

## I

*(Resolutions, recommendations and opinions)*

## RECOMMENDATIONS

## EUROPEAN CENTRAL BANK

**Recommendation for a Council Regulation amending Regulation (EC) No 2533/98 concerning the collection of statistical information by the European Central Bank****(ECB/2008/9)**

(2008/C 251/01)

**EXPLANATORY MEMORANDUM**

## 1. INTRODUCTION

On 23 November 1998, the Council of the European Union adopted Regulation (EC) No 2533/98 concerning the collection of statistical information by the European Central Bank (ECB) <sup>(1)</sup>. A number of amendments should now be considered to maintain Regulation (EC) No 2533/98 as an effective instrument to carry out the statistical information collection tasks of the European System of Central Banks (ESCB).

In line with Article 107(6) of the Treaty establishing the European Community, the ECB previously submitted to the Council its Recommendation ECB/1998/10 for a Council Regulation (EC) concerning the collection of statistical information by the European Central Bank <sup>(2)</sup>. It is therefore appropriate to follow the same procedure to introduce the proposed amendments to Regulation (EC) No 2533/98.

## 2. COMMENTS ON THE ARTICLES

*Article 1***General reference to the ESCB tasks**

Article 5.4 of the Statute of the European System of Central Banks and the European Central Bank (hereinafter the 'ESCB Statute') provides that the Council defines the natural and legal persons subject to reporting requirements. Article 5.1 of the ESCB Statute and Article 2(1) of Regulation (EC) No 2533/98 provide that the ECB may collect the statistical information necessary to carry out the tasks of the ESCB. Article 2(2) of Regulation (EC) No 2533/98 identifies the reference reporting population from which the ECB collects that statistical information and lists specific statistical purposes for which the information may be collected. However, data are increasingly collected

only once and serve multiple statistical purposes, in order to minimise the reporting burden. As a consequence, a one-to-one link between the reference reporting population and specific types of statistics has become ineffective and these provisions need to be amended.

Notwithstanding this general reference to the ESCB tasks, the ECB recommends providing an indicative list of the statistical purposes for which statistics may be collected from the reference reporting population. These would include the following:

- 'monetary and financial statistics': this term is more appropriate than the currently used 'money and banking statistics', in view of the integration of financial markets and the increasing complexity of financial instruments,
- 'payment and payment systems statistics': replacing 'payment systems statistics' in order to clarify that the purposes for which statistics may be collected cover payment data as part of payment systems statistics. Article 105(2) of the Treaty gives the ESCB a mandate to promote the smooth operation of payment systems. In this context, comprehensive information on both the payments infrastructures and the payments carried out via these infrastructures are necessary for ECB policy-making, including the oversight of these market infrastructures,
- 'balance of payments and international investment position statistics',
- 'financial stability statistics': as Article 105(5) of the Treaty provides that the ESCB contributes to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system, this may require the collection of macro-prudential statistical data.

<sup>(1)</sup> OJ L 318, 27.11.1998, p. 8.

<sup>(2)</sup> OJ C 246, 6.8.1998, p. 12.

### Adjustment of the reference reporting population

The financial markets are becoming increasingly complex, with steadily growing interlinkages between the financial transactions and balance sheet positions of different types of financial intermediaries, such as monetary financial institutions, insurance corporations and financial vehicle corporations. In turn, this may imply that the ECB requires comparable, frequent and timely statistics for these subsectors, so that it can continue to carry out its tasks. Therefore, the ECB should be able to collect the necessary statistical information if the merits of doing so outweigh the costs and if this information is not already collected by other bodies. As a consequence, the reference reporting population must now comprise the financial corporations sector as a whole. In particular, this must include insurance corporations and pension funds (ICPF), which represent the second largest financial corporations' sub-sector in the euro area in terms of financial assets. In addition, the growing awareness of the financial implications of longevity as well as the general move towards funded pension schemes are likely to substantially increase the importance of the ICPF sub-sector for ECB policy-making. Related to this, these institutions are managing their portfolios much more actively than in the past, which further increases their relevance for monetary policy.

In addition, financial auxiliaries play an important role in the financial markets and in their interactions with other financial sub-sectors. Therefore, it is important to be able to also collect statistics from these institutions if deemed necessary.

Finally, in view of the forthcoming amendment to Council Regulation (EC) No 2223/96 of 25 June 1996 on the European system of national and regional accounts in the Community <sup>(3)</sup>, this Regulation could make a dynamic reference to it.

### Transitional arrangements to become permanent

The reporting of positions across euro area countries and of the related transactions should be allowed on a permanent basis. This is necessary for the compilation of high-quality balance of payments and financial accounts for the euro area. The current legal framework set up this reporting for a transitory period during the early years of the single currency. However, experience shows that such a reporting remains indispensable to overcome constraints in the data collection systems and to minimise the reporting burden.

### Statistical principles

Regulation (EC) No 2533/98 should refer to the statistical principles that govern the development, production and dissemination of statistics to carry out the ESCB tasks. Both Article 5 of the ESCB Statute and Regulation (EC) No 2533/98 are currently silent on statistical principles, while Article 285(2) of the Treaty, which governs the statistics of the European Statistical System

(ESS), explicitly sets out the principles that govern the production of Community statistics <sup>(4)</sup>. Including the ESCB's statistical principles in Regulation (EC) No 2533/98 would clarify that the ESCB's statistical activities are governed by these principles. It would also underline that the European statistical community shares the same fundamental convictions, although it is organised on the basis of two parallel systems and governance structures.

### Confidentiality regime

#### *Exchange of confidential information within the ESCB*

In order to minimise the reporting burden and to collect data only once, as well as to ensure the high quality of the statistics produced and the proper performance of the ESCB tasks, there is a need to extend the exchange of confidential statistical information within the ESCB. Furthermore, legal clarity is required for the transmission of confidential information between the ECB and the national central banks (NCBs) and between NCBs. To this end, such a transmission of confidential statistical information collected pursuant to Article 5 of the ESCB Statute should be made possible, provided that it is necessary to carry out the ESCB tasks or for the efficient development, production or dissemination of statistics, or for increasing their quality. For the same reason, already available information should be used to the maximum extent, regardless of the purpose for which it was originally collected, while safeguarding its confidentiality if so required. In fact, information becomes statistical information if it is used for the compilation of statistics, irrespective of the purpose for which it was originally collected.

#### *Exchange of confidential information between the ESCB and the ESS*

An extended exchange of confidential information between the ESCB and the ESS is necessary to minimise the reporting burden or for the efficient development, production or dissemination of European statistics, or for increasing their quality. Such exchange must be organised so as to maintain reporting agents' confidence in the protection of confidential information. Mirroring provisions enabling such exchange of confidential information between the ESS and the ESCB should be embedded in both Regulation (EC) No 2533/98 and the proposed Regulation on European Statistics. The following guiding principles should apply:

1. the exchange of confidential data between the ESCB and the ESS may take place if necessary to minimise the reporting burden or for the efficient development, production or dissemination of European statistics or for increasing their quality;
2. the exchange of confidential data between the ESCB and the ESS should take place for statistical purposes only: that is, exclusively for the compilation of statistics in their respective spheres of competence;

<sup>(3)</sup> OJL 310, 30.11.1996, p. 1.

<sup>(4)</sup> 'Community statistics' form part of 'European statistics' referred to in the recitals to Regulation (EC) No [XX] on European Statistics.

3. confidential data exchanged need to be protected from unlawful disclosure;
4. the ESCB and the ESS should inform reporting agents that they may exchange confidential data;
5. for the sake of clarity, uniform confidentiality protection measures should be applied to the exchange of confidential data between the ESCB and the ESS. These protection measures are laid down in Article 19 of Regulation (EC) No [XX] on European Statistics.

The proposed legal framework does not affect any agreements at national level on the exchange of confidential statistical information other than information covered in this recommendation.

