



EUROPEAN CENTRAL BANK
EUROSYSTEM

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ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK
of 3 September 2018
on the transmission of administrative data for statistical purposes
(CON/2018/40)

Introduction and legal basis

On 20 July 2018 the European Central Bank (ECB) received a request from the German Federal Ministry of Economic Affairs and Energy (hereinafter 'the Ministry') for an opinion on a draft law governing the statistical use of administrative data and the transmission of detailed information on multinational enterprise groups to statistical authorities (hereinafter the 'draft law'). On 10 August 2018, the Ministry submitted to the ECB a revised version of the draft law.

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 indent of Article 2(1) of Council Decision 98/415/EC¹, as the draft law relates to the Deutsche Bundesbank (hereinafter 'the Bundesbank'), and the specific tasks conferred upon the ECB concerning the prudential supervision of credit institutions under Article 127(6) of the Treaty.

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 and content of the draft law

- 1.1 According to its explanatory memorandum, the draft law is intended to govern aspects of data exchange between authorities for two separate issues. First, the application of the EU concept of 'enterprise' for statistical purposes in Germany from the reporting year 2018 onwards requires that data available at the Bundesbank and the Bundesanstalt für Finanzdienstleistungen (BaFin, the Federal Financial Supervisory Authority) can be submitted to the Statistisches Bundesamt (Federal Statistical Office) and the statistical offices of the Federal States. Second, to ensure that Germany can adequately participate in pilot studies of Eurostat on statistical data concerning multinational enterprises, provision has to be made for the exchange of detailed information at the European level.²
- 1.2 The draft law obliges the Bundesbank to provide the Federal Statistical Office with the following data regarding entities belonging to economic activity classes 64.19-Other monetary

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 Such pilot studies will be carried out by Eurostat on the impact of cross-border restructuring and relocation processes of multinational enterprise groups on the quality and reliability of official economic and business statistics.

- intermediation and 64.92-Other credit granting as referred to in Annex I of Regulation (EC) No 1893/2006³: (1) name and address, (2) legal form, (3) economic activity, (4) place and number of entry in the trade register, (5) Legal Entity Identifier and (6) data from the annual profit and loss account as well as data collected on staff.
- 1.3 Furthermore, the Federal Statistical Office is required by the draft law to transmit the data received from the Bundesbank to the statistical offices of the Federal States for their respective field of competence.
- 1.4 The draft law sets out that persons obliged to abide by confidentiality with respect to supervisory data according to section 9 of the German Banking Act (*Kreditwesengesetz*) are exempt from professional secrecy with respect to the data concerned by the draft law. Furthermore, the draft law sets out that the confidentiality obligations arising from the German Banking Act with respect to, inter alia, Bundesbank staff members shall be applicable accordingly to personnel of the German statistical offices with respect to data concerned by the draft law.
- 1.5 The draft law authorises the Federal Statistical Office to transmit detailed information, inter alia, to members of the European System of Central Banks (ESCB) insofar as this is necessary to verify and improve the quality of the treatment of multinational enterprise groups in the national accounts and foreign trade statistics of the Member States of the European Union. Such detailed information includes general information on multinational and national enterprise groups as well as quantitative economic statistics data. According to the draft law, the authorisation for the Federal Statistical Office to transmit such data is valid until the end of 2021.
- 1.6 According to the explanatory memorandum of the draft law, the Federal Statistical Office is, for the purposes of Article 5(1) of Regulation (EC) No 223/2009⁴, the point of contact for Eurostat in statistical matters. As such, it is obliged pursuant to Article 5(1) of Regulation (EC) No 295/2008⁵ in conjunction with Commission Regulation (EC) No 251/2009⁶ to acquire certain data concerning structural business statistics. For the proper implementation of the EU concept of statistical enterprise in terms of Council Regulation (EEC) No 696/93⁷, the Federal Statistical Office will, from reporting year 2018 onwards, have to fulfil its coordination function and send the required data to Eurostat. In accordance with Article 5(3) of Regulation (EC) No 295/2008 and Article 17a(1) of Regulation (EC) No 223/2009, national authorities shall have access to

³ Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains (OJ L 393, 30.12.2006, p. 1).

⁴ Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities (OJ L 87, 31.3.2009, p. 164).

