

PUBLIC CONSULTATION
DRAFT ECB REGULATION ON SUPERVISORY FEES
TEMPLATE FOR COMMENTS

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Please separate your comments per issue, citing the relevant article of the draft Regulation on supervisory fees where appropriate and indicating whether you are proposing an amendment, clarification or a deletion. If you require more space for your comments, please copy page 2.

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COMMENTS ON THE DRAFT ECB REGULATION ON SUPERVISORY FEES

Issue	Article	Comment	Concise statement why your comment should be taken on board
Definition of 'supervised entity'	Art 3 Par 18	Amendment	<p>The definition, in points (b) and (c), refers to financial holding companies and mixed financial holding companies. It should be clarified that for the purpose of the SSM supervisory fee calculation, only the credit institutions within the holding, and not the insurance undertakings or investment firms, shall be taken into account. This is in line with the Art 1 sub-paragraph 2 of the Reg. 2024/2013 (SSM Regulation), which clearly states that investment firms are excluded from the supervisory tasks conferred on ECB. Therefore the following sentence amendment should be made:</p> <p><i>“‘supervised entity’ means any of the following: (a) a credit institution established in a participating Member State; (b) a credit institution within a financial holding company established in a participating Member State; (c) a credit institution in a mixed financial holding company</i></p>



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			<i>established in a participating member State; (d) a credit institution which is a branch established in a Participating Member State by a credit institution established in a non-participating Member State”</i>
Cost efficiency	Art 4 Par 3 (new)	Amendment	<p>It is imperative that the ECB is bound by an obligation to operate in a cost-efficient manner, whereby the expenditure incurred by the ECB does not exceed what is necessary to fulfil its new supervisory tasks. This should be duly monitored, with an appropriate involvement of the supervised credit institutions. Therefore, the following provision should be added:</p> <p><i>“The ECB shall ensure that the SSM operates on the basis of the principle of cost efficiency. An advisory panel shall be established to assess, oversee and evaluate the annual budget of the ECB with regards to the exercise of its supervisory functions. Supervised credit institutions shall have a seat in that panel and shall have access to information and possibility to communicate formal opinions on the use of the amounts paid”.</i></p>
Cost efficiency/audit	Art 4 Par 4 (new)	Amendment	<p>It is crucial to ensure that the expenditure of the ECB is subject to an objective review. Therefore, the following sentence should be added:</p> <p><i>“The expenditure of the ECB as regards the exercise of its supervisory functions covered by the annual supervisory fees as defined in Article 3 Paragraph 1 of this Regulation shall be subject to verification by the Court of Auditors, and an annual discharge from the European Parliament”.</i></p>
Identification of fee debtor (issue 1)	Art 5 Par 2	Amendment	<p>In should be clarified that in the case of consolidated groups, the central institution shall be the fee debtor. Therefore, an additional sentence should be added:</p> <p><i>“ For credit institutions permanently affiliated to a central body according to the conditions of Art 10 of the Regulation 575/2013/EU (CRR), the fee debtor will be the central body”.</i></p>

Identification of fee debtor (issue 2)	Art 5 Par 6	Deletion	<p>The rules on identifying the fee debtor as outlined in Art 5.2. are sufficiently clear, and there is no need for the ECB to reserve the right to determine the fee debtor. Any additional discretion for the ECB would create unnecessary legal uncertainty.</p> <p>Therefore, Par 6 should be deleted.</p>
Inclusion of damages in annual cost calculation	Art 6 Par 2 point (b)	Amendment	<p>Banks would face incalculable risks if they had to bear the financial consequences of a violation of duty by the ECB, on which they will have no influence. Therefore, the costs related to damages paid to third parties for a loss directly or indirectly caused by the ECB should not in our view be part of the amount of the annual cost. Such an approach would result in supervised institutions financing their own damage compensation. As a minimum, the meaning of a "third party" should be strictly and narrowly defined. In addition, consistent approach should be adopted with regards to damages and sanctions, as follows: if the revenues from sanctions paid to the ECB under Art 16 are to fill the ECB's general budget, then the damages under Art 6 should be likewise paid from the ECB's general budget, and not covered by the supervisory fees.</p> <p>Therefore, point (b) should be deleted, or otherwise Art 6.2(b) and Art 16 of this Regulation should be brought in line as explained above.</p>
No publication of individual fees	Art 7 Par 3 (new)	Amendment	<p>While the ECB should be as transparent as possible about the overall costs which it will recover from the supervised entities, and about the split of the costs between SIs and LSIs, the information about the individual fees should not be made public. The following clarification should be added:</p> <p><i>“The ECB shall not publish information about the level of fees payable by individual fee debtors”.</i></p>
Overhead costs	Art 9 Par 2	Amendment	<p>It should be clarified in the Regulation how the costs to be recovered from Significant Institutions (SIs) and Less Significant Institutions (LSIs) will be split with regards to overhead costs (i.e. costs which cannot be directly allocated to SIs or LSIs, such as costs related to DG 4, Secretariat, support staff, consultancy, IT). In our view, the split for all those additional costs between the SIs and LSIs</p>

			<p>shall be done in accordance with the same ratio as the one proposed for the split between organisational units directly responsible for direct and indirect supervision. This methodology, as well as the exact costs allocated to SIs and LSIs should be clearly published by the ECB. The following sentence should be added:</p> <p><i>“The costs of all other units shall be split between significant and less significant supervised entities according to the ratio established in the first sentence. The ECB shall publish the costs which are to be recovered from each category of supervised entities in advance”</i></p> <p>NB: Please see also our comments on Recital 9a (new) at the end of this document.</p>
Transparency of methodology and procedures	Art 10 Par 3 point (a) last sentence	Amendment	<p>According to Art 30.2 of the SSM Reg., “The amount of the fee levied on a credit institution or branch shall be calculated in accordance with the arrangements established, and published in advance, by the ECB”. In order to ensure legal certainty, the details on the methodology and procedures regarding fee factors should be provided within the binding ECB Regulation, and not only on the ECB website as currently proposed.</p> <p>The last sentence should be therefore replaced by a description of the methodology and procedures for determination and collection of data.</p>
No additional reporting requirements	Art 10 Par 4	Amendment	<p>The ECB Reg. on supervisory fees should not create additional reporting requirements. Therefore, the first sentence should be replaced by the following:</p> <p><i>“To establish the fee factors, the ECB shall in the first place rely on data available through regulatory reporting requirements as set out in Commission Implementing Regulation (...) [based on EBA ITS on supervisory reporting of institutions according to Regulation 575/2013/EU, CRR]”.</i></p>
Minimum fee	Art 10 Par 5	Amendment	<p>There is a significant size diversification amongst LSIs, no less significant as diversification that can be observed amongst the SIs. The option to halve the minimum fee component for the smallest</p>

component	point (b)		<p>banks should also be envisaged. The following sentence should be added:</p> <p><i>“For less significant entities with total assets of EUR 500 million or less, the minimum fee component is halved”.</i></p>
Fee notice	Art 14 Par 4 (new)	Amendment	<p>It is necessary to provide a clear basis for recourse for the supervised entity which considers that the fee notice contains obvious errors or is incorrectly calculated. The following provision should be added:</p> <p><i>“The fee notice shall be amended ex officio if it includes manifest spelling or calculation errors which result from an obvious mistake of the ECB. The fee debtor shall have the possibility to challenge the fee notice before the Court of Justice of the European Union, and the supervised bank shall be able to apply for interim measures, such as the suspension of the fee notice”.</i></p>
Fair split of costs between SIs and LSIs	Recital 9a (new)	Amendment	<p>In line with the comments made concerning Art 9, the following provision should be added in the preamble:</p> <p><i>“The split of costs to be recovered from significant institutions and less significant institutions should be made on the basis of ‘user pays principle’, and in particular should be fair and proportional”.</i></p>