

III

(Preparatory acts)

EUROPEAN CENTRAL BANK

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OPINION OF THE EUROPEAN CENTRAL BANK

of 6 November 2012

on a proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 223/2009 on European statistics**(CON/2012/84)**

(2012/C 374/02)

Introduction and legal basis

On 15 May 2012, the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on a proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 223/2009 on European statistics ⁽¹⁾ (hereinafter the 'proposed regulation').

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union since the proposed regulation lies within the ECB's fields of competence. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

General observations

European statistics are developed, produced and disseminated by the European Statistical System (ESS) and the European System of Central Banks (ESCB) that operate under two separate but complementary legal frameworks while cooperating closely in the performance of their statistical functions ⁽²⁾. Therefore, the ECB welcomes enhancements to the ESS legal framework that will increase its effectiveness and, in particular, enable it to achieve a similar level of independence as the ESCB. More specifically, the ECB supports the objective of strengthening the ESS's governance by: (a) reinforcing the role of national statistical institutes (NSIs) in coordinating the statistical activities of other national authorities relating to European statistics under the exclusive responsibility of the ESS ⁽³⁾; (b) reinforcing the professional independence of the Heads of the NSIs and the Head of Eurostat ⁽⁴⁾; (c) reinforcing the implementation of the European Statistics Code of Practice by imposing on Member States the obligation to undertake specific policy measures on the basis

⁽¹⁾ COM(2012) 167 final.

⁽²⁾ See recitals 7 to 10 and Article 9 of Regulation (EC) No 223/2009, Article 5 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB'), Articles 2a and 8a of Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank (OJ L 318, 27.11.1998, p. 8) and recital 8 of Council Regulation (EC) No 951/2009 of 9 October 2009 amending Regulation (EC) No 2533/98 concerning the collection of statistical information by the European Central Bank (OJ L 269, 14.10.2009, p. 1). Cf. paragraph 1.1 of 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 (OJ C 291, 5.12.2007, p. 1).

⁽³⁾ See Article 5 of Regulation (EC) No 223/2009, as amended by Article 1(2) of the proposed regulation.

⁽⁴⁾ See new Article 5a inserted in Regulation (EC) No 223/2009 by Article 1(3) of the proposed regulation. cf. Articles 3 and 7 of Commission Decision 2012/504/EU of 17 September 2012 on Eurostat (OJ L 251, 18.9.2012, p. 49).

of the 'Commitment on Confidence in Statistics', progress on which is to be monitored by the Commission⁽¹⁾; and (d) enhancing access to and use of administrative data by NSIs⁽²⁾.

1. Enhanced coordination role of the NSIs within the ESS and cooperation with the ESCB

1.1. Under the proposed regulation, the NSIs 'shall act ... as the sole contact point for the Commission (Eurostat) on statistical matters'⁽³⁾ and 'shall, in particular, be responsible at national level for coordinating statistical programming and reporting, quality monitoring, methodology, data transmission and communication on ESS statistical actions'⁽⁴⁾. The ECB welcomes the proposed reinforcement of the responsibilities of the NSIs at national level as this will support the complete and coherent production of European statistics. At the same time the ECB understands that such enhanced coordination powers will refer to 'European statistics developed, produced and disseminated by the ESS'⁽⁵⁾. The ECB recalls that the national central banks (NCBs) that are members of the ESCB: (a) produce European statistics under Articles 3 and 5 of the Statute of the European System of Central Banks and of the European Central Bank, as further specified in Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank⁽⁶⁾, and (b) do not participate in the production of European statistics under Regulation (EC) No 223/2009 although under specified conditions data produced by NCBs may be used by NSIs, other national authorities and the Union statistical authority for the production of European statistics⁽⁷⁾. Statistical tasks of the NCBs performed through the ESCB are coordinated by the ECB's Governing Council. The latter's role in this respect includes, inter alia, specifying the division of tasks within the ESCB concerning the collection and verification of statistical information and enforcement of statistical reporting obligations⁽⁸⁾. Consequently the ECB expects that the coordination powers of NSIs will not relate to European statistics produced through the ESCB under Articles 3 and 5 of the Statute of the ESCB and Regulation (EC) No 2533/98.

1.2. Although the members of the ESS and of the ESCB fulfil their own statistical responsibilities, they cooperate closely, particularly in specified areas for which they have a joint responsibility such as the production of national accounts and balance of payments statistics⁽⁹⁾. In those areas of European statistics for which the ESS and the ESCB are jointly responsible, it is essential to maintain and enhance the present robust cooperation arrangements as implemented at Union level through the Committee on Monetary, Financial and Balance of Payment Statistics⁽¹⁰⁾, as well as respective national cooperation arrangements reflecting the division of responsibilities in individual cases.

