



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from : Presidency
to : Working Party on Statistics on 23 March 2009

Subject : Recommendation of the ECB for a Council Regulation amending Council
 Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of
 statistical information by the European Central Bank
 - Presidency compromise

The Delegations are kindly requested to send their comments on the attached Presidency proposal to the Presidency (int-eu@czso.cz) and the General Secretariat (pedro.sanjose@consilium.europa.eu) **by 19 March 2009**, at the latest.

Proposal for a compromise text of the Council Regulation amending Council Regulation (EC) N° 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank

GENERAL OBSERVATION:

The differences between the original text and Presidency proposals are in **bold underlined** characters or marked with [...].

Comments appear under the heading "Observation" and in *italics*.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank (hereinafter referred to as the 'Statute') and in particular to Article 5.4 thereof,

Having regard to the recommendation of the European Central Bank (ECB),

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Commission,

Having regard to Regulation (EC) No [XX] of the European Parliament and of the Council on European Statistics,

Acting in accordance with the procedure laid down in Article 107(6) of the Treaty establishing the European Community and in Article 42 of the Statute,

Whereas:

- (1) Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank is a key component in the legal framework supporting the statistical information collection tasks of the ECB assisted by the national central banks. The ECB has consistently relied on it to carry out and monitor the coordinated collection of statistical information necessary to undertake the tasks of the European System of Central Banks (ESCB).
- (2) In order to maintain Regulation (EC) No 2533/98 as an effective instrument for the ECB to carry out the statistical information collection tasks of the ESCB and to guarantee the continued availability to the ECB of statistical information of the necessary quality and covering the entire range of tasks of the ESCB it is essential to review the scope of the reporting requirements that this Regulation imposes. In this context, attention needs to be paid not only to the performance of the tasks of the ESCB and to its independence, but also to the statistical principles provided in this Regulation.
- (3) It is necessary to amend Regulation (EC) No 2533/98 to enable the ECB to collect the statistical information needed to undertake the ESCB's tasks conferred by the Statute. In line with this, the purposes for which statistical information may be collected need also to include the compilation of the macro-prudential statistics required for the performance of the ESCB's tasks under Article 105(5) of the Treaty.
- (4) The scope of the reporting requirements necessary for the performance of the ESCB tasks should also take into account structural financial markets developments and address related statistical information requirements that were less apparent at the time Regulation (EC) No 2533/98 was adopted. For that reason, it is necessary to allow the collection of statistical information from the entire sector of financial corporations, and in particular from the insurance corporations and pension funds, which represent the second largest sub-sector of financial corporations in the euro area in terms of financial assets.”

- (5) In order to allow for the continued compilation of balance of payments statistics of sufficient quality, it is necessary to clarify the reporting requirements imposed in connection with data on all positions and transactions between the residents of participating Member States.
- (6) Researchers increasingly require access to confidential statistical information which does not allow direct identification to analyse and understand developments within sectors and across countries. Therefore, it is important to allow the ECB and the NCBs to grant to scientific research bodies access to such detailed statistical information at the ESCB level, while maintaining strict confidentiality safeguards.
- (7) To minimise the reporting burden [...] and to enable the efficient development, production and dissemination of high-quality statistics, and the proper performance of the ESCB tasks, it is necessary to **carry out cost-effectiveness analyses, assess the reporting burden and** to allow the maximum use of existing **surveys, statistical infrastructures and** information [...] **already available**, including an exchange of confidential statistical information within the ESCB.

Observation:

The Presidency slightly modified the proposed text to extend the scope of measures for minimising the reporting burden. Statistical infrastructure means mainly statistical registers (e.g. multinational enterprise groups register).

(7a) The development, production and dissemination of European Statistics should take into account best practices and the relevant international recommendations.

Observation:

The Presidency proposes this text to reflect opinions of the Council Working Party on Statistics (CWPS).

- (8) Furthermore, it is important to ensure close cooperation between the ESCB and the European Statistical System (ESS) and notably to foster exchange of confidential data between the two systems for statistical purposes, in the light of Article 285 of the Treaty and Article 5 of the Statute.

(8a) In line with Article 5.1 of the Statute, the ESCB and the ESS should cooperate closely in order to ensure the coherence necessary to develop, produce and disseminate European Statistics. In particular, the ESCB and the ESS should cooperate when updating their own statistical principles established in each separate legal framework, when designing their respective statistical work programme, and when striving to reduce the overall response burden. To this end it is necessary to consult the ESS Committee, the Committee for Monetary, Financial and Balance of Payments statistics and other relevant bodies on the ESCB statistical work programme and its implementation.

