

Memorandum of Understanding

Concerning Consultation, Cooperation and the Exchange
of Information Between the Office of Financial Research
and the European Central Bank



**MEMORANDUM OF UNDERSTANDING
CONCERNING CONSULTATION, COOPERATION AND THE EXCHANGE OF INFORMATION**

This Memorandum of Understanding is made

BETWEEN

the Office of Financial Research, with its headquarters at 717 14th Street, NW
Washington, DC 20220

AND

the European Central Bank, with its headquarters at Sonnemannstr. 20, 60314 Frankfurt am Main,
GERMANY

Preamble:

Mutual cooperation and cross border assistance is necessary to effectively monitor for financial market risks, assess macro prudential policy tools, and to identify data gaps and advance data standards for systemic risk assessment. The Office of Financial Research (“OFR”) and the European Central Bank (“ECB”) have reached this Memorandum of Understanding (“MOU”) to express their mutual intent to exchange information pertaining to their contribution to financial market risk monitoring and systemic risk assessment, as well as enhancing the quality and accessibility of data needed for effective risk assessment.

Paragraph 1

Definitions

- 1.1 “Party” means the OFR or the ECB (together, the “Parties”);
- 1.2 “Receiving Party” means the Authority receiving a request under this MOU;
- 1.3 “Requesting Party” means the Authority making a request under this MOU;
- 1.4 “Providing Party” means the Authority that provides information under this MOU;
- 1.5 “Dodd-Frank Act” refers to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010;

- 1.6 "Financial Stability Oversight Council" as defined in Title I of the Dodd-Frank Act;
- 1.7 "Non-Public Information" means information in any form, including orally provided information, that the Providing Party shares with the Requesting Party unless the Providing Party expressly consents in writing not to have the information treated as Non-Public Information or designates in writing the information as publicly available. Non-Public Information remains the record or property of the Providing Party; and,
- 1.8. "Confidential Statistical Information" means confidential statistical information as defined in Article 1(2) of Council Regulation (EC) No. 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank (O.J. L 318, 27.11.1998 , p.8), as amended, set out in Annex I.

Paragraph 2

General Provisions

- 2.1 This MOU is a statement of intent to consult, cooperate and exchange information in connection with their statutory contribution to financial risks monitoring and systemic risk assessment, and related issues of data standards and enhancing the quality and accessibility of data needed for effective risk assessment, in a manner consistent with, and permitted by, the laws and requirements that govern the Parties. The Parties anticipate that cooperation is to be primarily achieved through ongoing, informal, oral consultations, supplemented by more in-depth written communications, including data transfers. The provisions of this MOU are intended to support such informal and oral communication as well as facilitate the exchange of Non-Public Information where necessary. Any exchange of information between the OFR and the ECB shall take place only to the extent necessary in view of their respective statutory objectives and tasks.
- 2.2 The information to be exchanged may include information about monitoring for financial risks, the development of risk metrics or other analytical information, as well as related research and analysis.
- 2.3 The Parties do not intend for any information to be exchanged to include: i) Confidential Statistical Information as defined in Article 1.8; ii) any data or other information collected by the ECB in exercise of any of the tasks conferred on the ECB pursuant to Council Regulation (EU) No. 1024 /2013 of 15 October 2013 conferring specific tasks on the European Central Bank relating to the prudential supervision of credit institutions; or iii) any other data or information, which may not be shared with third parties under European Union law.
- 2.4 The information to be exchanged may include information about identifying data gaps, standardizing data, and improving the quality of, and access to, data for financial risk monitoring.

