



OPINION OF THE EUROPEAN CENTRAL BANK
of 27 June 2014
on statistical reporting requirements in the field of payment statistics
(CON/2014/47)

Introduction and legal basis

On 4 April 2014, the European Central Bank (ECB) received a request from the Polish Minister for Finance for an opinion on a draft ordinance of the Minister for Finance on detailed scope of information referred to in Article 14a-14c of the Law on payment services which is to be transferred to Narodowy Bank Polski and the procedure for complying with the reporting obligation (hereinafter the ‘draft ordinance’).

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 and the third, fourth and sixth indents of Article 2(1) of Council Decision 98/415/EC¹, as the draft law relates to Narodowy Bank Polski (NBP), the collection, compilation and distribution of monetary, financial, banking, payment systems and balance of payments statistics, and rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets. 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.

1. Purpose of the draft ordinance

- 1.1 The draft ordinance implements Article 14d of the Law of 19 August 2011 on payment services², which authorises the Minister for Finance to impose on acquirers, electronic money institutions and payment instrument issuers obligations to report data to NBP, which NBP uses for the purposes of making periodic assessments of monetary clearing as part of its role as overseer of payment systems.
- 1.2 The draft ordinance will replace and consolidate three implementing ordinances which currently regulate the reporting obligations of acquirers, payment card issuers and electronic money

¹ Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42).

² *Dziennik Ustaw* (Dz. U.) of 2011 No 199, item 1175.

institutions³. Additionally, the draft ordinance expands the scope of reporting to include payment instruments other than payment cards.

- 1.3 The draft ordinance also aims to update the relevant reporting templates to take account of Regulation (EU) No 1409/2013 (ECB/2013/43) of the European Central Bank⁴ and Recommendation ECB/2013/44⁵.

2. General observations

- 2.1 Article 5.2 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the ‘Statute of the ESCB’) provides that ‘national central banks shall carry out, to the extent possible, the tasks described in Article 5.1’. These are the tasks of the European System of Central Banks (ESCB) defined in the Treaty and the Statute of the ESCB. Although regulations adopted under Article 34.1 of the Statute of the ESCB do not confer any rights or impose any obligations on Member States that have not adopted the euro (hereinafter the ‘non-euro area Member States’), Article 5 of the Statute of the ESCB applies to all Member States, whether or not they have adopted the euro⁶. In addition, Article 4 of Council Regulation (EC) No 2533/98 requires all Member States to ‘organise themselves in the field of statistics and ... fully cooperate with the ESCB in order to ensure the fulfilment of the obligations arising out of Article 5 of the Statute’. These provisions therefore mean that non-euro area Member States are under an obligation to design and implement at national level all measures they consider appropriate to carry out the collection of statistical information needed to fulfil the ECB’s statistical reporting requirements and to make timely preparations in the field of statistics in order for them to become participating Member States.
- 2.2 In this context, it is primarily the task of the national authorities of non-euro area Member States to determine which detailed reporting requirements and collection methods are the most efficient and effective at the national level and the least burdensome for the reporting population concerned. The ECB does not comment in detail on national reporting provisions as they may differ considerably between Member States, depending on various national and external factors. The ECB’s comments are therefore of a general nature only and are meant to serve as a guide, enabling Polish authorities to shape its reporting requirements in line with those of the Eurosystem in preparation for Poland’s adoption of the euro.

³ The three ordinances were issued under the Law on electronic payment instruments, which was repealed with effect from 7 October 2013 as part of the consolidation of payment services-related provisions in the Law on payment services. On that consolidation, see Opinion CON/2012/72. All ECB Opinions are published on the ECB’s website at www.ecb.europa.eu.

⁴ Regulation (EU) No 1409/2013 of the European Central Bank of 28 November 2013 on payments statistics (ECB/2013/43) (OJ L 352, 24.12.2013, p. 18).

⁵ Recommendation of the European Central Bank of 28 November 2013 on payments statistics (ECB/2013/44) (OJ C 5, 9.1.2014, p. 1).

⁶ See recital 17 in the preamble to 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).

3. Specific observations and technical comments

- 3.1 The ECB welcomes the consolidation of the implementing provisions on reporting obligations in the field of payment statistics for a certain part of the reporting population in a single act, as it will increase the clarity and consistency of interpretation and application of the reporting obligations.
- 3.2 The ECB also welcomes the statement by the Polish authorities that the draft ordinance aims to align the statistical reporting requirements in Poland in the field of payment statistics with relevant parts of the ECB's requirements, in particular as laid down in Regulation (EU) No 1409/2013 (ECB/2013/43) and Recommendation ECB/2013/44. Achieving consistency with the ECB's statistical standards and requirements will enable the reporting population to become familiar with the statistical reporting regime that will apply once Poland adopts the euro. With this in mind, the ECB takes the view that further alignments with Regulation (EU) No 1409/2013 (ECB/2013/43) might be considered worthwhile as regards: (i) the adoption in template FN.19 of a geographical breakdown similar to Table 3 in Annex III to that Regulation; (ii) a possible distinction between point-of-sale (POS) and non-POS terminals in template ST.03; and (iii) a possible inclusion of information on the general structure of payment statistics and data definitions similar to Annexes I and II to that Regulation. In addition, the ECB notes that the reporting of payment statistics by payment system operators does not fall within the scope of the draft ordinance, as this information is collected under different national provisions⁷.
- 3.3. The ECB welcomes the fact that the draft ordinance includes provisions for collecting detailed information on payment instruments for oversight purposes which is in most aspects very similar to, or even more detailed than (e.g. in respect of EMV, e-money and mobile payments), the corresponding Eurosystem scheme of data collection. The ECB observes that no breakdown per country of foreign fraudulent transactions appears to be included. As a result, in this respect, the Polish authorities would have no detailed information on the geographical origin of the fraud. In addition, the draft ordinance appears not to include a breakdown of ATM cash withdrawal fraud into categories ('lost and stolen', 'card not received', 'counterfeit', 'other'), whereas this breakdown is included in relation to e-money. The ECB recommends introducing a differentiation in the data collection distinguishing fraudulent transactions resulting from mail or telephone order from transactions of that kind made via the Internet. Such differentiation would be advantageous as Internet fraud, in particular, is increasing substantially. Admittedly, however, this also remains an optional breakdown under the current Eurosystem scheme for data collection.

⁷ The relevant provisions are Article 16 of the Law on settlement finality in payment systems and securities settlement systems and the rules for the supervision of such systems (Dz. U. of 2010 No 112, item 743) and Article 23(2a) of the Law on Narodowy Bank Polski (consolidated text: Dz. U. of 2013, item 908).

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3.4 The above comments do not prejudice any future ECB assessment relating to the reporting scheme for payment statistics in Poland.

This opinion will be published on the ECB's website.

Done at Frankfurt am Main, 27 June 2014.

[signed]

The President of the ECB

Mario DRAGHI