1.3. Under the proposed regulation, the 'heads of NSIs shall have the sole responsibility for deciding on processes, statistical methods, standards and procedures, and on the content and timing of statistical releases and publications for all European statistics'⁽¹¹⁾. While the ECB welcomes the proposed enhancement of the professional independence of the Heads of the NSIs for activities undertaken at national level within the ESS, the ECB understands that their enhanced coordinating role is without

⁽¹⁾ See new paragraph 3 inserted in Article 11 of Regulation (EC) No 223/2009 by Article 1(5) of the proposed regulation.

⁽²⁾ See new Article 17a inserted in Regulation (EC) No 223/2009 by Article 1(8) of the proposed regulation.

⁽³⁾ See Article 5(1) first subparagraph of Regulation (EC) No 223/2009, as amended by Article 1(2) of the proposed regulation.

⁽⁴⁾ See Article 5(1) second subparagraph of Regulation (EC) No 223/2009, as amended by Article 1(2) of the proposed regulation.

⁽⁵⁾ See recital 6 of the proposed regulation.

⁽⁶⁾ OJ L 318, 27.11.1998, p. 8. Cf. paragraph 1.2 of the ECB Opinion CON/2007/35.

⁽⁷⁾ See recital 9 of Regulation (EC) No 223/2009. National law may in some cases entrust individual NCBs, to the extent that this is compatible with the performance of their ESCB tasks, with the production of statistical data falling within the scope of European statistical programmes and normally collected through the ESS under Regulation (EC) No 223/2009.

⁽⁸⁾ See recital 11 of Regulation (EC) No 2533/98.

⁽⁹⁾ See Article 6 of Council Regulation (EC) No 2223/96 of 25 June 1996 on the European system of national and regional accounts in the Community (OJ L 310, 30.11.1996, p. 1). See also recital 9 of Regulation (EC) No 184/2005 of the European Parliament and of the Council of 12 January 2005 on Community statistics concerning balance of payments, international trade in services and foreign direct investment (OJ L 35, 8.2.2005, p. 23). See also Guideline ECB/2004/15 of 16 July 2004 on the statistical reporting requirements of the European Central Bank in the field of balance of payments and international investment position statistics, and the international reserves template (OJ L 354, 30.11.2004, p. 34).

⁽¹⁰⁾ See Council Decision 91/115/EEC establishing a Committee on monetary, financial and balance of payment statistics (OJ L 59, 6.3.1991, p. 19).

⁽¹¹⁾ See new Article 5a inserted in Regulation (EC) No 223/2009 by Article 1(3) of the proposed regulation.

prejudice to the performance by the NCBs of their statistical tasks under the Statute of the ESCB and Regulation (EC) No 2533/98 that benefit from independence safeguards specified in Article 130 of the Treaty and Article 7 of the Statute of the ESCB.

1.4. Consequently, the ECB recommends introducing drafting clarifications to ensure that the proposed regulation respects the institutional separation between the ESS and the ESCB. Moreover, it should acknowledge the need for appropriate cooperation to allow the two systems to best perform their complementary functions related to the development, production and dissemination of European statistics ⁽¹⁾.

2. Enhancing NSI access and use of administrative data

2.1. Under the proposed regulation, the NSIs, other statistical authorities and the Commission (Eurostat) 'shall have the right to access and use, promptly and free of charge, all administrative records and to integrate these administrative records with statistics, to the extent necessary for the development, production and dissemination of European statistics' ⁽²⁾. The ECB notes that the introduction of the concepts of 'administrative records' (which was previously 'administrative data sources' ⁽³⁾) and of access being available 'promptly and free of charge' may require additional clarification. As the ECB has already noted ⁽⁴⁾, access to public records should be governed by the rules adopted by the Member States and the Commission in their respective fields of competence ⁽⁵⁾.

2.2. Further, the proposed amendments provide that 'the NSIs and the Commission (Eurostat) shall be consulted on and involved in the initial design, subsequent development and discontinuation of administrative records built up and maintained by other bodies' and 'shall have the right to coordinate standardisation activities concerning administrative records relevant for statistical data production' ⁽⁶⁾. The ECB welcomes the proposed changes that, when applied in accordance with the general Treaty principles, including subsidiarity and proportionality ⁽⁷⁾, would enable the ESS to make better use of administrative data sources to generate efficiency gains, reduce the reporting burden and improve the quality of European statistics produced by the ESS. However, the ECB notes that the proposed amendments should not interfere with the principle of central bank independence, stemming from Article 130 of the Treaty and Article 7 of the Statute of the ESCB and the obligation of professional secrecy set out in Article 37 of the Statute of the ESCB. Hence, clarification is needed concerning the potential access by the NSIs and the Commission to administrative records maintained by ESCB members, in particular the administrative records related to performance of ESCB tasks ⁽⁸⁾.

