Changes to legislation: *There are outstanding changes not yet made to Regulation (EU) No 1163/2014 of the European Central Bank. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Regulation (EU) No 1163/2014 of the European Central Bank of 22 October 2014 on supervisory fees (ECB/2014/41)

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.

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(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.

(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[3] 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

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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.

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;

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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. **[**[F1]. . . . .**]**

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. **[**[F2]‘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[(4)] 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[(5)], excluding the risk exposure amount of subsidiaries established in non-participating Member States and

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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.**]**

Textual Amendments

F1 Deleted by 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).

F2 Substituted by 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).

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.

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;

[[F2]c determined in accordance with the provisions of paragraph 2, in the case of a group of fee-paying entities.**]**

[[F2]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