Regulation (EU) 2019/2155 of the European Central Bank of 5 December 2019 amending Regulation (EU) No 1163/2014 on supervisory fees (ECB/2019/37)

REGULATION (EU) 2019/2155 OF THE EUROPEAN CENTRAL BANK

of 5 December 2019

amending Regulation (EU) No 1163/2014 on supervisory fees (ECB/2019/37)

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[(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 1163/2014 of the European Central Bank (ECB/2014/41)[(2)] 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.

(2) 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.

(3) 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.

(4) 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.

(5) 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.

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2019/2155 of the European Central Bank. (See end of Document for details)*

(6) 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[3] and Regulation (EU) 2015/534 of the European Central Bank (ECB/2015/13)[4]. 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.

(7) 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 1 billion or less. To this end, the minimum fee component for these supervised entities and supervised groups should be halved.

(8) 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.

(9) 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. This Regulation should therefore enter into force at the beginning of 2020.

(10) 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 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[5] 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);

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[6], 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.;

(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;

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2019/2155 of the European Central Bank. (See end of Document for details)*

(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 latest notification received by the ECB by 30 September 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