



**COUNCIL OF  
THE EUROPEAN UNION**

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**NOTE**

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from :	Presidency
to :	Working Party on Statistics on 29 May 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

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In this note the Presidency would like to introduce the compromise text of the ECB Recommendation prepared for the CWPS on 29 May 2009.

Since the last CWPS, which was held on 23 March 2009, the Presidency has carried out intensive discussions with the ECB and the Commission as well as with the Council Legal Service. These discussions were mainly focused on the following issues:

I. Reference reporting population (ESCB statistical work programme)

In the new compromise text the Presidency has added a new sentence to Article 2(1) that refers to the ESCB statistical work programme, which will serve as a tool for specification of the ECB's statistical reporting requirements in relation to the reference reporting population. This provision, together with Recital 7d and Article 2a should provide enough guarantees that the both systems will be able to share information about their plans and intentions as regards the development, production and dissemination of European Statistics within the framework of their close cooperation and thus

avoid duplications in data collection. The ESCB statistical programme has been also included in the definition of European Statistics to mirror the provision in the Regulation on European Statistics.

## II. Cooperation between the ESS and the ESCB

A strengthening of cooperation between the ESS and the ESCB is one of the major priorities presented by the Delegations at the CWPS. However, this area does not belong to the competencies of the Council. Therefore the inclusion of separate Article 2a on the cooperation between the ESCB and the ESS (which mirrors Article 9 of the Regulation on European Statistics) appears to be an important step forward, especially considering that this Article is further supplemented with Recital 7d, where a mutual cooperation in elaboration of statistical principles, design of statistical programmes and reduction of response burden is mentioned.

## III. Statistical Principles

The text on statistical principles has been further elaborated in the Presidency compromise text. New separate Recital 7b on statistical principles, which introduces Recital 7d and Article 3a, has been included. In addition the Presidency has formally modified Article 3a to partially reflect the opinion of the Council Legal Service.

## IV. Confidentiality

For clarity and consistency reasons it has been proposed to have two separate articles on confidential data protection in the ECB Recommendation, one for the data collected or transmitted by the ESCB members (Article 8) and the other one for confidential data transmitted between the ESS and the ESCB with the confidentiality rules for data provided by the ESS authorities to the ESCB members (Article 8a). Compared to the previous version Article 8 has been reordered to be more consistent and the introductory paragraph was modified to make clear that this Article applies only to the confidential data provided from the reporting agent to the ESCB member or transmitted within the ESCB. Taking into account the proposal of some Member States and the Council Legal Service the Presidency has also enlarged Article 8a by explicitly mentioning the rules necessary for a protection of confidential data provided by the ESS authorities.

## V. Recital on minimising the response burden (Recital 7)

In cooperation with the ECB the text of Recital 7 has been redrafted. The prioritisation of statistical need has been suggested as the alternative for providing the cost-benefit analysis since the both terms are very similar in the substance and cost-effectiveness has been already included as one of the ESCB's statistical principles in Recital 7b and Article 3a. Furthermore the specification of sources that can be used for the development, production and dissemination of the ESCB statistics has been extended and modified to reflect the opinion of the last CWPS.

In addition to the above-mentioned issues the Presidency together with the ECB and Eurostat has:

- modified the definition of European Statistics to reflect proposals of the last CWPS;
- added the new text in Article 2(4), which simplifies the collection of consolidated statistical information from large and complex banking groups and enterprise groups;
- included new Article 8c, which allows the ECB and the NCBs to have an access to the administrative records;
- adjusted the order of recitals to make them more consistent;
- harmonized the terminology and wording used throughout the Recommendation;
- included the definitions of statistical information and confidential statistical information and modified the definition of reporting agents.

Furthermore the opinions of the European Parliament, Council Legal Service and European Data Protection Supervisor have been taken into account.

## General remarks

Some parts of the text were put in the square brackets, as they are interrelated and need to be discussed as one package.

The CWPS on 29 May 2009 will examine the whole compromise text. The Presidency will start with the recitals and then continue article by article. The text in the square brackets will be discussed separately. The purpose of the CWPS is to finalize the text to be submitted to COREPER in the near future.

**Proposal for a compromise text of the Council Regulation amending Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank**

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*GENERAL OBSERVATION:*

The differences between the original text and Presidency proposals are in **bold underlined** characters or marked with [...]. The Presidency proposals since the last CWPS are marked in **bold underlined** with the grey colour. The texts in **square brackets** need to be discussed as one package.

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

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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,

**[...]**

*Observation:*

*Modification proposed by the Council Legal Service. In this part of the Regulation the text can only refer to legal basis or mandatory procedural steps. It is not possible to refer to a piece of legislation in general.*

**After consulting the European Data Protection Supervisor.**

*Observation:*

*The Council requested the opinion of the European Data Protection Supervisor. The text, proposed by the Council Legal Service, reflects this procedural step.*

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 referred to in the Treaty. In line with this, the purposes for which statistical information may be collected [...] should also include the compilation of the macro-prudential statistics required for the performance of the ESCB's tasks under Article 105 [...] of the Treaty.

*Observation:*

*“The Treaty” has been substituted for “Statute” as it is more consistent to refer to the Treaty throughout this Recital. The Council Legal Service suggested the inclusion of „should“ instead of „shall“. Moreover, a general reference to Article 105 is proposed as the compilation of macro-prudential statistics could relate to several aspects of the ESCB's tasks and not just Article 105(5).*

- (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.

*Observation:*

*Formal modification proposed by the Presidency and ECB.*

- (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, [...] **the ECB prioritises the statistical needs and** assesses the reporting burden. **For the same reason,** it is necessary to allow the maximum use of existing information, **surveys, administrative data, statistical registers and other sources [...] already available,** including an exchange of confidential statistical information within the ESCB **and with the European Statistical System (ESS).**

*Observation:*

*In the first part of the sentence the Presidency suggests using the term prioritisation as a broader alternative for cost-effectiveness analysis, which is now already included in Recital 7b.*

*On the request of the last CWPS the “administrative data, statistical registers and other sources“ have been substituted for “statistical infrastructure”. In addition the exchange of confidential statistical information with the ESS has been included, as it will also contribute to the fulfilment of intentions mentioned in this Recital.*

**(7a) European Statistics are [...] 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. 223/2009 on European Statistics.**

*Observation:*

*The text has been moved from Recital 9 to keep Recitals more consistent (the term “European Statistics” is used for the first time) and formally has been modified as proposed by the Council Legal Service.*

**(7b) European Statistics are developed, produced and disseminated by the ESCB in accordance with the statistical principles of impartiality, objectivity, professional independence, cost-effectiveness, statistical confidentiality, alongside the principles of minimisation of reporting burden and high quality, including reliability. The principles, adopted and published by the ECB are similar with the statistical principles of Regulation (EC) No. 223/2009 on European Statistics.**

*Observation:*

*On the request of some Member States the Presidency suggests including the separate recital on statistical principles, which introduces Article 3a. It also introduces Recital 7d where the mutual cooperation on elaborating the statistical principles is mentioned.*

**(7c) The development, production and dissemination of European Statistics should take into account best practices and the relevant European and international statistical standards.**

*Observation:*

*The text has been modified to reflect the ECB’s request at the last CWPS.*



**(7d) In line with Article 5.1 of the Statute, the ESCB and the ESS cooperate closely in order to ensure the coherence necessary to develop, produce and disseminate European Statistics. [In particular, the ESCB and the ESS cooperate when elaborating their own statistical principles, when designing their respective statistical work programme, and when striving to reduce the overall response burden. To this end the regular exchange of appropriate information related to the ESCB and the ESS statistical work programmes between the relevant ESCB and ESS committees is of particular importance in order to maximise the benefits of a good cooperation and avoid duplication in collection of statistical information.]**

*Observation:*

*The word “elaborating” has been substituted for “updating” to reflect the spirit of the Council Legal Service’s comments.*

*The text proposed by the French Presidency for the CWPS on 17 December 2008 has been modified to introduce the reasons and ways for cooperation between the ESS and the ESCB as well as to include the exchange of information between the relevant ESCB and ESS committees.*

(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 [...] **statistical information** between the two systems for statistical purposes, in the light of Article 285 of the Treaty and Article 5 of the Statute.

*Observation:*

*“Confidential statistical information” has been substituted for “confidential data” to reflect the ESCB terminology.*

(9) [...]

*Observation:*

*For consistency reasons the text of this Recital has been moved to Recital 7a.*

**(9a) In order to enhance transparency, the statistics compiled on the basis of the statistical information collected from financial sector institutions by the ESCB should be made publicly available but a high level of data protection and confidentiality should be guaranteed.**

*Observation:*

*Inclusion of amendment 1 of the draft EP legislative resolution partially modified by the ECB.*

**(10) Any confidential [...] statistical information collected and supplied to a member of the ESCB by an ESS authority should be used exclusively for statistical purposes and should not be used for the purposes that are not exclusively statistical such as for administrative, legal or tax purposes, or for the sanctioning against statistical units. In this respect it is necessary to ensure the physical and logical protection of this confidential statistical information and ensure that no unlawful disclosure and use for non-statistical purposes occur.**

*Observation:*

*In order to reflect the ESCB terminology the “confidential statistical information” has been substituted for “confidential data”.*

