

DECISION (EU) 2019/2158 OF THE EUROPEAN CENTRAL BANK**of 5 December 2019****on the methodology and procedures for the determination and collection of data regarding fee factors used to calculate annual supervisory fees (ECB/2019/38)****(recast)**

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) and Article 30 thereof,

Whereas:

- (1) A number of amendments are to be made to Decision (EU) 2015/530 of the European Central Bank (ECB/2015/7) ⁽²⁾. In the interest of clarity, that Decision should be recast.
- (2) In accordance with Article 10(3)(a) of Regulation (EU) No 1163/2014 of the European Central Bank (ECB/2014/41) ⁽³⁾, the fee factors used to determine the individual annual supervisory fee payable in respect of each supervised entity or supervised group will be the amount, as at the relevant reference date, of: (i) total assets; and (ii) total risk exposure.
- (3) Regulation (EU) No 1163/2014 (ECB/2014/41) required 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. The ECB launched a public consultation and, taking into account the responses received, decided to amend Regulation (EU) No 1163/2014 (ECB/2014/41) to introduce a revised framework on supervisory fees. Decision (EU) 2015/530 (ECB/2015/7) lays down more detailed procedures on the methodology and procedures for the determination and collection of data regarding the fee factors used to calculate annual supervisory fees.
- (4) According to the revised framework under Regulation (EU) No 1163/2014 (ECB/2014/41), the reference date for the fee factors should, as a general rule, remain 31 December of the year preceding the fee period for which supervisory fees are calculated. This allows supervisory information already available to the ECB under Decision ECB/2014/29 ⁽⁴⁾ and pursuant to Commission Implementing Regulation (EU) No 680/2014 ⁽⁵⁾ (common reporting (COREP) and financial reporting (FINREP)) and under Regulation (EU) 2015/534 of the European Central Bank (ECB/2015/13) ⁽⁶⁾ (FINREP) to be used in the calculation of the annual supervisory fee for the majority of fee debtors.
- (5) Supervised entities and supervised groups that are not subject to mandatory reporting for prudential purposes or supervised groups which exclude assets and/or the risk exposure amount of subsidiaries established in non-participating Member States and third countries should continue reporting the fee factors separately for the purpose of calculating the supervisory fees. Article 10(3)(bd) of Regulation (EU) No 1163/2014 (ECB/2014/41) provides that those fee factors shall be submitted to the NCA concerned, with the relevant reference date, in accordance with an ECB decision.

⁽¹⁾ OJ L 287, 29.10.2013, p. 63.

⁽²⁾ Decision (EU) 2015/530 of the European Central Bank of 11 February 2015 on the methodology and procedures for the determination and collection of data regarding fee factors used to calculate the annual supervisory fees (ECB/2015/7) (OJ L 84, 28.3.2015, p. 67).

⁽³⁾ Regulation (EU) No 1163/2014 of the European Central Bank of 22 October 2014 on supervisory fees (ECB/2014/41) (OJ L 311, 31.10.2014, p. 23).

⁽⁴⁾ Decision ECB/2014/29 of 2 July 2014 on the provision to the European Central Bank of supervisory data reported to the national competent authorities by the supervised entities pursuant to Commission Implementing Regulations (EU) No 680/2014 and (EU) No 2016/2070 (ECB/2014/29) (OJ L 214, 19.7.2014, p. 34).

⁽⁵⁾ Commission Implementing Regulation (EU) No 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council (OJ L 191, 28.6.2014, p. 1).

⁽⁶⁾ Regulation (EU) 2015/534 of the European Central Bank of 17 March 2015 on reporting of supervisory financial information (ECB/2015/13) (OJ L 86, 31.3.2015, p. 13).