Observation:

The text proposed by French Presidency for the CWPS on 17 December 2008 was modified to include a consultative role of the ESS Committee, CMFB and other relevant committees and bodies (e.g. STC) on the ESCB statistical work programme.

- (9) European Statistics are and will be developed, produced and disseminated by both the ESCB and the ESS but under separate legal frameworks reflecting their respective governance structures. This Regulation should therefore apply without prejudice to Regulation (EC) No [XX],

(10) Any confidential statistical data collected and supplied to a member of the ESCB by a member of the ESS should be used exclusively for statistical purposes.

Observation:

The Presidency proposes the new text, which specifies that all confidential data provided by the ESS authorities must be used exclusively for statistical purposes regardless whether they are collected under the ESS or the ESCB framework regulation.

HAS ADOPTED THIS REGULATION:

Article 1
Definitions

For the purposes of this Regulation:

1. 'the ECB's statistical reporting requirements' shall mean the statistical information which reporting agents are required to provide and which is necessary for the tasks of the ESCB to be performed;

1a. European Statistics shall mean statistics necessary to undertake the ESCB's tasks as set out in Article 5.1 of the Statute. [They are referred to in the ESCB statistical work programme.]
They shall be developed, produced and disseminated according to the statistical principles referred to in Article 3a.

Observation:

In cooperation with the ECB the Presidency proposes slightly modified definition of the European Statistics. The Presidency is of the opinion that the inclusion of text in the square brackets would contribute to the clarity of the term European Statistics, however the ECB considers the necessity of this text since there is already the reference to Article 5.1 of the Statute. On the request of the CWPS the Presidency is prepared to consult the Council Legal Service on using two separate definitions for European Statistics.

2. 'reporting agents' shall mean the legal and natural persons and the entities referred to in Article 2(3) which are subject to the ECB's statistical reporting requirements;

3. 'participating Member State' shall mean a Member State which has adopted the single currency in accordance with the Treaty;
4. 'resident' and 'residing' shall mean having a centre of economic interest in the economic territory of a country as described in Council Regulation (EC) n°2223/96 of 25 June 1996 on the European system of national and regional accounts in the Community; in this context, 'cross-border positions' and 'cross-border transactions' shall mean respectively positions and transactions in the assets and/or liabilities of residents of participating Member States seen as one economic territory vis-a-vis residents of non-participating Member States and/or residents of third countries;
5. 'International Investment Position' shall mean the balance sheet of the stock of cross-border financial assets and liabilities;
6. 'electronic money' shall mean an electronic store of monetary value on a technical device, including prepaid cards, that may be widely used for making payments to entities other than the issuer without necessarily involving bank accounts in the transaction, but acting as a prepaid bearer instrument.
- 7. 'use for statistical purposes' shall mean the exclusive use for the development and production of statistical results and analyses;**
- 8. 'development' shall mean the activities aiming at setting up, strengthening and improving the statistical methods, standards and procedures used for the production and dissemination of statistics as well as at designing new statistics and indicators;**
- 9. 'production' shall mean all the activities related to the collection, storage, processing, and analysis necessary for compiling statistics;**

10. ‘dissemination’ shall mean the activity of making statistics and statistical analysis and information accessible to users.

Observation:

The Presidency added definitions of “use for statistical purposes“, “development”, “production” and “dissemination”. The text mirrors the definitions included in the Regulation on European Statistics except the definition of “dissemination” where the word “information” was added to reflect the access by researches referred to in Article 8 of the Recommendation.

Article 2
Reference reporting population

Observation:

This Article is still open to further discussion at the CWPS. It is intended to discuss this Article together with the ECB’s non-paper on enhancement of the reference reporting population.

1. For the fulfilment of the ECB’s statistical reporting requirements, the ECB, assisted by the national central banks in accordance with Article 5.2 of the Statute, shall have the right to collect statistical information for the development, production and dissemination of European Statistics within the limits of the reference reporting population and of what is necessary to carry out the tasks of the ESCB. In particular, information may be collected to fulfil the ECB’s statistical reporting requirements including in the area of monetary and financial statistics, payments and payment systems statistics, financial stability statistics, balance of payments and international investment position statistics.’
2. To the extent that the statistical information to be provided is necessary to fulfil the ECB’s statistical reporting requirements, the reference reporting population shall comprise the following reporting agents:

- (a) legal and natural persons residing in a Member State and falling within the sector ‘financial corporations’ as defined in the ESA95;
 - (b) post office giro institutions;
 - (c) legal and natural persons residing in a Member State, to the extent that they hold cross-border positions or have carried out cross-border transactions;
 - (d) legal and natural persons residing in a Member State, to the extent that they have issued securities or electronic money;
 - (e) legal and natural persons residing in a participating Member State, to the extent that they hold financial positions vis-à-vis residents of other participating Member States or have carried out financial transactions with residents of other participating Member States.’
3. An entity that would otherwise be covered by the definition in paragraph 2, but which according to the national law of its country of residence is neither a legal person nor a collection of natural persons, while it can be the subject of rights and obligations, shall be a reporting agent. The reporting obligation of such an entity shall be fulfilled by the persons legally representing it.

Where a legal person, collection of natural persons or an entity as referred to in the first subparagraph has a branch resident in another country, the branch shall be a reporting agent in its own right irrespective of where the head office is located insofar as the branch satisfies the conditions defined in paragraph 2, with the exception of the need to possess separate legal personality. Any number of branches set up in the same Member State shall be regarded as a single branch when they belong to the same sub-sector of the economy. The reporting obligation of a branch shall be fulfilled by the persons legally representing it.

Article 2a

Cooperation with the ESS

To minimise reporting burden and guarantee the coherence necessary to produce European Statistics, the ESCB and the ESS shall cooperate closely, while complying with the statistical principles laid down in Article 3a.

Observation:

The Czech Presidency suggests keeping this Article as was proposed by the French Presidency.

Article 3

Modalities for the definition of statistical reporting requirements

[...]

Observation:

The text was moved to a separate Article 3a to respond to a concern raised by Member States stating that the title of Article 3 was not appropriate anymore if the statistical principles were added.

In defining and imposing its statistical reporting requirements, the ECB shall specify the actual reporting population within the limits of the reference reporting population as defined in Article 2.

Without prejudice to the fulfilment of its statistical reporting requirements, the ECB:

- (a) shall use existing statistics as far as possible;
- (b) shall take into account [...] **European** and international statistical standards;
- (c) may fully or partly exempt specific classes of reporting agents from its statistical reporting requirements.

Observation:

The Presidency suggests substituting the word “European” for “Community”, which is more general and takes into account other than Community statistical standards (e.g. statistical standards of Member States).

Article 3a

Statistical principles underlying European Statistics produced by the ESCB

The principles of impartiality, objectivity, professional independence, cost-effectiveness, statistical confidentiality, alongside the principles of minimisation of reporting burden and high output quality, **including reliability**, shall govern the development, production and dissemination of European Statistics by the ESCB. **ECB shall publish the definitions of these statistical principles.**

Observation:

The term “reliability” was included to be as harmonised with the ESS statistical principles as possible. The Presidency proposes the new text that obliges the ECB to publish the definition of the statistical principles. This Article should be discussed together with the non-paper on definitions of statistical principles, to be submitted by the ECB.

Article 4

Obligations of Member States

Member States shall organise themselves in the field of statistics and shall fully cooperate with the ESCB in order to ensure the fulfilment of the obligations arising out of Article 5 of the Statute.

Article 5

Regulatory power of the ECB

1. The ECB may adopt regulations for the definition and imposition of its statistical reporting requirements on the actual reporting population of participating Member States.
2. To guarantee the coherence necessary to produce statistics meeting their respective information requirements, the ECB shall consult the Commission on draft regulations whenever links with the statistical requirements of the Commission exist. The Committee on Monetary, Financial and Balance of Payments Statistics shall take part, within the limits of its competence, in the process of cooperation between the Commission and the ECB.

Observation:

The ECB Recommendation did not propose any changes to this Article and any amendments are not considered necessary by the ECB. Taking into account the opinion of the Council Legal Service, which clearly states that it is not possible to discuss this Article without the ECB’s approval, the Presidency reinstated the original text of this Article from the Regulation (EC) No 2533/98.

Article 6

Right of verification and compulsory collection of statistical information

1. If a reporting agent residing in a participating Member State is suspected of an infringement, as set out in Article 7(2), of the ECB's statistical reporting requirements, the ECB and, in accordance with Article 5.2 of the Statute, the national central bank of the participating Member State concerned shall have the right to verify the accuracy and quality of the statistical information and to carry out its compulsory collection.

However, should the statistical information concerned be necessary in order to demonstrate compliance with minimum reserve requirements, the verification should be carried out in accordance with Article 6 of Council Regulation (EC) No 2531/98 of 23 November 1998 concerning the application of minimum reserves by the European Central Bank (8). The right to verify statistical information or to carry out compulsory collection thereof shall comprise the right to:

- (a) require submission of documents;
 - (b) examine the books and records of the reporting agents;
 - (c) take copies or extracts from such books and records; and
 - (d) obtain written or oral explanations.
2. The ECB or the competent national central bank shall notify the reporting agent in writing of its decision to verify statistical information or to collect it compulsorily, specifying the time limit for compliance with the verification request, the sanctions applicable in the case of non-compliance and the right to review. The ECB and the national central bank concerned shall inform each other of such verification requests.
 3. For the verification and the compulsory collection of statistical information, national procedures shall be followed. The costs of the procedure shall be borne by the reporting agent concerned if it is established that the reporting agent has breached statistical reporting requirements.

4. The ECB may adopt regulations specifying the conditions under which the right to verify or to carry out the compulsory collection of statistical information may be exercised.
5. Within the limits of their competence, national authorities of participating Member States shall give the necessary assistance to the ECB and national central banks in the exercise of the powers provided for in this Article.
6. When a reporting agent opposes or obstructs the verification process or the compulsory collection of the required statistical information, the participating Member State in which the reporting agent's premises are located shall afford the necessary assistance, including ensuring access to the reporting agent's premises by the ECB or the national central bank so that the rights mentioned in paragraph 1 can be exercised.

Article 7

Imposition of sanctions

1. The ECB shall have the power to impose the sanctions set out in this Article on reporting agents which are subject to reporting requirements and residing in a participating Member State and which fail to comply with the obligations resulting from this Regulation or from ECB regulations or decisions defining and imposing the ECB's statistical reporting requirements.
2. The obligation to transmit certain statistical information to the ECB or to the national central banks shall be deemed to have been infringed if:
 - (a) no statistical information is received by the ECB or national central bank by the established deadline; or
 - (b) the statistical information is incorrect, incomplete or in a form not complying with the requirement.

3. The obligation to allow the ECB and the national central banks to verify the accuracy and quality of the statistical information submitted by reporting agents to the ECB or national central bank shall be deemed to have been infringed whenever a reporting agent obstructs this activity. Such obstruction includes, but is not limited to, the removal of documents and prevention of physical access by the ECB or the national central bank which is necessary for them to carry out their verification task or compulsory collection.
4. The ECB may impose sanctions on a reporting agent as follows:
 - (a) in the event of an infringement as defined in paragraph 2(a), a daily penalty payment not exceeding EUR 10 000, with the total fine not exceeding EUR 100 000;
 - (b) in the event of an infringement as defined in paragraph 2(b), a fine not exceeding EUR 200 000; and
 - (c) in the event of an infringement as defined in paragraph 3, a fine not exceeding EUR 200 000.
5. The sanctions set out in paragraph 4 shall be additional to the obligation on the reporting agent to meet the costs of the verification and compulsory collection procedure as required in Article 6(3).
6. In exercising the powers provided for in this Article, the ECB shall act in accordance with the principles and procedures as set out in Regulation (EC) No 2532/98.

Article 8

Confidentiality regime

0. This article applies without prejudice to Article 8a (2) and (3).

Observation:

The reference to paragraphs 2 and 3 was included only to reflect the content of the new Article 8a.

1. Within the scope of this Regulation and for the purposes of the confidentiality regime covering the statistical information which is necessary for the tasks of the ESCB to be performed, statistical information shall be confidential when it allows reporting agents or any other legal person, natural person, entity or branch to be identified, either directly from their name, address or from an officially allocated identification code, or indirectly through deduction, thereby disclosing individual information. To determine whether a reporting agent or any other legal person, natural person, entity or branch is identifiable, account shall be taken of all the means that might reasonably be used by a third party to identify the said reporting agent or the other legal person, natural person, entity or branch. Statistical information taken from sources which are available to the public in accordance with national law is not confidential.

2. [...]

 - (a) transmission within the ESCB of confidential statistical information that has been collected pursuant to Article 5 of the Statute shall take place: (i) to the extent and at the level of detail necessary for the performance of the tasks of the ESCB under Article 105 of the Treaty; or (ii) provided that such transmission is necessary for the efficient development, production or dissemination of statistics under Article 5 of the Statute or for increasing their quality;
 - (b) the Governing Council may decide on the collection and transmission, to the extent and level of detail necessary, within the ESCB of confidential information originally collected for purposes other than those of Article 5 of the Statute, provided that this is necessary for the efficient development or production of statistics or for increasing their quality and that these statistics are necessary for the performance of the tasks of the ESCB under Article 105 of the Treaty.