*On the request of some Member States the Presidency has prepared modified text, which introduces the rules for use and protection of confidential information provided by an ESS authority. This issue is further specified in Article 8a.*

**(11) Regulation (EC) No 45/2001 of the European Parliament and of the Council 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 has entered into force and needs to be respected in the development, production and dissemination of statistics by the ESCB.**

*Observation:*

*The recital has been included to reflect the opinion of the EDPS.*

HAS ADOPTED THIS REGULATION:

## Article 1

### Definitions

For the purposes of this Regulation:

0. **'European Statistics' shall mean statistics, that are: (i) necessary to undertake the ESCB's tasks as referred to in Articles 105 and 106 of the Treaty; (ii) [determined] in the ESCB statistical work programme; and (iii) developed, produced and disseminated in conformity with the statistical principles referred to in Article 3a.**

*Observation:*

*The text of the definition has been modified in cooperation with the ECB to better mirror the definition in the Regulation on European Statistics. The whole definition has been moved to the beginning of this Article in order to reflect its significance. The reference to the Treaty instead of the Statute has been proposed by the ECB as it covers the ESCB's tasks more comprehensively than the Statute.*

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

*Observation:*

*The Presidency proposes slightly modified text to be in line with Article 2(3).*

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 Annex A Chapter I (1.30)** of Council Regulation (EC) No. 2223/96 [...] 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;

*Observation:*

*Reflecting the recommendation of the Council Legal Service the Presidency proposes to add more specific reference to the Council Regulation (EC) No. 2223/96 and has slightly modified the original text.*

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.*

**11. ‘statistical information’ shall mean aggregated and individual data, indicators and related metadata;**

*Observation:*

*The definition of “statistical information” has been included in order to react on the recommendation of the EDPS to clarify this expression.*

**12. ‘confidential statistical information’ shall mean statistical information which 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.**

*Observation:*

*The Presidency proposes to add a definition of “confidential statistical information” which has been moved from Article 8(1) of this proposal. It mirrors the definition of “confidential data“ in the Regulation on European Statistics.*

## Article 2

### 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 [...] 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.’ **The information that is collected for fulfilment of the ECB’s statistical reporting requirements is further specified in the ESCB statistical work programme.**

*Observation:*

*In the in view of the new definition of European Statistics in Article 1, the addition “and for the development, production and dissemination of European Statistics” in the first sentence of this Article has been deleted. The Presidency further proposes to include the reference to the ESCB statistical work programme.*

*The expression “including” has been put in the square brackets, as there is still request from some Member States to delete it.*

2. [...] **In this respect**, the reference reporting population shall comprise the following reporting agents:

*Observation:*

*The simplification of the text proposed by the French Presidency.*

- (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 **residing in a Member State**;

*Observation:*

*The expression “residing in a Member State” has been added for consistency reasons.*

- (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.

**4. The ECB shall have the right to collect statistical information from legal persons, collection of natural persons and entities, as referred to in paragraph 3, on a consolidated basis, while specifying the coverage of the consolidation.**

*Observation:*

*A new paragraph has been proposed by the ECB in order to simplify the collection of consolidated statistical information from large and complex banking groups and enterprise groups, which might be necessary for financial stability statistics. The inclusion of the new text is also appropriate for the reasons of legal clarity and minimisation of response burden.*

**Article 2a**

**Cooperation with the ESS**

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

*Observation:*

*The Czech Presidency keeps 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 the Member States stating that the title of Article 3 was not appropriate.*

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 **the relevant** [...] **European** and international statistical standards;
- (c) may fully or partly exempt specific classes of reporting agents from its statistical reporting requirements.

*Observation:*

*The specification of European and international standards has been included.*

## **Article 3a**

### **Statistical principles underlying European Statistics produced by the ESCB**

**The development, production and dissemination of European Statistics by the ESCB are governed by the principles of impartiality, objectivity, professional independence, cost-effectiveness, statistical confidentiality, minimisation of reporting burden and high output quality, including reliability.**

**The ECB decides on and publishes the definitions of these principles.**

*Observation:*

*In cooperation with the Council Legal Service the Presidency has modified the text of Article 3a. As regards the text on publication of definitions strongly requested by the Member States the Presidency has modified it in cooperation with the ECB to take into utmost account the comments of the Council Legal Service.*

## **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.

## **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**

### **Protection and use of confidential statistical information collected by the ESCB**

- 0. The following rules shall apply to prevent unlawful use and disclosure of confidential statistical information provided from the reporting agent or the other legal person, natural person, entity or branch to an ESCB member or transmitted within the ESCB. The provisions of this Article shall not affect special national or Community provisions relating to the transmission of other types of information to the ECB and shall not apply to confidential statistical information transmitted between an ESS authority and an ESCB member, which is specified in Article 8a.**

*Observation:*

*The title of Article 8 and the introductory paragraph have been modified to make clear that this Article applies only to the confidential statistical information provided from the reporting agent or the other legal person, natural person, entity or branch to the ESCB member or transmitted within the ESCB. The whole Article 8 was reordered to make it more consistent.*

**1.** [...] **The ESCB shall use confidential statistical information 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)**;
- (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.

**2.** [...] **Reporting 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.**

**3.** [...] **The ESCB members** 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 [...] **confidential statistical information.**

*Observation:*

*The Presidency proposes small modifications of the text in order to make Article 8 more consistent.*

*“Confidential statistical information” has been substituted for “confidential data” to reflect the ESCB terminology.*



**4.** [...] Transmission of confidential statistical information within the ESCB that has been collected pursuant to Article 5 of the Statute shall take place:

**(a)** to the extent and at the level of detail necessary for the performance of the tasks of the ESCB under Article 105 **and 106** the Treaty; or

**(b)** 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;

*Observation:*

*The reference to Treaty has been specified in order to cover all relevant ESCB statistics.*

**5.** [...] 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 **or 106** of the Treaty.

*Observation:*

*The reference to Treaty has been specified in order to cover all relevant ESCB statistics.*

**6.** [...] Confidential statistical information may be exchanged within the ESCB in order to grant scientific research bodies access to such information, in accordance with paragraphs **1(c)** and **2** of this Article.

*Observation:*

*The Presidency proposes small modifications of the text in order to make Article 8 more consistent.*

**7.** [...] Statistical information taken from sources which are available to the public in accordance with national legislation is not confidential.

**8.** [...] 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 [...] in the event of an infringement.

*Observation:*

*The Presidency proposes modifications of the text in order to make Article 8 more consistent.*

**9.** [...] 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.

**10.** [...]

**11.** [...] 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 [...] 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.

**12.** [...] **This Article shall apply without prejudice to Article 8(a) (2) and (3).**

## Article 8a

### Exchange of confidential [...] statistical information between the ESCB and the ESS

*Observation:*

“Confidential statistical information” has been substituted for “confidential data” to reflect the ESCB terminology.

- 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 **and that this necessity has been justified.** Any **further** transmission beyond the first transmission must be explicitly authorised by the ESCB member that collected the information.

*Observation:*

An improvement of the text based on the outcome of the CWPS is suggested.

- 2.** [...] **The confidential [...] statistical information 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.** [...]
- 2a.** **Statistical information which the ESCB members receive from ESS authorities and which was obtained from sources lawfully available to the public and which remains available to the public according to national legislation shall not be considered confidential for the purpose of dissemination of statistics obtained from this statistical information.**

*Observation:*

*The new paragraph has been added to clarify that when the ESCB receives confidential data from ESS authorities, the protection rules of the ESS are followed, also in respect to the publicly available information.*

3. [...]

**3a. Within their respective spheres of competence, the ESCB members shall take all necessary regulatory, administrative, technical and organisational measures to ensure the physical and logical protection of confidential statistical information (statistical disclosure control) provided by the ESS authorities.**

**4. Confidential statistical information used for statistical purposes shall be stored separately from the statistical information needed for other purposes.**

**5. Confidential statistical information provided by the ESS authorities shall only be accessible to staff working in statistical activities within their specific domain of work. These persons shall use these data exclusively for statistical purposes. They shall be subject to this restriction even after cessation of their functions.**

**6. Member States and the ECB shall take appropriate measures to prevent and sanction any violations of the protection of confidential statistical information provided by the ESS authorities.**

*Observation on paragraphs 3a-6:*

*Reflecting the opinion of the Council Legal Service that using the reference to Article 20 of the Regulation on European Statistics is not appropriate solution as it includes the Commission (Eurostat) but not the ECB/ESCB the Presidency deleted paragraph 3 and proposes an explicit text dealing with the protection measures related to the confidential statistical information provided by the ESS authorities. The proposed solution also reflects suggestions of some Member States to store confidential statistical data used for statistical purposes separately from the statistical information needed for other purposes.*

## **Article 8b**

### **Confidentiality report**

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

#### *Observation:*

*This text has been agreed at the CWPS. “Confidential statistical information” has been substituted for “confidential data” to reflect the ESCB terminology.*

## **Article 8c**

### **Access to administrative records**

**In order to reduce the burden on respondents, the NCBs and the ECB shall have access to relevant sources of administrative data within their respective public administration systems, to the extent that these data are necessary for the development, production and dissemination of European Statistics or increasing its quality.**

*Observation:*

*The Article on access to administrative records, which partly mirrors the Regulation on European Statistics, has been added by the ECB.*

## **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.

*Observation:*

*This text will be adjusted after finishing discussion on the proposal.*