Council Regulation (EC) No 951/2009 of 9 October 2009 amending Regulation (EC) No 2533/98 concerning the collection of statistical information by the European Central Bank

COUNCIL REGULATION (EC) No 951/2009

of 9 October 2009

amending Regulation (EC) No 2533/98 concerning the collection of statistical information by the European Central Bank

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute'), and in particular to Article 5.4 thereof,

Having regard to the recommendation of the European Central Bank[(1)],

Having regard to the opinion of the European Parliament[(2)],

Having regard to the opinion of the Commission[(3)],

After consulting the European Data Protection Supervisor,

Acting in accordance with the procedure laid down in Article 107(6) of the Treaty establishing the European Community and in Article 42 of the Statute,

Whereas:

(1) Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank[(4)] is a key component in the legal framework supporting the statistical information collection tasks of the European Central Bank (ECB) assisted by the national central banks. The ECB has consistently relied on it to carry out and monitor the coordinated collection of statistical information necessary to undertake the tasks of the European System of Central Banks (ESCB).

(2) In order to maintain Regulation (EC) No 2533/98 as an effective instrument for the ECB to carry out the statistical information collection tasks of the ESCB and to guarantee the continued availability to the ECB of statistical information of the necessary quality and covering the entire range of tasks of the ESCB it is essential to review the scope of the reporting requirements that the named Regulation imposes. In this context, attention needs to be paid not only to the performance of the tasks of the ESCB and to its independence, but also to the statistical principles laid down in this Regulation.

(3) It is necessary to amend Regulation (EC) No 2533/98 to enable the ECB to collect the statistical information needed to undertake the ESCB's tasks referred to in the Treaty. Accordingly, the purposes for which statistical information may be collected should also comprise the compilation of macro-prudential statistics required for the performance of the ESCB's tasks under Article 105 of the Treaty.

Changes to legislation: *There are outstanding changes not yet made to Council Regulation (EC) No 951/2009. 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*

(4) The scope of the reporting requirements necessary for the performance of the ESCB's tasks should also take into account structural developments in the financial markets and address related statistical information requirements that were less apparent when Regulation (EC) No 2533/98 was adopted. For that reason, it is necessary to allow the collection of statistical information from the entire sector of financial corporations, and in particular from the insurance corporations and pension funds, which represent the second largest sub-sector of financial corporations in the euro area in terms of financial assets.

(5) In order to allow for the continued compilation of balance of payments statistics of sufficient quality, it is necessary to clarify the reporting requirements imposed in connection with data on all positions and transactions between the residents of participating Member States.

(6) Researchers increasingly require access to confidential statistical information which does not allow direct identification in order to analyse and understand developments within sectors and across countries. Therefore, it is important to allow the ECB and the national central banks to grant to scientific research bodies access to such detailed statistical information at the ESCB level, while maintaining strict confidentiality safeguards.

(7) To minimise the reporting burden and to enable the efficient development, production and dissemination of high-quality statistics, and the proper performance of the ESCB's tasks, the ECB prioritises statistical needs and assesses the reporting burden. For the same reason, it is necessary to allow the maximum use of existing information, surveys, administrative data, statistical registers and other sources available, including an exchange of confidential statistical information within the ESCB and with the European Statistical System (ESS).

(8) European statistics are developed, produced and disseminated by both the ESCB and the ESS but under separate legal frameworks, reflecting their respective governance structures. Regulation (EC) No 2533/98 should therefore apply without prejudice to Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics[(5)].

(9) European statistics are developed, produced and disseminated by the ESCB in accordance with the statistical principles of impartiality, objectivity, professional independence, cost-effectiveness, statistical confidentiality, minimisation of the reporting burden and high output quality, including reliability. These principles are defined and further elaborated by the ECB and published on its website as a public commitment concerning European statistics produced by the ESCB. These principles are similar to the statistical principles laid down in Regulation (EC) No 223/2009.

(10) The development, production and dissemination of European statistics should take into account best practice and the relevant European and international statistical standards.

(11) In line with Article 5.1 of the Statute, the ESCB and the ESS cooperate closely to ensure the coherence necessary to develop, produce and disseminate European statistics. In particular, the ESCB and the ESS cooperate when elaborating their own statistical

***Changes to legislation:** There are outstanding changes not yet made to Council Regulation (EC) No 951/2009. 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*

principles, when designing their respective statistical work programmes and when striving to reduce the overall response burden. To this end the exchange of appropriate information related to the ESCB and the ESS statistical work programmes between the relevant ESCB and ESS committees, as well as between the ECB and the Commission, is of particular importance to maximise the benefits of good cooperation and to avoid duplication in collecting statistical information.

(12) The ESS members need part of the data collected by the ESCB for the development, production and dissemination of European statistics within the meaning of Article 1 of Regulation (EC) No 223/2009. Appropriate arrangements for making the respective data available to the ESS members should therefore be set up.

