

REGULATION (EU) No 1163/2014 OF THE EUROPEAN CENTRAL BANK
of 22 October 2014
on supervisory fees
(ECB/2014/41)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

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 ⁽¹⁾, 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:

- (1) Regulation (EU) No 1024/2013 establishes a Single Supervisory Mechanism (SSM) composed of the European Central Bank (ECB) and national competent authorities (NCAs).
- (2) Pursuant to Regulation (EU) No 1024/2013, the ECB is responsible for the effective and consistent functioning of the SSM for all credit institutions, financial holding companies and mixed financial holding companies in all euro area Member States as well as in non-euro area Member States which enter into close cooperation with the ECB. The rules and procedures governing the cooperation between the ECB and NCAs within the SSM and with national designated authorities are laid down in Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17) ⁽²⁾.
- (3) Article 30 of Regulation (EU) No 1024/2013 provides for the levying of an annual supervisory fee by the ECB on credit institutions established in the participating Member States and on branches established in a participating Member State by a credit institution established in a non-participating Member State. The fees levied by the ECB should cover, and not exceed, expenditure incurred by the ECB in relation to the tasks conferred on it under Articles 4 to 6 of Regulation (EU) No 1024/2013.
- (4) The annual supervisory fee should comprise an amount to be paid annually by all 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 that are supervised within the SSM.
- (5) Within the SSM, the supervisory responsibilities of the ECB and each NCA are allocated on the basis of the significance of the supervised entities.
- (6) The ECB has direct supervisory competence in respect of significant credit institutions, financial holding companies, mixed financial holding companies established in participating Member States, and branches located in participating Member States of significant credit institutions established in non-participating Member States.
- (7) The ECB also oversees the functioning of the SSM, which includes all credit institutions, whether significant or less significant. The ECB is exclusively competent in relation to all credit institutions established in the participating Member States to authorise entities to take up the business of a credit institution, to withdraw authorisations and to assess acquisitions and disposals of qualifying holdings.
- (8) The NCAs are responsible for the direct supervision of less significant supervised entities, without prejudice to the ECB's power to exercise direct supervision in specific cases where this is necessary for the consistent application of high supervisory standards. When allocating the amount to be recovered via supervisory fees between the categories of significant supervised entities and less significant supervised entities, this sharing of supervisory responsibilities within the SSM and the related expenditure incurred by the ECB is taken into account.

⁽¹⁾ OJ L 287, 29.10.2013, p. 63.

⁽²⁾ 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).

- (9) Article 33(2) of Regulation (EU) No 1024/2013 requires the ECB to publish by means of regulations and decisions the detailed operational arrangements for the implementation of the tasks conferred upon it by Regulation (EU) No 1024/2013.
- (10) According to Article 30(3) of Regulation (EU) No 1024/2013 the fees are to be based on objective criteria relating to the importance and risk profile of the credit institutions concerned, including risk weighted assets.
- (11) The fees are to be calculated at the highest level of consolidation within participating Member States. This means that when credit institutions are part of a supervised group established in the participating Member States, one fee shall be calculated and paid at group level.
- (12) In calculating the annual supervisory fee, subsidiaries established in non-participating Member States should not be taken into account. In this respect, and in order to determine the relevant fee factors of a supervised group, sub-consolidated data for all subsidiaries and operations controlled by the parent undertaking in the participating Member States should be provided. However, the costs of producing such sub-consolidated data may be high and, for this reason, supervised entities should be able to opt for 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 might result in a higher fee.
- (13) The institutions referred to in Article 2(5) of Directive 2013/36/EU of the European Parliament and of the Council ⁽¹⁾ are excluded from the supervisory tasks conferred on the ECB in accordance with Regulation (EU) No 1024/2013 and, therefore, the ECB will not levy fees on them.
- (14) A regulation has general application, is binding in its entirety and directly applicable in all euro area Member States. It is thus the appropriate legal instrument to lay down the practical arrangements for the implementation of Article 30 of Regulation (EU) No 1024/2013.
- (15) In line with Article 30(5) of Regulation (EU) No 1024/2013, this Regulation is without prejudice to the right of NCAs to levy fees in accordance with national law and, to the extent supervisory tasks have not been conferred on the ECB, or in respect of costs of cooperating with and assisting the ECB and acting on its instructions, in accordance with relevant Union law and subject to the arrangements made for the implementation of Regulation (EU) No 1024/2013, including Articles 6 and 12 thereof,

HAS ADOPTED THIS REGULATION:

PART I

GENERAL PROVISIONS

Article 1

Subject matter and scope

1. This Regulation lays down:
 - (a) the arrangements for calculating the total amount of the annual supervisory fees to be levied in respect of supervised entities and supervised groups;
 - (b) the methodology and criteria for calculating the annual supervisory fee to be borne by each supervised entity and each supervised group;
 - (c) the procedure for the collection by the ECB of the annual supervisory fees.

⁽¹⁾ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

2. The total amount of the annual supervisory fees shall encompass the annual supervisory fee in respect of each significant supervised entity or group and each less significant supervised entity or group and shall be calculated by the ECB at the highest level of consolidation within the participating Member States.

Article 2

Definitions

For the purposes of this Regulation, the definitions contained in Regulation (EU) No 1024/2013 and Regulation (EU) No 468/2014 (ECB/2014/17) shall apply, unless otherwise provided for, together with the following definitions:

1. 'annual supervisory fee' means the fee payable in respect of each supervised entity and each supervised group as calculated in accordance with the arrangements set out in Article 10(6);
2. 'annual costs' means the amount, as determined in accordance with the provisions of Article 5, to be recovered by the ECB via the annual supervisory fees for a specific fee period;
3. 'fee debtor' means the fee-paying credit institution or fee-paying branch determined in accordance with Article 4 and to which the fee notice is addressed;
4. 'fee factors' means the data related to a supervised entity or a supervised group defined in Article 10(3)(a) which are used to calculate the annual supervisory fee;
5. 'fee notice' means a notice specifying the annual supervisory fee payable by and issued to the relevant fee debtor in accordance with this Regulation;
6. 'fee-paying credit institution' means a credit institution established in a participating Member State;
7. 'fee-paying branch' means a branch established in a participating Member State by a credit institution established in a non-participating Member State;
8. 'fee period' means a calendar year;
9. 'first fee period' means the period of time between the date on which the ECB assumes the tasks conferred on it under Regulation (EU) No 1024/2013 and the end of the calendar year in which the ECB assumes these tasks;
10. 'group of fee-paying entities' means (i) a supervised group and (ii) a number of fee-paying branches that are deemed to be one branch in accordance with Article 3(3);
11. 'Member State' means a Member State of the Union;
12. 'total assets' means the total value of assets as determined in accordance with Article 51 of Regulation (EU) No 468/2014 (ECB/2014/17). In the case of a group of fee-paying entities, total assets excludes subsidiaries established in non-participating Member States and third countries;
13. 'total risk exposure' means, with reference to a group of fee-paying entities and to a fee-paying credit institution that is not part of a group of fee-paying entities, the amount determined at the highest level of consolidation within the participating Member States and calculated by application of Article 92(3) of Regulation (EU) No 575/2013 of the European Parliament and of the Council ⁽¹⁾.

Article 3

General obligation to pay the annual supervisory fee

1. The ECB shall levy an annual supervisory fee in respect of each supervised entity and each supervised group for each fee period.

⁽¹⁾ 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. The annual supervisory fee for each supervised entity and supervised group will be specified in a fee notice issued to and payable by the fee debtor. The fee debtor will be the addressee of the fee notice and of any notice or communication from the ECB with regard to supervisory fees. The fee debtor will be responsible for paying the annual supervisory fee.
3. Two or more fee-paying branches established by the same credit institution in the same participating Member State are deemed to be one branch. Fee-paying branches of the same credit institution established in different participating Member States are not deemed to be one branch.
4. Fee-paying branches shall be deemed to be separate from subsidiaries of the same credit institution established in the same participating Member State for the purposes of this Regulation.

Article 4

Fee debtor

1. The fee debtor in respect of the annual supervisory fee is:
 - (a) the fee-paying credit institution, in the case of a fee-paying credit institution that is not part of a supervised group;
 - (b) the fee-paying branch, in the case of a fee-paying branch that is not combined with another fee-paying branch;
 - (c) determined in accordance with the provisions of paragraph 2, in the case of a supervised group of fee-paying entities.
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 names of all supervised entities of the group covered by the notification;
 - (b) it is signed on behalf of all supervised entities of the group;
 - (c) it reaches the ECB by 1 July of each year at the latest, in order to be taken into account for the issuance of the fee notice in respect of the following 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.

3. Without prejudice to paragraph 2, the ECB reserves the right to determine the fee debtor.

PART II

EXPENDITURE AND COSTS

Article 5

Annual costs

1. The annual costs shall be the basis for determining the annual supervisory fees and they shall be recovered via the payment of such annual supervisory fees.
2. 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.