- 2.5 Subject to Article Three, below, regarding confidentiality of data, data and information exchanged under this MOU may be used to create a variety of financial risk monitoring-related work products, including reports, analysis, research papers, and financial market monitors.
- 2.6 This MOU does not create any legally binding obligations, confer any rights, or supersede any United States or European laws or regulatory requirements in force in the Parties' respective jurisdictions. Accordingly, the MOU also does not confer upon any person the right or ability to directly or indirectly obtain, suppress, or exclude any information or to challenge the execution of a request for assistance under this MOU.
- 2.7 The Parties acknowledge that this MOU does not alter the terms and conditions of any agreement or understanding entered into at any time between either party and any FSOC member or other federal agency or office of the United States, including any office or bureau of the United States Department of the Treasury, as well as any agreement or understanding entered into at any time between either party and any other member of the European System of Central Banks (ESCB) or other authority or agency from member states of the European Union.
- 2.8 The Parties dedicate themselves to provide each other with the fullest cooperation possible within the framework of, and limits set out in, this MOU. This MOU, however, is not intended to, and does not, alter, waive or compromise the discretion of the Providing Party to determine the information it may share.
- Furthermore, the Providing Party is to take into account factors that the Providing Party reasonably believes should apply to the disclosure or receipt of Non-Public Information, such as:
- 2.8 (1) Restrictions under applicable law;
- 2.8 (2) The public interest;
- 2.8 (3) With regard to Non-Public Information received from another source, the burden on the Requesting Party of obtaining that information directly from the other source; and,
- 2.8 (4) The need to protect the judgments, analyses, opinions and findings related to the Non-Public Information.
- 2.9 To facilitate cooperation under this MOU, the Parties designate the individuals listed in the Annex I of the MOU as contact persons for the MOU.
- 2.10 To facilitate cooperation under this MOU, the Parties may execute further separate written Annexes in order to reflect their joint understanding of the matters covered therein.
- 2.11 To the extent feasible, requests for written information or data pursuant to this MOU or the relevant Annexes should be made in writing and addressed to relevant contact person. A request should generally specify the following:
- 2.11 (1) The information being sought by the Requesting Party;
- 2.11 (2) A general description of the reasons why the information is being sought;

- 2.11 (3) A general description of potential uses of the information;
 - 2.11 (4) Efforts made to obtain the information from other sources; and,
 - 2.11 (5) Confirmation that the information, including Non-Public Information, is to be treated in accordance with the terms of this MOU and/or any related Annex.
- 2.12 The Parties may periodically review the functioning and effectiveness of the cooperation arrangements.

Paragraph 3

Uses and Confidentiality of Information

- 3.1 The Requesting Party may use Non-Public information obtained under this MOU for the purposes described in Article Two.
- 3.2 Except for disclosures in accordance with the MOU, including permissible uses of information, each Party is to keep confidential to the extent permitted by law information shared under this MOU, requests made under this MOU, the contents of such requests, and any other matters arising under this MOU (other than the existence of this MOU). (Applicable laws regarding confidentiality requirements are noted in Annex II).
- 3.3 The Requesting Party is to obtain the prior written consent of the Providing Party before disclosing Non-Public Information received under this MOU to any non-signatory to this MOU. If written consent is not obtained from the Providing Party, the Parties may consult to discuss the reasons for withholding approval of such use and the circumstances, if any, under which the intended use by the Requesting Party might be allowed.
- 3.4 The Parties intend that the sharing or disclosure of Non-Public Information, including but not limited to deliberative and consultative materials, such as written analysis, opinions, data relating to Non-Public Information that is prepared by or on behalf of an Authority, pursuant to terms of this MOU, is not a waiver of privilege or confidentiality of such information.
- 3.5 The Receiving Party, to the extent permitted by law, is to:
 - 3.5 (1) Promptly notify the Providing Party in writing of any legally enforceable demand or request from a third party for any record originated by the Providing Party;
 - 3.5 (2) Provide a copy of the request or demand to the Providing Party for its consideration and advise the requestor of such action;
 - 3.5 (3) Provide the Providing Party a reasonable opportunity to respond to the demand or request;
 - 3.5 (4) Assert on behalf of the Providing Party all such reasonable and appropriate legal exemptions or privileges that the Providing Party may request be asserted on its behalf; and,

- 3.5 (5) Consent to application by the Providing Party to intervene in any related action for the purpose of asserting and/or preserving any claims of confidentiality with respect to any records originated by the Providing Party.

Paragraph 4

Information Security

- 4.1 Subject to Article 2.3 above, and to the laws of its jurisdiction, each Party is to use reasonable measures to protect confidential information, including the use of appropriate confidentiality classifications, that it receives from a Providing Party.
- 4.2 A Receiving Party is to promptly notify the Providing Party in the event of a known or suspected security incident or breach of the MOU that affects, or may affect, the confidentiality of information provided under the MOU.
- 4.3 Each Party is to establish appropriate administrative, technical and physical safeguards for maintaining the confidentiality and data security and integrity of any Non-Public Information. This includes provisions that persons with access to information will be subject to confidentiality requirements even after the person leaves their respective jurisdictions.
- 4.4 Each Party is to provide the other, upon request, with descriptions of information security protections and document/data handling policies and procedures.

Paragraph 5

Amendments and Execution of the MOU

- 5.1 Cooperation in accordance with this MOU is to become effective on the date this MOU is signed by the Parties.
- 5.2 Amendments to this MOU, including the addition of new Annexes, are to be made by the written understanding of both Parties.

Paragraph 6

Notice of Material Changes

The Parties intend to promptly inform each other of any material change in their respective legal status, statutory tasks or internal organization, which affects, or may affect, their cooperation under this MOU.

Paragraph 7

Termination

- 7.1 Cooperation and assistance in accordance with this MOU is to continue until the expiration of 30 days after either Party gives written notice to the other Party of its intention to terminate its cooperation and assistance thereunder. If either party gives such notice, cooperation and assistance under this MOU is to continue with respect to all requests for assistance that were made, or information provided, before the effective date of notification (as indicated in the notice but no earlier than the date the notice is sent) until the Requesting Party terminates the matter for which assistance was requested.
- 7.2 In the event of the termination of this MOU, information obtained under this MOU is to be continued to be treated confidentially in the manner prescribed under Articles Three and Four.

Signed at Frankfurt on 30 May 2017 in two original copies each in the English language and signed by the Parties' duly authorised representatives.

Signed By:

For the Office of Financial Research

[Signed]

Richard Berner, Director

For the European Central Bank

[Signed]

Aurel Schubert, Director General Statistics

[Signed]

Sergio Nicoletti Altimari, Director General Macprudential Policy and Financial Stability

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CONFIDENTIALITY REQUIREMENTS

United States

United States Code, Title 18

Section 1905. Whoever, being an officer or employee of the United States or of any department or agency thereof, any person acting on behalf of the Federal Housing Finance Agency, or agent of the Department of Justice as defined in the Antitrust Civil Process Act (15 U.S. C. 1311-1314), or being an employee of a private sector organization who is or was assigned to an agency under chapter 37 of title 5, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses or expenditures of any person, firm, partnership, corporation or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law, shall be fined under this title, or imprisoned not more than one year, or both; and shall be removed from office or employment.

Code of Federal Regulations, Title 5:

Section 2635.703(a) An employee shall not engage in a financial transaction using nonpublic information, nor allow the improper use of nonpublic information to further his own private interest or that of another, whether through advice or recommendation, or by knowing unauthorized disclosure.

Dodd-Frank Wall Street Reform and Consumer Protection Act:

Section 112(d) (5) (a): The Council, the Office of Financial Research, and the other member agencies shall maintain the confidentiality of any data, information, and reports submitted under this title.

European Union

Article 5 of the ESCB/ECB Statute (Protocol (No 4) on the Statute of the European System of Central Banks and of the ECB OJ C 326, 26.10.2012, p. 230)

Collection of statistical information

- 5.1. In order to undertake the tasks of the ESCB, the ECB, assisted by the national central banks, shall collect the necessary statistical information either from the competent national authorities or directly from economic agents. For these purposes it shall cooperate with the Union institutions, bodies, offices or agencies and with the competent authorities of the Member States or third countries and with international organisations.
- 5.2. The national central banks shall carry out, to the extent possible, the tasks described in Article 5.1.
- 5.3. The ECB shall contribute to the harmonisation, where necessary, of the rules and practices governing the collection, compilation and distribution of statistics in the areas within its fields of competence
- 5.4. The Council, in accordance with the procedure laid down in Article 41, shall define the natural and legal persons subject to reporting requirements, the confidentiality regime and the appropriate provisions for enforcement.

