

European Central Bank

**Kaiserstrasse 29
60311 Frankfurt am Main
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CP2 – ECB Regulation on Supervisory Fees Consultation

Dear ladies and gentlemen,

Deutsche Börse Group (DBG) welcomes the opportunity to comment on the public consultation on a draft Regulation of the European Central Bank on supervisory fees.

DBG is operating in the area of financial markets along the complete chain of trading, clearing, settlement and custody for securities, derivatives and other financial instruments and as such mainly active with regulated Financial Market Infrastructure providers. Among others, Clearstream Banking S.A., Luxembourg (CBL) and Clearstream Banking AG, Frankfurt/Main, who act as (I)CSD¹ as well as Eurex Clearing AG, Frankfurt/Main as the leading European Central Counterparty (CCP), are classified as credit institutions and are therefore within the scope of the SSM. Clearstream subgroup is supervised on a consolidated level as a financial holding group.

The banking activities of the group are limited in nature and are related to short term maturities only. In consequence of the importance of the group entities for the financial markets, the group as well as its banking entities are classified as systemically important though not on a global scale. However, the group and its entities are to be seen more as systemically important financial markets infrastructures than as credit institutions and currently non of the group entities are classified as a significant institution in the meaning of Article 6 SSM Regulation.

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In this context we intend to share our views and perspective on the intended fees for financial institutions.

A. General remarks

We have analysed the draft Regulation and in general agree to its approach.

In balancing out simplicity of the proposal with the allocation of costs according to concrete efforts we nevertheless see the approach of simple allocation of all costs to the supervised entities based on key figures only as being too simplistic. We see the necessity to split total supervisory fees in fees concerning specific / non-recurring tasks and general supervision as it doesn't seem appropriate to mutualise costs which can also be easily dedicated to a specific counterpart. The ECB should consider dedicated fees for (selected) dedicated services (mainly related to tasks of DG IV) and distribute only the remaining costs for the general supervision between all supervised entities. The proposed approach to distribute general supervision costs is however supported with the exemption for some inconsistencies which need adjustments.

We want to urge the ECB to initiate/request to the Member States to take the ECB fees into account when determining the fees for additional NCA supervision.

Further we want to bring the attention on the topic of the calculation of the fees for every individual supervised entity for 2014/2015. Currently it is hardly possible to estimate costs. The formula for the calculation of the levies is straight forward, nevertheless institutions would need an indication what are the total assets and total risk exposures amounts of all banks to anticipate expected costs in order to plan their budgets and provisions for 2014 costs. It is indicated that these figures will be published on the homepage of the ECB in 2015, nevertheless it would be more than helpful if the ECB would publish rough figures rather soon.

B. Detailed comments

For the following topics we see the need for adjustments and refinement:

I. Scope of application

According to Article 2 (1)² of the proposed ECB Regulation it only applies to credit institutions established in the participating Member States and branches established in participating Member States by a credit institution established in a non-participating Member State. The SSM Regulation includes in Article 4 (1) lit. g in addition financial holding companies and mixed financial holding companies under the SSM Framework. Therefore the ECB Regulation on Supervisory Fees should also include the entities mentioned in the scope of the SSM Regulation as stated above in order to be consistent.

We propose to change the wording of Article 2 (1) like follows³:

"1. This Regulation applies to:

(a) credit institutions established in the participating Member States;

(b) branches established in participating Member States by a credit institution established in a non-participating Member State;

(c) financial holding companies in the participating Member States;

(d) mixed financial holding companies in the participating Member States."

In addition to the arguments stated above also the definition in Article 3 (18) in our mind supports the change requested above (see section II).

II. Level of fee application

In addition to the question who is the addressee of this Regulation the question what level is relevant to assess the basis for the calculation of supervisory fees is unclear. More concretely the question is if groups being included on a consolidated level are taken into account only on the basis of

² If it is not stated otherwise articles refer to the ECB Supervisory Fees Regulation

³ Proposed changes are in bold letters.

the data on consolidated level or on the basis of the sum of the data of the supervised entities. Related to that is the question which legal entities out of a consolidated group are actually included in the fee defining basis and which legal entity within the group might be the potential addressee of the invoice. Taking this into consideration the ECB proposal is incomplete and inconsistent at various places. While in Article 2 (1) only credit institutions and branches are in scope, in Article 3 (12) in connection with Article 3 (18) financial holding companies and mixed financial holding companies are included as well.