The total amount of the annual supervisory fees shall cover, but not exceed, the expenditure incurred by the ECB in relation to its supervisory tasks in the relevant fee period.

3. When determining the annual costs, the ECB shall take into account:
 - (a) any fee amounts related to previous fee periods that were not collectible;
 - (b) any interest payments received in accordance with Article 14;
 - (c) any amounts received or refunded in accordance with Article 7(3).

Article 6

Estimating and determining the annual costs

1. Without prejudice to its reporting obligations under Regulation (EU) No 1024/2013, the ECB shall by the end of each calendar year calculate the estimated annual costs in respect of the fee period for the following calendar year.
2. Within four months after the end of each fee period the ECB shall determine the actual annual costs for that fee period.
3. The estimated annual costs and actual annual costs shall serve as a basis for the calculation of the total amount of the annual supervisory fees referred to in Article 9(1).

PART III

DETERMINING THE ANNUAL SUPERVISORY FEE

Article 7

New supervised entities or change of status

1. Where a supervised entity or a supervised group is supervised for only part of the fee period, the annual supervisory fee shall be calculated by reference to the number of full months of the fee period for which the supervised entity or the supervised group is supervised.
2. Where, following an ECB decision to such effect, the status of a supervised entity or a supervised group changes from significant to less significant, or vice versa, 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 a significant or less significant entity or group at the last day of the month.
3. Where the amount of the annual supervisory fee levied deviates from the amount of the fee calculated in accordance with paragraphs 1 or 2, a refund to the fee debtor shall be paid, or an additional invoice shall be issued by the ECB to be paid by the fee debtor.

Article 8

Split of annual costs between significant and less significant supervised entities

1. In order to calculate the annual supervisory fee payable in respect of each supervised entity and supervised group the annual costs shall be split into two parts, one for each category of supervised entities and supervised groups, as follows:
 - (a) the annual costs to be recovered from significant supervised entities;
 - (b) the annual costs to be recovered from less significant supervised entities.
2. The split of the annual costs in accordance with paragraph 1 shall be made on the basis of the costs allocated to the relevant functions which perform the direct supervision of significant supervised entities and the indirect supervision of less significant supervised entities.

*Article 9***Amount to be levied**

1. The total amount of the annual supervisory fees to be levied by the ECB shall be the sum of:
 - (a) the estimated annual costs for the current fee period based on the approved budget for the fee period;
 - (b) any surplus or deficit from the previous fee period determined by deducting the actual annual costs incurred in respect of the previous fee period from estimated annual costs levied for the previous fee period.
2. For each category of supervised entities and supervised groups, the ECB shall decide the total amount to be levied via the annual supervisory fees, which shall be published on its website by 30 April of the relevant fee period.

*Article 10***Annual supervisory fee payable in respect of supervised entities or supervised groups**

1. The annual supervisory fee payable in respect of each significant supervised entity or significant supervised group shall be determined by allocating the amount to be levied on the category of significant supervised entities and significant supervised groups to the individual significant supervised entities and significant supervised groups on the basis of their fee factors.
2. The annual supervisory fee payable in respect of each less significant supervised entity or less significant supervised group shall be determined by allocating the amount to be levied on the category of less significant supervised entities and less significant supervised groups to the individual less significant supervised entities and less significant supervised groups on the basis of their fee factors.
3. The fee factors at the highest level of consolidation within the participating Member States shall be calculated on the following basis.
 - (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;
 - (ii) total risk exposure. In the case of a fee-paying branch, total risk exposure is considered zero.
 - (b) The data regarding the fee factors shall be determined and collected in accordance with an ECB decision outlining the applicable methodology and procedures. This decision shall be published on the ECB website.
 - (c) For the purpose of the calculation of fee factors, supervised groups should — as a rule — exclude assets of subsidiaries located in non-participating Member States and third countries. Supervised groups may decide not to exclude such assets for the determination of fee factors.
 - (d) For supervised entities or supervised groups classified as less significant on the basis of Article 6(4) of Regulation (EU) No 1024/2013, the fee factor of total assets shall not exceed EUR 30 billion.
 - (e) The relative weighting used in respect of the fee factors shall be:
 - (i) total assets: 50 %;
 - (ii) total risk exposure: 50 %.
4. The fee debtors shall provide the fee factors with a reference date of 31 December of the preceding year and submit the required data to the NCA concerned for the calculation of the annual supervisory fees by the ECB by close of business on 1 July of the year following the said reference date or on the next business day if 1 July is not a business day. Where supervised entities prepare their annual accounts based on an accounting year-end which deviates from the calendar year, the fee debtors may provide fee factors with a reference date of their accounting year-end. NCAs shall submit these data to the ECB in accordance with procedures to be established by the ECB. 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.