Article 37 of the ESCB/ECB Statute (Protocol (No 4) on the Statute of the European System of Central Banks and of the ECB OJ C 326, 26.10.2012, p. 230)

Professional secrecy

- 37.1. Members of the governing bodies and the staff of the ECB and the national central banks shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy.
- 37.2. Persons having access to data covered by Union legislation imposing an obligation of secrecy shall be subject to such legislation.

Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank (OJ L 318 of 27.11.1998, pp. 8-19) as amended by Council Regulation (EU) 2015/373 of 5 March 2015.

Article 1(2)

“Confidential statistical information “ means statistical information which allows reporting agents or any other legal or natural person, entity or branch to be identified, either directly from their name or 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 or 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 or natural person, entity or branch.”

Article 8

Protection and use of confidential statistical information collected by the ESCB

The following rules shall apply to prevent the unlawful use and disclosure of confidential statistical information provided by the reporting agent or other legal or natural person, entity or branch to an ESCB member or transmitted within the ESCB:

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 or 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 the ECB and national central banks, if the said statistical information is used in the field of prudential supervision;
 - (e) as regards national central banks in accordance with Article 14.4 of the Statute, for the exercise of functions other than those specified in 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 concerning 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.
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 tasks of the ESCB referred to in the Treaty or tasks in the field of prudential supervision given to the members of the ESCB; 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.

- 4a. The ESCB may transmit confidential statistical information to authorities or bodies of the Member States and the Union responsible for the supervision of financial institutions, markets and infrastructures or for the stability of the financial system in accordance with Union or national law, and to the European Stability Mechanism (ESM), only to the extent and at the level of detail necessary for the performance of their respective tasks. The authorities or bodies receiving confidential statistical information shall take all the necessary regulatory, administrative, technical and organisational measures to ensure the physical and logical protection of confidential statistical information. Any further transmission thereafter shall be necessary for the execution of those tasks and shall be explicitly authorised by the ESCB member that collected the confidential statistical information. Such authorisation shall not be required for further transmission from the ESM members to national parliaments to the extent required under national law, provided that the ESM member has consulted the ESCB member before the transmission and that, in any event, the Member State has taken all the necessary regulatory, administrative, technical and organisational measures to ensure the physical and logical protection of confidential statistical information in accordance with this Regulation. When transmitting confidential statistical information in accordance with this paragraph, the ESCB shall take all the necessary regulatory, administrative, technical and organisational measures to ensure the physical and logical protection of confidential statistical information pursuant to paragraph 3 of this Article.
5. The ECB 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 referred to in the Treaty.
6. Confidential statistical information may be exchanged within the ESCB to grant scientific research bodies access to such information, in accordance with paragraphs 1(c) and 2.
7. Statistical information taken from sources which are available to the public in accordance with national legislation shall not be considered confidential.
8. Member States and the ECB shall adopt all necessary measures to ensure the protection of confidential statistical information, including the imposition of the appropriate enforcement measures in the event of an infringement.

This Article shall apply without prejudice to special national or Community provisions relating to the transmission of information other than confidential statistical information to the ECB and shall not apply to confidential statistical information initially transmitted between an ESS authority and an ESCB member, to which Article 8a shall apply.

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.

Article 8c

Protection of confidential information on individuals

This Regulation shall apply without prejudice to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data 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.

ECB legal acts

GUIDELINE OF THE EUROPEAN CENTRAL BANK of 22 December 1998 concerning the common rules and minimum standards to protect the confidentiality of the individual statistical information collected by the European Central Bank assisted by the national central banks (ECB/1998/NP28)

Article 4

Third party access

In the event of any third party having access to confidential statistical information, the ECB and the NCBs shall ensure through appropriate means, where possible by way of a contract, that the confidentiality requirements laid down in Regulation (EC) No 2533/98 and in this Guideline are respected by the third party.

DECISION OF THE EUROPEAN CENTRAL BANK of 4 March 2004 on public access to European Central Bank documents (ECB/2004/3).