Where the ECB recommends that the proposed regulation is amended, specific drafting proposals are set out in the Annex accompanied by explanatory text to this effect.

Done at Frankfurt am Main, 6 November 2012.

The President of the ECB

Mario DRAGHI

⁽¹⁾ See amendments 1 to 2 and 4 to 6 in the Annex to this opinion.

⁽²⁾ See new Article 17a(1) inserted in Regulation (EC) No 223/2009 by Article 1(8) of the proposed regulation.

⁽³⁾ See Article 24 of Regulation (EC) No 223/2009 deleted by Article 1(10) of the proposed regulation.

⁽⁴⁾ See paragraph 1.4 of ECB Opinion CON/2007/35.

⁽⁵⁾ Currently required by the second paragraph of Article 24 of Council Regulation (EC) No 223/2009. See Amendments 3 and 7 in the Annex to this opinion.

⁽⁶⁾ See new Article 17a(2) inserted in Regulation (EC) No 223/2009 by Article 1(8) of the proposed regulation.

⁽⁷⁾ See Article 5(3)(4) of the Treaty on the European Union.

⁽⁸⁾ See Amendment 7 in the Annex to this opinion.

ANNEX

Drafting proposals

Text proposed by the Commission	Amendments proposed by the ECB (!)
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Amendment 1

Recital 9

'(9) Furthermore, the coordinating role already attributed to the NSIs should be clarified as regards its scope, so as to achieve more efficient coordination of statistical activities at national level, including quality management.'	'(9) Furthermore, the coordinating role already attributed to the NSIs for European statistics produced through the ESS should be clarified as regards its scope, so as to achieve more efficient coordination of statistical activities within the ESS at national level, including quality management.'
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Explanation

See Amendment 2.

Amendment 2

New recital 9a

[no text]	'(9a) In accordance with Article 9 of Regulation (EC) No 223/2009 and Article 2a of Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank (*), the ESS and the European System of Central Banks (ESCB) cooperate closely to ensure complete and coherent European statistics produced by the two statistical systems in their fields of competence in accordance with their respective work programmes. Particular areas of cooperation include national accounts and balance of payment statistics, as well as the provision of advice to the Commission on statistics related to the excessive deficit procedure.
	(*) OJ L 318, 27.11.1998, p. 8.'

Explanation

In accordance with Regulations (EC) No 223/2009 and (EC) No 2533/98, European statistics are developed, produced and disseminated by the ESS and the ESCB under two separate but complementary legal frameworks. As indicated in recital 9 of Regulation (EC) No 223/2009, members of the ESCB do not participate in the production of European statistics pursuant to Regulation (EC) No 223/2009. Nevertheless, the ESS and the ESCB cooperate closely ensuring that they can each perform their own statistical functions. More specifically, an NCB may agree with the Union statistical authority, within their respective competences and without prejudice to national arrangements, that NSIs, other national authorities and the Union statistical authority may directly or indirectly use data produced by the NCB for the production of European statistics. The proposed amendments reflect these existing arrangements.

Amendment 3

Recitals 10 and 11

'(10) In order to reduce the burden on statistical authorities and respondents, the NSIs and other national authorities should be able to access and use administrative records, including those filled electronically, promptly and free-of-charge, as well as to integrate these records with statistics.'	'(10) In order to reduce the burden on statistical authorities and respondents, the NSIs and other national authorities should be able to access and use administrative records, including those filled electronically, promptly and free-of-charge, as well as to integrate these records with statistics.'
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Text proposed by the Commission	Amendments proposed by the ECB (1)
<p>(11) The NSIs should furthermore be consulted at an early stage on the design of new administrative records that could provide data for statistical purposes and on planned changes to, or cessation of, existing administrative sources. They should also receive relevant metadata from the owners of administrative data and coordinate standardisation activities concerning administrative records that are relevant for statistical data production.'</p>	<p>(11) The NSIs should furthermore be consulted at an early stage on the design of new administrative records that could provide data for statistical purposes and on planned changes to, or cessation of, existing administrative sources. They should also receive relevant metadata from the owners of administrative data and coordinate standardisation activities concerning administrative records that are relevant for statistical data production. The exercise by the NSIs and other national authorities of competences related to access, use, standardisation, initial design, subsequent development and cessation of ESCB administrative records should not interfere with the performance of ESCB tasks specified in Article 127 of the Treaty and with safeguards on central bank independence under Article 130 and Article 282(3) of the Treaty and Article 7 of the Statute of the European System of Central Banks and of the European Central Bank.'</p>

Explanation

See Amendment 7.

