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COMMISSION OPINION

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Regulation (EC) No 2533/98 concerning the collection of statistical information by the
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1. Introduction

1.1. On 20 June 2014, the European Central Bank (ECB) submitted a Recommendation for a Council Regulation amending Regulation (EC) No 2533/98 concerning the collection of statistical information by the European Central Bank (ECB/2014/13). On 15 July 2014 the Council decided to consult the European Commission on this proposal.

1.2. As this Recommendation is of specific relevance to supervision of financial institutions, markets and infrastructures, the stability of the financial system, but also to European statistics, the Commission welcomes this consultation.

1.3 The ECB recommends that the ECB, on which specific functions in the field of prudential supervision of credit institutions have been conferred by Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions¹, may use confidential statistical information for the performance of these functions. It also recommends that transmission of confidential statistical information between the ESCB members and other authorities of the Member States and the Union responsible for (a) the supervision of financial institutions, markets and infrastructures, and (b) the stability of the financial system, to the European Stability Mechanism (ESM) may take place to support the respective tasks. Authorities may include, inter alia, the competent authorities responsible for supervision and macro-prudential oversight, the European Supervisory Authorities, the European Systemic Risk Board, as well as authorities authorised to resolve credit institutions.

2. Specific observations

2.1. The recommended amendment involves, among other things, adding a paragraph 4a to Article 8 of Regulation (EC) No 2533/98², in order to enable the transmission and use of statistical information collected by the ESCB between the ESCB and relevant authorities.

2.2. The Commission supports the objectives sought by the ECB's recommendation – minimising the reporting burden of undertakings, ensuring that data only needs to be collected once and also providing the EU and Member States bodies responsible for the supervision of financial institutions, markets and infrastructures and the stability of the financial system with the information necessary for the performance of their tasks.

¹ OJ L 287, 29.10.2013, p. 63.

² OJ L 318, 27.11.1998, p. 8.

2.3 However, the Commission must underline the importance of protecting statistical confidentiality when producing European statistics.

2.4 The Commission would, therefore, like to see, directly in Regulation (EC) No 2533/98, clear and restrictive definitions of the data concerned and the potential use that can be made of them. As regards the receiving authorities, it should be made clear that they are covered by strict confidentiality obligations, including physical and logical protection measures and time restrictions. This is currently not the case, since those obligations are limited to the ESCB members (Article 8(3) of Regulation (EC) No 2533/98).

2.5 The principle of statistical confidentiality is crucial to maintaining the trust of citizens and enterprises alike. It is therefore established in both systems that are responsible for producing European statistics, namely the European Statistical System (ESS) and the ESCB. However, while the principle is applied in the ESS basic legal framework – Regulation (EC) No 223/2009 on European statistics³ – by means of a clear prohibition on the use of data collected for statistical purposes for any other purposes, with very few and strict exceptions to that rule, the basic legal framework for the ESCB – Regulation (EC) No 2533/98 – establishes a rather extensive and not so clearly defined list of exceptions⁴.

2.6. It is this list of exceptions that the ECB now recommends should be further expanded, to include the use by entities out-side the ESCB that are responsible for tasks related to the supervision of financial institutions, markets and infrastructures and macro-prudential oversight.

2.7. Failure to include clear and strict rules and conditions in the context of the current recommendation to expand the list of exceptions would be a concern for the Commission in several respects. Firstly, because entities that are not part of the ESCB and are not producers of statistics would be allowed access. Those entities are not bound by the professional principles that apply to statistical authorities on the basis of the above-mentioned basic framework regulations and related European Statistics Code of Practice. Secondly, because of the character of the information to be accessed and its intended use for financial supervision purposes. Data of high commercial sensitivity for the data subjects would be used for monitoring and verification purposes. While administrative data may be used for statistical purposes, the use of confidential statistical information for administrative purposes would not be in line with usual statistical principles. Thirdly, because the ESCB may not be able to guarantee that the receiving entities out-side the ESCB will protect the data to the full extent required. This could weaken public trust in statistical authorities and, as a consequence, would affect response rates and quality of reported data.

2.8. Specific rules apply to data originating in the ESS that have been transmitted to the ESCB (in particular Article 8a of Regulation (EC) No 2533/98). These rules are not directly affected by the amendments that are being proposed. Nevertheless, the Commission considers that additional safeguards are needed. These safeguards should be specified in Regulation (EC) No 2533/98, and not only at a later stage in bilateral agreements between the ECB and the Commission (Eurostat)⁵ or between other members of the ESCB and of the ESS, respectively.

³ OJ L 87, 31.3.2009, p. 164.

⁴ See Article 20 in combination with Article 2(1)(e) of Regulation (EC) No 223/2009 for ESS purposes, and Article 8 of Regulation (EC) No 2533/98 for ESCB purposes.

⁵ Eurostat being the Union's statistical authority responsible for the development, production and dissemination of European statistics.

3. Conclusion

3.1. The Commission supports the objectives sought by the ECB's recommendation – minimising the reporting burden of undertakings, ensuring that data only needs to be collected once and also providing the EU and Member States bodies responsible for the supervision of financial institutions, markets and infrastructures and the stability of the financial system with the information necessary for the performance of their tasks.

3.2 However, the Commission must underline the importance of protecting the statistical confidentiality when producing European statistics. In order to protect as much as possible this principle the Regulation should provide clear and restrictive definitions of the data concerned and the potential use that can be made of them. As regards the receiving authorities, it should be made clear that they are covered by strict confidentiality obligations, including physical and logical protection measures and time restrictions.

3.3. Consequently, the Commission is of the opinion that the concerns expressed above have to be addressed in Regulation (EC) No 2533/98.

Done at Brussels, 13.10.2014

For the Commission
Algirdas ŠEMETA
Member of the Commission