- (6) Fee debtors that need to continue reporting separately should submit the fee factors to the relevant national competent authority (NCA) using the templates set out in Annexes I and II. In the case of supervised groups with subsidiaries established in non-participating Member States and third countries, the fee debtors should provide an explanation of the method used for the determination of the fee factors.
- (7) Consistency should be ensured between the determination of fee factors of fee debtors for which the ECB already receives supervisory information through COREP and FINREP and the fee factors of fee debtors which need to report information separately for the purpose of calculating the supervisory fees.
- (8) For the purposes of the calculation of the fee factors, Article 10(3)(c) of Regulation (EU) No 1163/2014 (ECB/2014/41) provides for the possibility to exclude assets and/or the risk exposure amount of subsidiaries established in non-participating Member States and third countries. Those fee debtors should notify the ECB as to whether they intend to exclude the contribution of subsidiaries established in non-participating Member States and third countries to either or both fee factors. The deadline for submitting the notification should be consistent with the revised framework for the calculation of the supervisory fees.
- (9) For the majority of fee-paying branches, the obligation to provide auditor verification as means of certification of the total assets of the branch for the purposes of calculating the supervisory fee was assessed as disproportionate in the review of Regulation (EU) No 1163/2014 (ECB/2014/41). It suffices that fee-paying branches submit to the relevant NCA a management letter certifying the total assets of the branch.
- (10) Article 10(5) of Regulation (EU) No 1163/2014 (ECB/2014/41) provides that, in the event a fee debtor fails to provide the fee factors, the ECB shall determine the fee factors in accordance with an ECB decision.
- (11) This Decision should lay down the methodology and procedures for the determination and collection of data regarding the fee factors, as well as procedures for the submission of fee factors by fee debtors which need to continue reporting separately for the purpose of calculating the supervisory fees and by NCAs to the ECB. In particular, the format, frequency and timing of such submission, as well as the types of quality checks that NCAs should perform before submitting fee factors to the ECB, should be specified.
- (12) It is necessary to set up a procedure to carry out technical amendments to the Annexes to this Decision in an effective manner, provided that such amendments neither change the underlying conceptual framework nor affect the reporting burden. NCAs may propose such technical amendments to the Statistics Committee of the European System of Central Banks (ESCB), whose view will be taken into account when following this procedure.
- (13) To ensure coherence with the revised framework for the calculation of supervisory fees under Regulation (EU) No 1163/2014 (ECB/2014/41), which provides for transitional arrangements in respect of the 2020 fee period, this Decision should enter into force at the beginning of 2020,

HAS ADOPTED THIS DECISION:

Article 1

Subject matter and scope

This Decision lays down the methodology and the procedures for the determination and collection of data regarding the fee factors used for the calculation of the annual supervisory fees to be levied in respect of supervised entities and supervised groups under Regulation (EU) No 1163/2014 (ECB/2014/41) and the submission of the fee factors by the fee debtors referred to in Article 10(3)(bd) of that Regulation, as well as procedures for the submission of such data by NCAs to the ECB.

This Decision applies to fee debtors and NCAs.

Article 2

Definitions

For the purposes of this Decision, the definitions contained in Article 2 of Regulation (EU) No 1163/2014 (ECB/2014/41) shall apply, unless otherwise provided for, together with the following definitions:

1. 'working day' means a day which is not a Saturday, Sunday or a public holiday in the Member State where the relevant NCA is established;
2. 'management body' means a management body as defined in point 7 of Article 3(1) of Directive 2013/36/EU of the European Parliament and of the Council ⁽⁷⁾.

Article 3

Methodology for the determination of the fee factors

1. For supervised entities and supervised groups that are subject to mandatory reporting for prudential purposes and supervised groups that did not notify the ECB in accordance with Article 4 of their decision to exclude assets and/or the risk exposure amount of subsidiaries established in non-participating Member States and third countries, the ECB shall determine the respective fee factors in accordance with the following.