Amendment 4

Article 1(2)

<p>'(2) In Article 5, paragraph 1 is replaced by the following:</p> <p>"1. The national statistical authority designated by each Member State as the body having the responsibility for coordinating all activities at national level for the development, production and dissemination of European statistics (the NSI) shall act in this regard as the sole contact point for the Commission (Eurostat) on statistical matters.</p> <p>The coordinating responsibility of the NSI shall cover all other national authorities responsible for the development, production and dissemination of European statistics. The NSI shall, in particular, be responsible at national level for coordinating statistical programming and reporting, quality monitoring, methodology, data transmission and communication on ESS statistical actions."</p>	<p>'(2) In Article 5, paragraph 1 is replaced by the following:</p> <p>"1. The national statistical authority designated by each Member State as the body having the responsibility for coordinating all activities at national level for the development, production and dissemination of European statistics at national level under this Regulation (the NSI) shall act in this regard as the sole contact point for the Commission (Eurostat) on statistical matters.</p> <p>The coordinating responsibility of the NSI shall cover all other national authorities responsible for the development, production and dissemination of European statistics produced under this Regulation. The NSI shall, in particular, be responsible at national level for coordinating statistical programming and reporting, quality monitoring, methodology, data transmission and communication on ESS statistical actions and shall cooperate with the respective national central bank (NCB) to ensure production of complete and coherent European statistics through the ESS and the ESCB in their respective fields of competence."</p>
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Explanation

See Amendment 2.

Amendment 5

Article 1(3)

<p>'(3) The following Article 5a is inserted:</p> <p>"Article 5a</p> <p>Heads of NSIs</p>	<p>'(3) The following Article 5a is inserted:</p> <p>"Article 5a</p> <p>Heads of NSIs</p>
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Text proposed by the Commission	Amendments proposed by the ECB ⁽¹⁾
<p>1. Within their national statistical system, the heads of NSIs shall have the sole responsibility for deciding on processes, statistical methods, standards and procedures, and on the content and timing of statistical releases and publications for all European statistics. They shall be empowered to decide on all matters regarding the internal management of the NSI. They shall coordinate the statistical activities of all national authorities that contribute to the development, production and dissemination of European statistics. When carrying out these tasks, the heads of NSIs shall act in an independent manner; they shall neither seek nor take instructions from any government or other institution, body, office or entity; they shall refrain from any action incompatible with the performance of these tasks.”</p>	<p>1. Within their national statistical system, the heads of NSIs shall have the sole responsibility for deciding on processes, statistical methods, standards and procedures, and on the content and timing of statistical releases and publications for all European statistics produced under this Regulation. They shall be empowered to decide on all matters regarding the internal management of the NSI. They shall coordinate the statistical activities of all national authorities that contribute to the development, production and dissemination of European statistics produced through the ESS. Furthermore, they shall cooperate with the respective NCBs on issues related to the production of European statistics that are common to the ESS and to the ESCB. When carrying out these tasks, the heads of NSIs shall act in an independent manner; they shall neither seek nor take instructions from any government or other institution, body, office or entity; they shall refrain from any action incompatible with the performance of these tasks.”</p>

Explanation

See Amendment 2.

Amendment 6

Article 1(5)

<p>‘(5) In Article 11, the following paragraph 3 is added:</p> <p>“3. Member States shall take all necessary measures to implement the Code of Practice in order to maintain confidence in their statistics. To this effect, each Member State, represented by its government, shall sign and implement a ‘Commitment on Confidence in Statistics’ whereby specific policy commitments are made to implement the Code and to establish a national quality assurance framework, including self-assessments and improvement actions. The Commitment shall be counter-signed by the Commission.</p> <p>These commitments shall be regularly monitored by the Commission on the basis of annual reports sent by Member States. The Commission shall report to the European Parliament and the Council on the implementation of these commitments within 3 years of the entry into force of this Regulation.”’</p>	<p>‘(5) In Article 11, the following paragraph 3 is added:</p> <p>“3. Member States shall take all necessary measures to implement the Code of Practice in order to maintain confidence in their contribution to the European statistics produced by the ESS. To this effect, each Member State, represented by its government, shall sign and implement a ‘Commitment on Confidence in Statistics’ whereby specific policy commitments are made to implement the Code and to establish a national quality assurance framework, including self-assessments and improvement actions. The Commitment shall be counter-signed by the Commission.</p> <p>These commitments shall be regularly monitored by the Commission on the basis of annual reports sent by Member States. The Commission shall report to the European Parliament and the Council on the implementation of these commitments within 3 years of the entry into force of this Regulation.”’</p>
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Explanation

See Amendment 2.