5. In the event that a fee debtor fails to provide the fee factors, the ECB shall determine the fee factors in accordance with the methodology set out in the ECB decision. Failure to provide the fee factors as provided in paragraph 4 of this Article shall be considered as a breach of this Regulation.

6. The calculation of the annual supervisory fee payable by each fee debtor shall be performed as outlined below.

(a) The annual supervisory fee is the sum of the minimum fee component and the variable fee component.

(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 Articles 8 and 9. 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. 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. The minimum fee component represents the lower limit of the annual supervisory fee per fee debtor.

(c) The variable fee component is the difference between the total amount of the annual supervisory fees for each category of supervised entities, as determined in accordance with Articles 8 and 9, and the minimum fee component for the same category. The variable fee component is allocated to individual fee debtors in each category according to each fee debtor's share in the sum of all fee debtors' weighted fee factors as determined pursuant to paragraph 3.

On the basis of the calculation performed in accordance with the preceding paragraphs and of the fee factors provided in accordance with paragraph 4 of 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.

PART IV

COOPERATION WITH NCAS

Article 11

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. NCAs shall assist the ECB in levying fees if the ECB so requests.

3. 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.

PART V

INVOICING

Article 12

Fee notice

1. A fee notice shall be issued annually by the ECB to each fee debtor.

2. The fee notice shall specify the means by which the annual supervisory fee shall be paid. The fee debtor shall comply with the requirements set out in the fee notice with respect to the payment of the annual supervisory fee.

3. The amount due under the fee notice shall be paid by the fee debtor within 35 days of the date of issuance of the fee notice.

*Article 13***Notification of the fee notice**

1. The fee debtor is responsible for keeping the contact details for the submission of the fee notice up to date and shall communicate to the ECB any changes in the contact details (i.e. name, function, organisational unit, address, e-mail address, telephone number, fax number). The fee debtor shall communicate any changes to the contact details to the ECB by 1 July of each fee period at the latest. These contact details shall refer to a natural person or preferably to a function within the fee debtor organisation.

2. The ECB shall notify the fee notice through any of the following means: (a) electronically or by other comparable means of communication, (b) by fax, (c) by express courier service, (d) by registered mail with a form for acknowledgment, (e) by service or delivery by hand. The fee notice is valid without signature.

*Article 14***Interest in case of non-payment**

Without prejudice to any other remedy available to the ECB, in the event of partial payment, non-payment or non-compliance with the conditions for payment specified in the fee notice, interest shall accrue on a daily basis on the outstanding amount of the annual supervisory fee at an interest rate of the ECB's main refinancing rate plus 8 percentage points from the date on which the payment was due.

PART VI

FINAL PROVISIONS*Article 15***Sanctions**

In the event of a breach of this Regulation, the ECB may impose sanctions on supervised entities in accordance with Council Regulation (EC) No 2532/98 ⁽¹⁾ complemented by Regulation (EU) No 468/2014 (ECB/2014/17).

*Article 16***Transitional provisions**

1. The fee notice for the first fee period shall be issued together with the fee notice for the 2015 fee period.
2. To enable the ECB to start levying the annual supervisory fee, each group of fee-paying entities shall nominate the fee debtor for the group and shall notify the identity of the fee debtor to the ECB by 31 December 2014, in accordance with Article 4(2).
3. The fee debtor shall submit the data mentioned in Article 13(1) for the first time by 1 March 2015.

*Article 17***Report and review**

1. In accordance with Article 20(2) of Regulation (EU) No 1024/2013, the ECB shall submit a report on the envisaged evolution of the structure and amount of the annual supervisory fees each year to the European Parliament, the Council of the European Union, the European Commission and the Euro Group.
2. The ECB shall conduct a review of this 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.

⁽¹⁾ Council Regulation (EC) No 2532/98 of 23 November 1998 concerning the powers of the European Central Bank to impose sanctions (OJ L 318, 27.11.1998, p. 4).

*Article 18***Entry into force**

This Regulation shall enter into force on the 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, 22 October 2014.

For the Governing Council of the ECB

The President of the ECB

Mario DRAGHI