It is our understanding that in general consolidated figures are the basis for the calculation of fees and that a super-ordinated company, e.g. a financial holding company or a mixed financial holding company could also be the fee debtor. It is important to mention a relevant difference when comparing fee calculation on the basis of consolidated figures compared to base the fees on the sum of the data of the supervised entities. Consolidated figures also include the data of companies in scope of consolidated supervision which are not itself supervised entities like ancillary services undertaking of financial institutions not being holding companies. Furthermore, consolidated figures take out risk positions between the companies included in the scope of regulatory consolidation.

Article 2 (2) is defining the consolidated level as basis for the calculation (in line with Article 3 (12)) while Article 3 (5) in connection with Article 3 (8) and (9) exclude financial holding companies and mixed financial holding companies as fee debtors.

In order to fix inconsistencies of the text which exist in our view, we propose to adjust regulation as follows:

- Article 2 (2):
“The total amount of the annual supervisory fees shall encompass the annual supervisory fee in respect of each significant supervised entity and each less significant supervised entity and shall be calculated by the ECB only at the highest level of consolidation within participating Member States;”
- Article 3 (5):

“‘fee debtor’ means the fee- paying credit institution or fee-paying branch or other fee paying entity determined in accordance with Article 5 and to which the fee notice is addressed;”

- Article 3 (9a): (to be added)

“‘other fee paying entity’ means any legal entity of a group of fee paying entities being determined as fee debtor in accordance with Article 5, being neither a credit institution nor a branch;”

- Article 5 (2):

In order to avoid confusion with the terminus ‘fee debtor’ as defined in Article 3 (5) the sentence 1 should be slightly rephrased:

“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 fee-debtor debtor for fee purposes.”

III. Fees for dedicated business

As already mentioned in the management summary for specific and non-recurring tasks the related supervisory fee should be directly allocated instead of being mutualised, especially in case of an application process where admission might be refused in the process. Otherwise the rejected applicant is not charged at all and all related costs are incurred by the community of supervised entities. A detailed analyses how this might be implemented was not performed by us due to the short consultation period in combination with other regulatory requirements and actions. § 14 of the german law on the Federal Financial Supervisory Authority (BaFin) (Gesetz über die Bundesanstalt für Finanzdienstleistungsaufsicht Finanzdienstleistungsaufsichtsgesetz - FinDAG) might be an example for such approach. If our proposal is followed in principle adjustments to the Regulation as follows are necessary:

- A dedicated article must be included for all services to be charged, e.g. directly before or after article 10;
- In Article 2 (1) that the legal entity or person causing the dedicated service, i.a. the application, investors control process etc. needs to be included as another addressee this regulation applies to, e.g. as lit. e:

“(e) Any person or company requiring services which are subject to fees in accordance with Article x”;

- An additional paragraph needs to be added to Article 3, e.g. as paragraph 9b for ‘service requesting fee payer’;
- Article 3 (5) needs to be amended to include the debtor for the service requesting fee payer;
- Further in Article 4 (2) not only the annual fees but also individual fees should be covered as we see the necessity that dedicated services should not be mutualised via gross annual fees but allocated to the dedicated debtor. Individual fees collected need to be dedicated before the remaining total costs are allocated to the community of supervised entities;
- A new paragraph needs to be added at the end of paragraph 5 to clarify the fee paying rules for the service requesting fee payer as described. To clarify i.a. following topics:
 - The legal entity which runs for application must pay all respective fees and not the super-ordinated company or the group debtor;
 - In an owner control investigation not the target company but the company initiating such process must be charged.

IV. Simplified rules for fee periods

In general we support any simplification where possible. Nevertheless we reject the approach that only full supervised months are charged and the fact that certain actions are not charged at all. It doesn't seem appropriate that companies applying to be authorised as a credit institution must not pay a specific supervisory fee and related costs are mutualised across of fee paying entities (see argumentation above).

Per-se we prefer an approach were all months of supervision are charged instead of only full months and as an approach for simplification the full months are charged instead of the relevant portion. In case our argumentation is followed we could think about two possible simplified methods:

- a) In case admission process is charged it seems reasonable to start charging supervisory fees with the first full month and charge the month in which the authorisation ceases to exist in full as well.
- b) In case no dedicated admission fee is charged any month of supervision regardless of the number of days should be charged in full.

We prefer option a). The wording of Article 8 (1) must be changed depending on the method chosen.

V. No overruling by ECB if debtor is named

In Article 5 (2) it is stated that each group of fee-paying entities shall nominate the fee debtor for the whole group. Nevertheless in Article 5 (6) it is stated that the ECB reserves the right to determine the fee debtor. From our perspective this is not justified. In case a group of fee paying entities has named the fee debtor it shouldn't be possible for the ECB to intervene and name another fee debtor. The right of ECB to determine the debtor in case no fee debtor is nominated is already included in Article 5 (2) sentence 4. There is no need to duplicate this in Article 5 (6).

VI. Clear specification of the allocation of fees

We miss in Article 9 (2) a clear specification what are the main drivers for the allocation of costs to significant and less significant institutions, branches, etc. We clearly disagree to the formulation and ask for at least a generic specification on the vague principles how allocation is derived.

VII. Simplified solution for branch fees

We agree to the idea of simplified solutions, but these must be reasonable and appropriate.

In Article 10 (3) lit. a ii) it is stated that in case of a fee-paying branch, total risk exposure is considered zero. This is clearly rejected by us. For fee-paying branches of course the risk exposure must be considered as well, otherwise branches with high risk exposures compared to their balance sheet would be incentivised and vice-versa. Therefore Article 10 (3) lit. a ii) must be adjusted. Similarly the rules for branches of supervised credit institutions or other group entities of a group of supervised entities outside the participating member states as defined in Article 5 (5) need to be built in the same way. As such, only the correct calculation of the risk exposure to be taken out [Article 5 (5)] or to be included [Article 10 (3)] seems to be the appropriate approach. Here equal treatment in both directions in general is mandatory. However, Article 5 (5) should foresee the option for the supervised entities to waive the exclusion of the branch data and include the data for the sake of avoiding complex calculations.

From our perspective we see no reason why risk exposures shouldn't be used, they are readily available for solvency and Large Exposures purposes. If these branches are treated differently as credit institutions in scope the level playing field is harmed and regulatory arbitrage would become possible to some extent. We can follow the idea to exempt operational risk for simplicity, but at least figures for credit risk and market risk are available.

VIII. Minimum Fees

Related to the approach for minimum fees in Article 10 (5) lit. b we would prefer a specific amount that has to be paid as minimum fee per supervised entity or group per category (significant/less significant). This would reduce the complexity of calculation supervisory fees and makes it more transparent and predictable.

IX. Data submission

In Article 10 (4) it is required to submit the required data for the calculation of the supervisory fees by close of business on 1 March of the following year to the NCA. This tight schedule seems not appropriate as in the first quarter human resources / staff are already designated to prepare the financial statements and other closing activities including reporting and audited financial statements are in principle due not before end of March. Therefore we propose late April or even May for the submission of the required data. For similar purposes (deposit guarantee scheme, banking levy, etc.) the delivery date currently is usually not before end of June. Concerning the case if a supervised entity needs to revise the data submitted the deadline 15 March is too burdensome as well. The general meetings are mostly in Mai or June, therefore the deadline should be postponed to 30 June.

X. Balance between factors

In Article 10 (3) total assets and total risk exposures are the (only) factors for determination of fees. Both are weighted with 50%.

We assume that the efforts for supervision of the supervised entities are depending on quite a view parameters. Having proposed dedicated fees for some specific individual cases, we believe some of this complexity for the distribution of the general supervisory fees could be taken out already. However, we see other important factors which could be taken into account: Number of jurisdictions being active in, number of legal entities within a consolidated group, differentiated efforts depending on prevailing risk category expressed in the capital charge (credit, market or operational risk), etc.

Having said this, without a sound database we can't make a valid statement or a proposal how to adjust the suggestion made. As there is no history for the cost of ECB supervision and its drivers and also public information on the

underlying data of the supervised entities is missing, we suggest to start with the proposed approach.

In order to reflect a reasonable simple but also cost adequate distribution mechanism at a later stage, we propose an opening clause in the Regulation which foresees a public consultation and a future (possible) adjustment of the Regulation to determine the appropriate treatment when respective data is available. Realistic seems to be the second half of 2016.

XI. Interest on delayed payments:

In case institutions are in delay of their payments the regulation defines 8% as interest rate to be paid. Considering the current interest rate environment this seems hardly plausible. If the ECB prefers a fixed rate we propose 6% as maximum, although we prefer a variable rate, e.g. Euribor 3M with an add-on of 2%.

We are happy to discuss the issues raised and proposals made if deemed useful.

Yours faithfully,


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