The new confidentiality regime aims to mirror the corresponding provisions put forward in ECB Opinion CON/2007/35 of 14 November 2007 at the request of the Council of the European Union on a proposal for a regulation

of the European Parliament and of the Council on European Statistics <sup>(2)</sup>, so that the same transmission mechanism is used for the transfer of data from the ESS to the ESCB and for the transfer of data from the ESCB to the ESS.

*Access to non-directly identifiable confidential statistical information for research purposes*

Access to confidential statistical information which does not allow direct identification is increasingly required for research purposes, for example to analyse and understand the developments within sectors and across countries. Currently, the legal framework provides for mainly decentralised access of scientific research bodies to such statistical information at the national level. Therefore, this must be supplemented by an appropriate legal framework at the ESCB level, which allows scientific research bodies to be granted access to such information, while maintaining strict confidentiality safeguards.

**Recommendation for a:**

**'COUNCIL REGULATION**

**amending Regulation (EC) No 2533/98 concerning the collection of statistical information by the European Central Bank**

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 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 <sup>(1)</sup> 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.

<sup>(1)</sup> OJ L 318, 27.11.1998, p. 8.

<sup>(2)</sup> OJ C 291, 5.12.2007, p. 1.

- (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 on reporting agents 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 allow the maximum use of existing information to compile statistics, including an exchange of confidential statistical information within the ESCB.
- (8) Furthermore, it is important to ensure close cooperation between the ESCB and the European Statistical System (ESS), 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.
- (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],
- ments 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.”;
- (b) paragraph 2 is replaced by the following:
- “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 ESA 95;
- (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. Article 3 is amended as follows:
- (a) the following sentence is added at the start:

HAS ADOPTED THIS REGULATION:

#### Article 1

Regulation (EC) No 2533/98 is amended as follows:

1. Article 1(4) is amended as follows: the words “in Annex A;” are replaced by the words “in Council Regulation (EC) No 2223/96 of 25 June 1996 on the European system of national and regional accounts in the Community;”;
2. Article 2 is amended as follows:
- (a) paragraph 1 is replaced by the following:

“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 require-

“The principles of impartiality, objectivity, professional independence, cost-effectiveness, statistical confidentiality, alongside the principles of minimisation of reporting burden and high output quality shall govern the development, production and dissemination of statistics by the ESCB.”;

- (b) paragraph (a) is replaced by the following:
- “(a) shall use existing statistics as far as possible.”;
4. Article 8 is amended as follows:
- (a) paragraph 2 is replaced by the following:
- “2. Without prejudice to Article 20 of Regulation (EC) No [XX],
- (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.”;
- (b) paragraph 3 is replaced by the following:  
 “3. Without prejudice to Regulation (EC) No [XX], 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.”;
- (c) paragraph 4 is replaced by the following:  
 “4. Without prejudice to paragraph 12 of this Article, the 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 the European Statistical System (ESS) in accordance with paragraph 11;  
 (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.”;
- (d) paragraph 5 is replaced by the following:  
 “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.”;
- (e) paragraph 8 is replaced by the following:  
 “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 (\*).

(\*) OJ L 8, 12.1.2001, p. 1.”;

- (f) in paragraph 9, the two last sentences are replaced by the following sentence:  
 “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.”;
- (g) the following paragraphs 11 to 13 are added:  
 “11. 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 transmission beyond the first transmission must be explicitly authorised by the ESCB member that collected the information.  
 12. If confidential data are transmitted between an ESS authority and an ESCB member, these data shall be used exclusively for statistical purposes and only be accessible to staff working in statistical activities within their specific domain of work.  
 13. The protection measures referred to in Article 19 of Regulation (EC) No [XX] shall apply to all confidential data transmitted between an ESS authority and an ESCB member pursuant to paragraphs 11 and 12 above, and to Article 20(1a) of Regulation (EC) No [XX]. The ECB shall publish an annual confidentiality report on the measures adopted to safeguard the confidentiality of the statistical data.”;
5. Annexes A and B are deleted.

#### Article 2

This Regulation shall enter into force on [date].

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

Done at Frankfurt am Main, 15 September 2008.

*The President of the ECB*  
 Jean-Claude TRICHET