Amendment 7

Article 1(8)

<p>‘(8) The following Article 17a is inserted:</p> <p>“Article 17a</p> <p>Access, use and integration of administrative records</p> <p>1. In order to reduce the burden on respondents, the NSIs, other national authorities as referred to in Article 4 and the Commission (Eurostat) shall have the right to access and use, promptly and free of charge, all administrative records and to integrate these administrative records with statistics, to the extent necessary for the development, production and dissemination of European statistics.</p>	<p>‘(8) The following Article 17a is inserted:</p> <p>“Article 17a</p> <p>Access, use and integration of administrative records</p> <p>1. In order to reduce the burden on respondents, the NSIs, other national authorities as referred to in Article 4 and the Commission (Eurostat) shall have the right to access and use, promptly and free of charge, all administrative records and to integrate these administrative records with statistics, to the extent necessary for the development, production and dissemination of European statistics produced under this Regulation.</p>
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Text proposed by the Commission	Amendments proposed by the ECB ⁽¹⁾
<p>2. The NSIs and the Commission (Eurostat) shall be consulted on and involved in the initial design, subsequent development and discontinuation of administrative records built up and maintained by other bodies, thus facilitating the further use of these records for statistical purposes. They shall have the right to coordinate standardisation activities concerning administrative records relevant for statistical data production.</p> <p>3. Access by and involvement of the NSIs, other national authorities and the Commission (Eurostat) pursuant to paragraphs 1 and 2 shall be limited to administrative records within their own respective public administrative system.</p> <p>4. The NSIs shall receive relevant metadata from the owners of administrative records used for statistical purposes.</p> <p>5. The NSIs and owners of administrative records shall establish the necessary cooperation mechanisms.”</p>	<p>2. The NSIs and the Commission (Eurostat) shall be consulted on and involved in the initial design, subsequent development and discontinuation of administrative records built up and maintained by other bodies, thus facilitating the further use of these records for statistical purposes. They shall have the right to coordinate standardisation activities concerning administrative records relevant for statistical data production.</p> <p>3. The practical arrangements and the conditions for achieving effective access shall be determined where necessary by each Member State and the Commission, within their respective spheres of competence. As regards administrative records built up and maintained by the ESCB, performance by NSIs, other national authorities and the Commission (Eurostat) of competences under paragraphs 1 and 2 shall not interfere with the performance of ESCB tasks specified in Article 127 of the Treaty and with the safeguards on central bank independence and professional secrecy specified in Article 130 and Article 282(3) of the Treaty and Articles 7 and 37 of the Statute of the European System of Central Banks and of the European Central Bank.</p> <p>34. Access by and involvement of the NSIs, other national authorities and the Commission (Eurostat) pursuant to paragraphs 1, and 2 and 3 shall be limited to administrative records within their own respective public administrative system.</p> <p>45. The NSIs shall receive relevant metadata from the owners of administrative records used for statistical purposes.</p> <p>56. The NSIs and owners of administrative records shall establish the necessary cooperation mechanisms.”</p>

Explanation

Arrangements for access to public records should continue to be defined by the rules adopted by the Member States and the Commission in their respective fields of competence, as required by the second paragraph of Article 24 of Regulation (EC) No 223/2009. Such rules may in particular clarify the concepts of ‘administrative records’ and ‘promptly and free of charge’.

Moreover, the proposed amendments concerning access to public records should not interfere with the performance of ESCB tasks under Article 127 of the Treaty and with the principle of central bank independence and the obligation of professional secrecy under Article 130 of the Treaty and Articles 7 and 37 of the Statute of the ESCB. Hence, clarification is needed concerning the potential access by the NSIs and the Commission to administrative records maintained by the ESCB, in particular administrative records related to performance of the ESCB-related tasks.

⁽¹⁾ Bold in the body of the text indicates where the ECB proposes inserting new text. Strikethrough in the body of the text indicates where the ECB proposes deleting text.