- (a) The total risk exposure amount for the relevant reference date specified in Article 10(3)(ba) or (bc) of Regulation (EU) No 1163/2014 (ECB/2014/41) shall be determined by reference to the common reporting (COREP) 'own funds requirements' template set out in Annex I to Implementing Regulation (EU) No 680/2014 (hereinafter the 'own funds requirements template') as submitted by the NCAs to the ECB pursuant to Decision ECB/2014/29. 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) of Regulation (EU) No 1163/2014 (ECB/2014/41), the total risk exposure amount shall be zero.
- (b) The total assets for the relevant reference date specified in Article 10(3)(ba), (bb) or (bc) of Regulation (EU) No 1163/2014 (ECB/2014/41) shall be determined by reference to the financial reporting (FINREP) 'balance sheet statement: assets' templates set out in Annexes III and IV to Implementing Regulation (EU) No 680/2014; and the 'balance sheet statement: assets' templates set out in Annexes I, II, IV and V and supervisory financial reporting data points set out in Annex III to Regulation (EU) 2015/534 (ECB/2015/13) as submitted by the NCAs to the ECB pursuant to Decision ECB/2014/29 and Regulation (EU) 2015/534 (ECB/2015/13). In the case of a fee-paying branch, the manager of that branch or, if the manager is unavailable, the management body of the credit institution establishing the fee-paying branch shall certify the fee-paying branch's total assets by means of a management letter submitted to the relevant NCA.

2. For supervised groups that are subject to mandatory reporting for prudential purposes and notify the ECB in accordance with Article 4 of their decision to exclude assets and/or the risk exposure amount of subsidiaries established in non-participating Member States and third countries, the ECB shall determine the respective fee factors on the basis of the data calculated by those supervised groups in accordance with the following points (a) and (b) and submitted by them to the relevant NCA pursuant to Article 5.

- (a) The total risk exposure for the relevant reference date specified in Article 10(3)(ba) or (bc) of Regulation (EU) No 1163/2014 (ECB/2014/41) shall be determined by reference to the own funds requirements template, from which the following shall be deducted:
 - (i) the contribution to the group's total risk exposure of those subsidiaries established in non-participating Member States and third countries as reported in the COREP 'group solvency: information on affiliates' template set out in Annex I to Implementing Regulation (EU) No 680/2014 (hereinafter the 'group solvency: information on affiliates template'); and
 - (ii) the contribution to the group's total risk exposure of those subsidiaries established in non-participating Member States and third countries not included in the group solvency: information on affiliates template and as reported in accordance with Annex I to this Decision.

⁽⁷⁾ 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 the 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).

(b) The total assets for the relevant reference date specified in Article 10(3)(ba), (bb) or (bc) of Regulation (EU) No 1163/2014 (ECB/2014/41) shall be determined by aggregating the total assets disclosed in the statutory financial statements of all the supervised entities established in participating Member States within the supervised group if available, or otherwise by aggregating the total assets stated in the relevant reporting package(s) used by the supervised entities or group of fee-paying credit institutions for preparing consolidated accounts at group level. To avoid double counting, the fee debtor has the option of eliminating intragroup positions among all supervised entities that are established in participating Member States. Any goodwill included in the consolidated financial statements of the parent undertaking of a supervised group shall be included in the aggregation; the exclusion of goodwill allocated to subsidiaries established in non-participating Member States and third countries is optional. Where a fee debtor uses statutory financial statements, an auditor shall certify that the total assets correspond to the total assets disclosed in the audited statutory financial statements of the single supervised entities. Where a fee debtor uses reporting packages, an auditor shall certify the total assets used for the calculation of the annual supervisory fees by carrying out appropriate verification of the reporting packages used. In all cases, the auditor shall confirm that the aggregation process does not deviate from the procedure laid down in this Decision and that the calculation performed by the fee debtor is coherent with the accounting method used to consolidate the accounts of the group of fee-paying entities.

3. For supervised entities and supervised groups which are not subject to mandatory reporting for prudential purposes, the total assets and total risk exposure, as defined pursuant to Article 2, points 12 and 13 of Regulation (EU) No 1163/2014 (ECB/2014/41), for the relevant reference date specified in Article 10(3)(ba), 10(3)(bb) or 10(3)(bc) of Regulation (EU) No 1163/2014 (ECB/2014/41) shall be determined by them and submitted to the relevant NCA pursuant to Article 5. In the case of a fee-paying branch, the manager of that branch or, if the manager is unavailable, the management body of the credit institution establishing the fee-paying branch shall certify the fee-paying branch's total assets by means of a management letter submitted to the relevant NCA.

Article 4

Notification of deduction of assets and/or the risk exposure amount of subsidiaries established in non-participating Member States and third countries

Fee debtors that intend to exclude assets and/or the risk exposure amount of subsidiaries established in non-participating Member States and third countries in accordance with Article 10(3)(c) of Regulation (EU) No 1163/2014 (ECB/2014/41) shall notify the ECB of their decision at the latest by 30 September of the fee period for which the fee is calculated. The notification shall indicate whether the deduction of the contribution of subsidiaries established in non-participating Member States and third countries shall apply to the total risk exposure fee factor, the total assets fee factor or both. If the ECB has received no such notification by 30 September of the fee period for which the fee is calculated, the total risk exposure and the total assets shall be determined in accordance with Article 3(1). If more than one notification reaches the ECB in time, the latest notification received by the ECB by 30 September of the fee period for which the fee is calculated shall prevail.

Article 5

Templates for the reporting of the fee factors to NCAs by the fee debtors

1. Fee debtors whose fee factors are determined in accordance with Article 3(2) or (3) shall submit the fee factors every year to the relevant NCA by the remittance dates specified in Article 6. The fee factors shall be submitted using the templates in Annexes I and II. In the case of a supervised group with subsidiaries established in non-participating Member States and third countries, the fee debtor shall provide an explanation of the method used to comply with Article 3(2) or (3) in the comments column allocated for this purpose in the relevant Annex.

2. Fee debtors shall submit the auditor's statement or management letter in accordance with Article 3(2) and (3) to the relevant NCA by the remittance dates specified in Article 6.

*Article 6***Remittance dates**

1. The fee debtors whose fee factors are determined in accordance with Article 3(2) and (3) shall provide the fee factors to the relevant NCA by close of business on the remittance date for quarterly reporting for the third quarter specified in Article 3(1)(b) of Implementing Regulation (EU) No 680/2014 of the fee period for which the fee is calculated or on the next working day if the remittance date is not a working day.
2. NCAs shall submit to the ECB the fee factors referred to in paragraph 1 at the latest by close of business on the 10th working day following the remittance date specified in paragraph 1. Thereafter, the ECB shall verify the data received within fifteen working days of receipt. If so requested by the ECB, NCAs shall explain or clarify the data.
3. The ECB shall grant each fee debtor access to its fee factors at the latest by 15 January of the year following the fee period. The fee debtors shall be given a period of fifteen working days in which to comment on the fee factors and submit revised data for consideration, in the event that they consider the fee factors to be incorrect. This period shall start on the day on which the fee debtors had the possibility to access the fee factors. Thereafter, the fee factors will be applied for the calculation of the annual supervisory fees. Any changes to the data received after that period will not be taken into consideration and accordingly will not result in a change to the fee factors.

*Article 7***Data quality checks**

NCAs shall monitor and ensure the quality and reliability of the fee factors collected from the fee debtors under Article 3(2) and (3) before submitting them to the ECB. NCAs shall apply quality control checks to assess whether the methodology set out in Article 3 has been followed. The ECB shall not correct or modify data regarding the fee factors provided by the fee debtors. Any corrections or modifications to the data shall be undertaken by the fee debtors and submitted by them to the NCAs. NCAs shall submit to the ECB any corrected or modified data received by them. When submitting data regarding the fee factors, NCAs shall: (a) provide information on any significant developments implied by such data; and (b) communicate to the ECB the reasons for any significant corrections or modifications to it. NCAs shall ensure that the ECB obtains the necessary corrections or modifications to the data.