⁵ Regulation (EC) No 295/2008 of the European Parliament and of the Council of 11 March 2008 concerning structural business statistics (OJ L 97, 9.4.2008, p. 13).

⁶ Commission Regulation (EC) No 251/2009 of 11 March 2009 implementing and amending Regulation (EC) No 295/2008 of the European Parliament and of the Council as regards the series of data to be produced for structural business statistics and the adaptations necessary after the revision of the statistical classification of products by activity (CPA) (OJ L 86, 31.3.2009, p. 170).

⁷ Council Regulation (EEC) No 696/93 of 15 March 1993 on the statistical units for the observation and analysis of the production system in the Community (OJ L 76, 30.3.1993, p. 1).

and use available administrative data in order to reduce response burdens. Therefore the Federal Statistical Office should draw on available data from the Bundesbank.

- 1.7 According to the explanatory memorandum accompanying the draft law, the provisions of the draft law are compatible with Directive 2013/36/EU⁸ (hereinafter ‘CRD IV’). The sharing of data by the Bundesbank with the Federal Statistical Office is required to comply with the EU law on statistics referred to above. Since these EU laws on statistics have equal standing with CRD IV, extending the grounds to share confidential supervisory data is justified.

2. Disclosure of supervisory data to the statistical offices

- 2.1 The ECB understands that the draft law effectively requires the Bundesbank to disclose data it has collected in the performance of its supervisory function.
- 2.2 It is questionable whether and to what extent the data submitted by the Bundesbank to the statistical offices under the draft law indeed concerns confidential information in terms of CRD IV. As the Court of Justice of the European Union has ruled with respect to Article 54 of Directive 2004/39/EC⁹, not all information communicated to a competent supervisory authority unconditionally constitutes confidential information.¹⁰ The information to be made available in accordance with the draft law may indeed be publicly available. Taking this into account, the impact of the draft law on confidential supervisory data may be further clarified in this regard.
- 2.3 Insofar as the draft law concerns confidential supervisory data according to Title VII, Chapter 1, Section II of CRD IV, it is noted that Articles 53 to 62 of CRD IV set out conditions under which confidential supervisory information may be shared with third parties, and refer to specific permitted recipients in this respect.
- 2.4 The ECB takes note of the position reflected in the explanatory memorandum of the draft law that the Federal Statistical Office, in its capacity as the point of contact for Eurostat, is obliged to acquire the necessary data on structural business statistics. The ECB also acknowledges that according to Regulation (EC) No 295/2008 and Regulation (EC) No 223/2009 the Federal Statistical Office shall have the right to have access to existing administrative records in order to reduce the response burden, and that administrative data be used to meet the requirements of the Regulation.
- 2.5 However, the ECB takes note that Title VII, Chapter 1, Section II of CRD IV, which is a part of the Single Rulebook and forms the specific legal regime applicable to the competent authorities, explicitly sets out various grounds permitting the competent authorities to disclose confidential supervisory information, none of which refer to the disclosure for the purposes of the draft law, i.e. disclosure for statistical purposes. The justification of the draft law does not address this

⁸ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

⁹ Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).

¹⁰ *Bundesanstalt für Finanzdienstleistungsaufsicht v Ewald Baumeister*, C-15/16, ECLI:EU:C:2018:464).

issue in detail but refers to the concept of access to administrative records for statistical purposes.

- 2.6 Considering that the definition of 'administrative data' is not stipulated in the draft law, making it difficult to define *ex ante* which type of data could be specified by means of decree of the Federal Government as additional data on economic entities to be transmitted by the Bundesbank, it should be considered whether the authorisation may concern confidential supervisory data.
- 2.7 In addition, the ECB expects the Federal Government to consult the ECB in accordance with Article 127(4) of the Treaty before adopting a decree under the draft law that would require submission of additional data linked to the ECB's competence.

3. Submission of statistical data to the ESCB

The ECB welcomes the provision of a temporary basis for the Federal Statistical Office to share statistical data with the members of the ESCB for the purpose of verifying and improving the quality of the treatment of multinational enterprise groups in the national accounts and foreign trade statistics of the Member States.

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

Done at Frankfurt am Main, 3 September 2018.

[signed]

The President of the ECB

Mario DRAGHI