Regulation (EU) No 1073/2013 of the European Central Bank of 18 October 2013 concerning statistics on the assets and liabilities of investment funds (recast) (ECB/2013/38)

REGULATION (EU) No 1073/2013 OF THE EUROPEAN CENTRAL BANK

of 18 October 2013

concerning statistics on the assets and liabilities of investment funds (recast)

(ECB/2013/38)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Article 5 thereof,

Having regard to Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank[(1)], and in particular Articles 5(1) and 6(4),

Having regard to the opinion of the European Commission,

Whereas:

(1) Since Regulation (EC) No 958/2007 of the European Central Bank of 27 July 2007 concerning statistics on the assets and liabilities of investment funds (ECB/2007/8)[(2)] needs to be substantially amended, in particular in the light of Regulation (EU) No 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts in the European Union[(3)], it should be recast in the interests of clarity.

(2) Regulation (EC) No 2533/98 provides in Article 2(1) that, for the fulfilment of its statistical reporting requirements, the European Central Bank (ECB), assisted by the national central banks (NCBs), has the right to collect statistical information within the limits of the reference reporting population and of what is necessary to carry out the tasks of the European System of Central Banks (ESCB). It follows from Article 2(2)(a) of Regulation (EC) No 2533/98 that investment funds (IFs) form part of the reference reporting population for the purposes of fulfilling the ECB's statistical reporting requirements, inter alia, in the field of monetary and financial statistics. Furthermore, Article 3 of Regulation (EC) No 2533/98 requires the ECB to specify the actual reporting population within the limits of the reference reporting population and entitles it to fully or partly exempt specific classes of reporting agents from its statistical reporting requirements.

(3) In order to fulfil its tasks and monitor financial activities other than those undertaken by monetary financial institutions (MFIs), the ESCB requires high quality statistical information on the business of IFs. The principal purpose of such information is to provide the ECB with a comprehensive statistical picture of the IF sector in the Member

Changes to legislation: *There are outstanding changes not yet made to Regulation (EU) No 1073/2013 of the European Central Bank. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

States whose currency is the euro (hereinafter the 'euro area Member States'), which are viewed as one economic territory.

(4) To limit the reporting burden, NCBs are allowed to collect the necessary information on IFs from the actual reporting population as part of a broader statistical reporting framework which serves other statistical purposes, provided that the fulfilment of the ECB's statistical requirements is not jeopardised. In order to foster transparency, in such cases it is appropriate to inform the reporting agents that data are collected to fulfil other statistical purposes.

(5) Having data available on financial transactions facilitates a more in-depth analysis for monetary policy and other purposes. Data on financial transactions, as well as data on stocks, are also used to compile other statistics, in particular the euro area financial accounts.

(6) Although regulations adopted under Article 34.1 of the Statute of the European System of Central Banks and the European Central Bank (hereinafter the 'Statute of the ESCB') do not confer any rights or impose any obligations on Member States whose currency is not the euro (hereinafter the 'non-euro area Member States'), Article 5 of the Statute of the ESCB applies to both euro and non-euro area Member States. Recital 17 of Regulation (EC) No 2533/98 refers to the fact that Article 5 of the Statute of the ESCB, together with Article 4(3) of the Treaty on European Union, implies an obligation to design and implement at national level all the measures that the non-euro area Member States consider appropriate to collect the statistical information needed to fulfil the ECB's statistical reporting requirements and make timely preparations in the field of statistics in order to become euro area Member States.

(7) Although this Regulation is primarily addressed to IFs, complete information on holders of bearer shares issued by IFs may not be directly available from IFs, and it is therefore necessary to include other entities in the actual reporting population.

(8) The standards for the protection and use of confidential statistical information as laid down in Article 8 of Regulation (EC) No 2533/98 should apply.

(9) Article 7(1) of Regulation (EC) No 2533/98 provides that the ECB has the power to impose sanctions on reporting agents which fail to comply with statistical reporting requirements set out in ECB regulations or decisions,

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

For the purposes of this Regulation:

(1) 'investment fund (IF)' means a collective investment undertaking that:

(a) invests in financial and/or non-financial assets, within the meaning of Annex II, to the extent that its objective is investing capital raised from the public; and

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(b) is constituted pursuant to Union or national law under:

(i) contract law, as a common fund managed by management companies;

(ii) trust law, as a unit trust;

(iii) company law, as an investment company;

(iv) any other similar mechanism or legal form.

The following are included within the definition:

(a) undertakings whose units or shares are, at the request of the holders, repurchased or redeemed directly or indirectly out of the undertaking's assets; and

(b) undertakings which have a fixed number of issued shares and whose shareholders have to buy or sell existing shares when entering or leaving the fund.

The following are not included within the definition:

(a) pension funds as defined in the revised European System of Accounts (hereinafter the 'ESA 2010') laid down by Regulation (EU) No 549/2013 (sub-sector S.129);

(b) money market funds (MMFs) as defined in Annex I to Regulation (EU) No 1071/2013 of the European Central Bank of 24 September 2013 concerning the balance sheet of the monetary financial institutions sector (ECB/2013/33)[(4)].

For the purposes of the definition of IF, 'public' shall encompass retail, professional and institutional investors;

(2) 'reporting agent' has the same meaning as defined in Article 1 of Regulation (EC) No 2533/98;

(3) 'resident' has the same meaning as defined in Article 1 of Regulation (EC) No 2533/98. For the purposes of this Regulation, if a legal entity lacks a physical dimension its residence shall be determined by the economic territory under whose laws the entity is incorporated. If the entity is not incorporated, legal domicile shall be used as a criterion, namely the country whose legal system governs the creation and continued existence of the entity;

(4) 'monetary financial institution (MFI)' has the same meaning as defined in Article 1 of Regulation (EU) No 1071/2013 (ECB/2013/33);

(5) 'OFI' means other financial intermediaries except insurance corporations and pension funds, as defined in ESA 2010 (sub-sector S.125);

(6) 'IF registered shares/units' means IF shares/units in respect of which, in accordance with national legislation, a record is kept identifying the holders of its shares/units, including information on the residency and sector of the holder;

(7) 'IF bearer shares/units' means IF shares/units in respect of which, in accordance with national legislation, a record is not kept identifying the holders of its shares/units, or in

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respect of which a record is kept which does not contain information on the residency and sector of the holder;

(8) 'relevant NCB' means the NCB of the euro area Member State in which the IF is resident;

(9) 'security-by-security' data means data broken down into individual securities.

Article 2

Actual reporting population

1 The actual reporting population shall consist of the IFs resident in the territory of the euro area Member States. The IF itself or, in the case of IFs that do not have legal personality under their national law, the persons legally entitled to represent them, shall be responsible for reporting the statistical information required under this Regulation.

2 Without prejudice to paragraph 1, for the purpose of collecting information on the holders of bearer shares issued by IFs in accordance with paragraph 3 in Part 2 of Annex I, the actual reporting population shall include MFIs and OFIs. The NCBs may grant derogations to these entities provided that the required statistical information is collected from other available sources in accordance with paragraph 3 in Part 2 of Annex I. The NCBs shall check the fulfilment of this condition in good time in order to grant or withdraw, if necessary, any derogation with effect from the start of each year, in agreement with the ECB. For the purposes of this Regulation, the NCBs may establish and maintain a list of reporting OFIs, in accordance with the principles laid down in paragraph 3 in Part 2 of Annex I.

Article 3

List of IFs for statistical purposes

1 The Executive Board shall establish and maintain, for statistical purposes, a list of IFs that form the reference reporting population, including, where applicable, their sub-funds, within the meaning of Article 4(2). The list may be based on existing lists of IFs supervised by national authorities, where such lists are available, supplemented by other IFs falling within the definition of IFs in Article 1.

2 The NCBs and the ECB shall make this list and its updates available in an appropriate form, including by electronic means, via the internet or, at the request of the reporting agents concerned, in paper form.

3 If the latest accessible electronic version of the list referred to in paragraph 2 is incorrect, the ECB shall not impose sanctions on any reporting agent which did not properly fulfil its statistical reporting requirements to the extent that it relied on the incorrect list in good faith.

Article 4

Fund-by-fund reporting

1 The actual reporting population shall report data on its assets and liabilities on a fund-by-fund basis.

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2 Without prejudice to paragraph 1, if an IF segregates its assets into different sub-funds in such a way that shares/units relating to each sub-fund are independently backed by different assets, each sub-fund shall be considered as an individual IF.

3 By derogation from paragraphs 1 and 2, subject to the prior approval and in accordance with the instructions of the relevant NCB, IFs may report their assets and liabilities as a group, provided that this leads to results that are similar to fund-by-fund reporting.

Article 5

Quarterly and monthly statistical reporting requirements

1 The reporting agents shall provide, in accordance with Annexes I and II:

a on a quarterly basis, end-of-quarter stock data on the assets and liabilities of IFs, and quarterly revaluation adjustments or transactions, where applicable; and

b on a monthly basis, end-of-month stock data on IF shares/units issued, the corresponding monthly revaluation adjustments or transactions, if applicable and separate reporting of new issuance and redemptions of IF shares/units during the reporting month.

2 The NCBs may choose to collect the data in paragraph 1(a) on a monthly instead of on a quarterly basis.

Article 6

Revaluation adjustments or transactions

1 The reporting agents shall report revaluation adjustments or transactions, in accordance with the relevant NCB's instructions, for the information reported on an aggregated basis as specified in Annex I.

2 As specified in Annex I, NCBs may either derive approximations of security transactions from the security-by-security information or directly collect data on transactions on an security-by-security basis.

3 Further requirements and guidelines regarding the compilation of revaluation adjustments or transactions are laid down in Annex III.

Article 7

Accounting rules

1 The accounting rules followed by IFs for the purposes of reporting under this Regulation shall be those laid down in the relevant national law implementing Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions[(5)] or, if the former provision is inapplicable, in any other national or international standards that apply to IFs.

2 Without prejudice to accounting practices and netting arrangements prevailing in the euro area Member States, all financial assets and liabilities shall be reported on a gross basis for statistical purposes.