*Article 8***Determination of fee factors by the ECB in the event of non-availability of the fee factors or non submission of corrections or modifications**

In the event that a fee factor is not available to the ECB or the fee debtor has not submitted timely revised data or modifications or corrections of the data regarding the fee factors in accordance with Articles 6(3) or 7, the ECB shall use information available to it to determine the missing fee factor.

*Article 9***Simplified amendment procedure**

Taking the views of the Statistics Committee into account, the ECB's Executive Board shall be entitled to make technical amendments to the Annexes to this Decision, provided that such amendments neither change the underlying conceptual framework nor affect the reporting burden on the fee debtors. The Executive Board shall inform the Governing Council of any such amendment without undue delay.

*Article 10***Repeal**

1. Decision (EU) 2015/530 (ECB/2015/7) is hereby repealed.

2. References to the repealed Decision shall be construed as references to this Decision and shall be read in accordance with the correlation table in Annex III.

Article 11

Entry into force

This Decision shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

Done at Frankfurt am Main, 5 December 2019.

The President of the ECB
Christine LAGARDE

ANNEX I

CALCULATION OF FEES

TOTAL RISK EXPOSURE

Reference date		NAME	
Submission date		MFI Code	
		LEI code	

Item		Type of institution	Source for risk exposure amount	Risk exposure amount	Comments
		010	020	030	040
010	TOTAL RISK EXPOSURE as calculated in accordance with Article 92 (3) of Regulation (EU) No 575/2013 of the European Parliament and of the Council	(1), (2) or (3)	COREP C 02.00, row 010		
020	CONTRIBUTION OF SUBSIDIARIES in non-participating Member States and third countries		COREP C 06.02, col 250 (SUM)		
1021	Entity 1				
1022	Entity 2				
1023	Entity 3				
1024	Entity 4				
.....	Entity ...				
N	Entity N				
030	TOTAL RISK EXPOSURE AMOUNT of the supervised group deducting the CONTRIBUTION OF SUBSIDIARIES in non-participating Member States and third countries: Item 030 is equal to 010 minus 020 minus sum of items 1021 to N				

Please ensure that this template is completed in accordance with the instructions provided separately.

ANNEX II

CALCULATION OF FEES

TOTAL ASSETS

Reference date		NAME	
Submission date		MFI Code	
		LEI code	

Item		Type of institution	Confirmation of auditor's verification or of management letter for fee-paying branches (Yes/No)	Total assets	Comments
		010	020	030	040
010	TOTAL ASSETS in accordance with Article 51(2) or (4) of Regulation (EU) No 468/2014 (ECB/2014/17)	(3)			
020	TOTAL ASSETS in accordance with Article 2, point (12)(b) or (c) of Regulation (EU) No 1163/2014 (ECB/2014/41)	(4)	(Yes)/(No)		
030	TOTAL ASSETS in accordance with Article 3(2)(b) of this Decision: Item 030 is equal to 031 minus 032 plus 033 minus 034	(2) or (5)	(Yes)/(No)		
031	Total assets of all group entities established in participating Member States — obligatory				
032	Intragroup positions among supervised entities established in participating Member States (from reporting packages used for the elimination of balances for group reporting purposes) — optional				
033	Goodwill included in the consolidated financial statements of the parent undertaking of a supervised group — obligatory				
034	Goodwill allocated to subsidiaries established in non-participating Member States and third countries — optional				

Please ensure that this template is completed in accordance with the instructions provided separately.

ANNEX III

CORRELATION TABLE

Decision (EU) 2015/530 (ECB/2015/7)	This Decision
Article 1	Article 1
Article 2	Article 2
—	Article 4
Article 3, first sentence	Article 5(1), second sentence
Article 3, second sentence	Article 5(2)
Article 3, third sentence	Article 5(1), third sentence
Article 4	Article 6
Article 5	Article 7
Article 6	Article 5(1), first sentence
Article 7	Article 3
Article 8	Articles 8
Article 9	Article 9
Article 10	Article 10
—	Article 11
Annexes I – II	Annexes I – II
—	Annex III