(13) Furthermore, it is important to ensure close cooperation between the ESCB and the ESS, and notably to foster the exchange of confidential statistical information between the two systems for statistical purposes, in the light of Article 285 of the Treaty and Article 5 of the Statute.

(14) In order to enhance transparency, the statistics compiled on the basis of the statistical information collected from financial sector institutions by the ESCB should be made publicly available but a high level of protection of confidential information should be guaranteed.

(15) Confidential statistical information collected and supplied to a member of the ESCB by an ESS authority should not be used for purposes that are not exclusively statistical, such as for administrative or tax purposes or legal proceedings or for the purposes referred to in Articles 6 and 7 of Regulation (EC) No 2533/98. In this respect, it is necessary to ensure the physical and logical protection of this confidential statistical information and ensure that no unlawful disclosure or use for non-statistical purposes occurs.

(16) 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 on the free movement of such data[6] has entered into force and must be complied with in the development, production and dissemination of statistics by the ESCB,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 2533/98 is amended as follows:

1. Article 1 is replaced by the following:

Article 1

Definitions

For the purposes of this Regulation:

Changes to legislation: *There are outstanding changes not yet made to Council Regulation (EC) No 951/2009. 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*

1. "the ECB's statistical reporting requirements" shall mean the statistical information which reporting agents are required to provide and which is necessary for the tasks of the ESCB to be performed;

1a. "European statistics" shall mean statistics that are: (i) necessary to undertake the ESCB's tasks as referred to in the Treaty; (ii) determined in the ESCB's statistical work programme; and (iii) developed, produced and disseminated in conformity with the statistical principles referred to in Article 3a;

2. "reporting agents" shall mean the legal and natural persons and the entities and branches referred to in Article 2(3) which are subject to the ECB's statistical reporting requirements;

3. "participating Member State" shall mean a Member State which has adopted the single currency in accordance with the Treaty;

4. "resident" and "residing" shall mean having a centre of economic interest in the economic territory of a country as described in Chapter 1(1.30) of Annex A to Council Regulation (EC) No 2223/96 of 25 June 1996 on the European system of national and regional accounts in the Community[(7)]; in this context, "cross-border positions" and "cross-border transactions" shall mean respectively positions and transactions in the assets and/or liabilities of residents of participating Member States seen as one economic territory vis-à-vis residents of non-participating Member States and/or residents of third countries;

5. "international investment position" shall mean the balance sheet of the stock of cross-border financial assets and liabilities;

6. "electronic money" shall mean an electronic store of monetary value on a technical device, including prepaid cards, that may be widely used for making payments to entities other than the issuer without necessarily involving bank accounts in the transaction, but acting as a prepaid bearer instrument;

7. "use for statistical purposes" shall mean the exclusive use for the development and production of statistical results and statistical analyses;

8. "development" shall mean activities aiming at setting up, strengthening and improving the statistical methods, standards and procedures used for the production and dissemination of statistics as well as at designing new statistics and indicators;

9. "production" shall mean all the activities related to the collection, storage, processing and analysis necessary for compiling statistics;

10. "dissemination" shall mean the activity of making statistics, statistical analyses and non-confidential information accessible to users;

11. "statistical information" shall mean aggregated and individual data, indicators and related metadata;

12. "confidential statistical information" shall mean 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,

***Changes to legislation:** There are outstanding changes not yet made to Council Regulation (EC) No 951/2009. 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*

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.

2. Article 2 is amended as follows:

(a) Paragraph 1 is replaced by the following:

1. For the fulfilment of the ECB's statistical reporting requirements, the ECB, assisted by the national central banks in accordance with Article 5.2 of the Statute, shall have 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 ESCB. Information may be collected in particular in the area of monetary and financial statistics, banknote statistics, payments and payment systems statistics, financial stability statistics, balance of payments statistics and international investment position statistics. When necessary to perform the tasks of the ESCB, additional information may be collected also in other areas in duly justified cases. The information that is collected for the fulfilment of the ECB's statistical reporting requirements shall be further specified in the ESCB's statistical work programme.

(b) Paragraph 2 is replaced by the following:

2. In this respect, the reference reporting population shall comprise the following reporting agents:

a legal and natural persons residing in a Member State and falling within the sector "financial corporations" as defined in ESA 95;

b post office giro institutions residing in a Member State;

c legal and natural persons residing in a Member State, to the extent that they hold cross-border positions or have carried out cross-border transactions;

d legal and natural persons residing in a Member State, to the extent that they have issued securities or electronic money;

e legal and natural persons residing in a participating Member State, to the extent that they hold financial positions vis-à-vis residents of other participating Member States or have carried out financial transactions with residents of other participating Member States.

(c) The following paragraph is added:

4. In duly justified cases, such as for financial stability statistics, the ECB shall have the right to collect from the legal and natural persons referred to in paragraph 2(a), and from the entities and branches referred to in paragraph 3, statistical information on a consolidated basis, including information on the entities controlled by such legal and natural persons and entities. The ECB shall specify the extent of the consolidation.

3. The following Article is inserted after Article 2: