted:

*‘Article 17a*

**Transitional arrangements for the 2020 fee period**

- 1. The annual supervisory fee payable in respect of each supervised entity and each supervised group for the fee period of 2020 shall be specified in the fee notice issued to the relevant fee debtor in 2021.
- 2. Any surplus or deficit from the fee period of 2019, determined by deducting the actual annual costs incurred in respect of that fee period from estimated annual costs levied for that fee period, shall be taken into account in determining the annual costs for the fee period of 2020.’.

*Article 2*

**Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Frankfurt am Main, [date Month YYYY].

*For the Governing Council of the ECB*

*The President of the ECB*

Mario DRAGHI

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For specific terminology please refer to the [SSM glossary](#) (available in English only).