3. [...] **R**eporting agents shall be informed of the statistical and other, administrative, uses, to which statistical information provided by them may be put. Reporting agents shall have the right to obtain information on the legal basis for the transmission and the protective measures adopted.

4. [...] **T**he ESCB shall use confidential statistical information transmitted to it exclusively for the exercise of the tasks of the ESCB except in any of the following circumstances:
- (a) if the reporting agent or the other legal person, natural person, entity or branch which can be identified, has explicitly given its consent to the use of the said statistical information for other purposes;
 - (b) for transmission to the members of [...] **ESS** in accordance with **Article 8a (1)**;

Observation:

The formal modification reflects a creation of the new Article 8a.

- (c) for granting scientific research bodies access to confidential statistical information which does not allow direct identification, and with the prior explicit consent of the authority which provided the information;
 - (d) as regards NCBs, if the said statistical information is used in the field of prudential supervision or for the exercise of functions other than those specified in the Statute, in accordance with Article 14.4 of the Statute.
5. Confidential statistical information may be exchanged within the ESCB in order to grant scientific research bodies access to such information, in accordance with paragraphs 3 and 4(c) of this Article.
6. This Article shall not prevent confidential statistical information collected for purposes other than, or in addition to, meeting the ECB's statistical reporting requirements from being used to meet those other purposes.
7. This Article shall apply only to the collection and transmission of confidential statistical information for the fulfilment of the ECB's statistical reporting requirements; it shall not affect special national or Community provisions relating to the transmission of other types of information to the ECB.

8. This Regulation shall apply without prejudice to Directive 95/46/EC and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and of the free movement of such data.
9. The ECB and the national central banks shall take all the necessary regulatory, administrative, technical and organisational measures to ensure the **physical and logical** protection of confidential statistical information. The ECB shall define common rules and implement minimum standards to prevent unlawful disclosure and unauthorised use of data transmitted under paragraphs 1 and 2.

Observation:

The small improvement of the text based on the outcome of the CWPS is suggested.

10. Member States **and the ECB** shall adopt all the necessary measures to ensure the protection of confidential statistical information, including the imposition of the appropriate enforcement measures by the Member States in the event of an infringement.

Observation:

The small improvement of the text based on the outcome of the CWPS is suggested.

Article 8a

Exchange of confidential data between the ESCB and the ESS

- 1.** Without prejudice to national provisions on the exchange of confidential statistical information other than information covered in this Regulation, the transmission of confidential statistical information between an ESCB member that collected the information and an ESS authority may take place provided that this transmission is necessary for the efficient development, production or dissemination or for increasing the quality of European Statistics within the respective spheres of competence of the ESS and the ESCB. Any **further** transmission beyond the first transmission must be explicitly authorised by the ESCB member that collected the information.

Observation:

Small modifications were proposed to reflect the subject of this Article in its title and additional word was added to be in line with the Regulation on European Statistics.

2. **[...] The** confidential data **which** are transmitted between an ESS authority and an ESCB member, shall **not be used for purposes that are not exclusively statistical, such as for administrative, legal or tax purposes, or for the sanctioning against statistical units.** **Furthermore these data shall** only be accessible to staff working in statistical activities within their specific domain of work.

Observation:

The Presidency proposal clearly specifies that the confidential data provided by the ESS authorities can be used only for statistical purposes. The word “sanctioning” was included instead of “verification” to reflect ECB terminology.

3. The protection measures referred to in Article **20** of Regulation (EC) No [XX] shall apply to all confidential data transmitted between an ESS authority and an ESCB member pursuant to paragraphs **1** and **2** above, and to Article **21(2)** of Regulation (EC) No [XX]. [...]

Observation:

The corrections were proposed to be in line with the Regulation on European Statistics and to reflect the creation of separate Article 8a. The missing text was moved to the separate Article 8b.

Article 8b

Confidentiality report

The ECB shall publish an annual confidentiality report on the measures adopted to safeguard the confidentiality of the statistical data **referred to in Article 8 and 8a.**

Observation:

This text has been agreed at the CWPS.

Article 9
Final provisions

This Regulation shall enter into force on the day of its publication in the Official Journal of the European Communities.

Article 5, Article 6(4) and Article 8(9) shall apply from the date of entry into force of this Regulation. The remaining Articles shall apply from 1 January 1999.

This Regulation shall be binding in its entirety and directly applicable in all Member States.
