

Council Regulation (EC) No 2533/98 (23 November 1998)

Caption: Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank.

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Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Protocol (No 3) on the Statute of the European System of Central Banks and of the European Central Bank (hereinafter referred to as the 'Statute') and in particular to Article 5.4 thereof,

Having regard to the recommendation of the European Central Bank (the 'ECB') ⁽¹⁾,

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

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

Acting in accordance with the procedure laid down in Article 106(6) of the Treaty establishing the European Community and in Article 42 of the Statute,

(1) Whereas Article 5.1 of the Statute requires the ECB, assisted by the national central banks, to collect either from the competent national authorities or directly from economic agents the statistical information which is necessary for the tasks of the European System of Central Banks (hereinafter referred to as the 'ESCB') to be performed; whereas, to facilitate the execution of these tasks, set out in Article 105 of the Treaty, and in particular the conduct of monetary policy, this statistical information is used primarily for the production of aggregated statistical information, for which the identity of individual economic agents is irrelevant, but may also be used at the level of individual economic agents; whereas Article 5.2 of the Statute requires the national central banks to carry out, to the extent possible, the tasks described in Article 5.1 of the Statute; whereas Article 5.4 of the Statute requires the Council to define the natural and legal persons subject to reporting requirements, the confidentiality regime and the appropriate provisions for enforcement; whereas the national central banks may cooperate with other competent authorities, including national statistical institutes and market regulators, for the purposes of Article 5.1 of the Statute;

(2) Whereas, in order for statistical information to be effective as an instrument for the performance of the tasks of the ESCB, definitions and procedures for its collection need to be structured so that the ECB has the ability and flexibility to avail itself in a timely manner of high-quality statistics which reflect changing economic and financial conditions and take account of the burden imposed on reporting agents; whereas in so doing attention must be paid not only to the performance of the ESCB's tasks and its independence but also to keeping the burden placed on the reporting agents to a minimum;

(3) Whereas it is therefore desirable to define a reference reporting population in terms of categories of economic units and statistical applications involved, to which the statistical powers of the ECB is confined and from which the ECB determines the actual reporting population through its regulatory power;

(4) Whereas a homogeneous reporting population is necessary for the production of the consolidated balance sheet of the Monetary Financial Institutions sector of the participating Member States, the principal aim of which is to provide the ECB with a comprehensive statistical picture of monetary developments in the participating Member States, seen as one economic territory; whereas the ECB has established and maintains a List of Monetary Financial Institutions for statistical purposes based on a common definition of these institutions;

(5) Whereas the said common definition for statistical purposes specifies that Monetary Financial Institutions comprise credit institutions as defined in Community law, and all other resident financial institutions whose business is to receive deposits and/or close substitutes for deposits from entities other than Monetary Financial Institutions and, for their own account (at least in economic terms), to grant credits and/or to make investments in securities;

(6) Whereas those post office giro institutions which may not fulfil the common definition for statistical

purposes of Monetary Financial Institutions may nevertheless need to be made subject to the ECB's statistical reporting requirements in the field of money and banking statistics and payment systems statistics because they may, to a significant extent, receive deposits and/or close substitutes for deposits and undertake payment systems business;

(7) Whereas in the European System of National and Regional Accounts 1995 ⁽⁴⁾ (hereinafter referred to as the 'ESA 95'), the Monetary Financial Institutions therefore comprise the sub-sectors 'the central bank' and 'other monetary financial institutions' and may be broadened solely through the inclusion of categories of institutions coming from the sub-sector 'other financial intermediaries, except insurance corporations and pension funds';

(8) Whereas statistics on the balance of payments, the International Investment Position, securities, electronic money and payment systems are necessary to enable the ESCB to fulfil its tasks in an independent manner,

(9) Whereas the use of the terms 'legal and natural persons' in Article 5.4 of the Statute has to be construed in a manner that is consistent with the practices of Member States in the field of money and banking statistics and balance of payments statistics and therefore also encompasses entities that are neither legal persons nor natural persons under their respective national laws but still fall within the relevant sub-sectors of the ESA 95; whereas reporting requirements can therefore be imposed on entities such as partnerships, branches, undertakings for collective investments in transferable securities (UCITS) and funds that, under their respective laws, do not enjoy the status of a legal person; whereas in these cases the reporting obligation is imposed on those persons who, under the applicable national laws, legally represent the entities concerned;

(10) Whereas the statistical balance sheet reports of institutions mentioned in Article 19.1 of the Statute may also be used to calculate the amount of minimum reserves which they may be obliged to hold;

(11) Whereas it is the task of the Governing Council of the ECB to specify the division of tasks between the ECB and the national central banks concerning the collection and verification of statistical information and their enforcement, taking into account the principle laid down in Article 5.2 of the Statute, as well as the tasks which will be assumed by national authorities within the limits of their competence, for the purposes of obtaining statistics of a consistently high quality;

(12) Whereas, in the early years of the single currency area, cost-effectiveness may require that the ECB's statistical reporting requirements be satisfied through transitional procedures due to existing constraints on the collection systems; whereas this may imply in particular that, in the case of the Financial Account of the balance of payments, data on cross-border positions or transactions of the participating Member States seen as one economic territory may in the early years of the single currency area be compiled using all positions or transactions between residents of a participating Member State and residents of other countries;

(13) Whereas the limits within and the conditions under which the ECB is entitled to impose sanctions on undertakings for failure to comply with the obligations laid down in regulations and decisions of the ECB have been defined by Council Regulation (EC) No 2532/98 of 23 November 1998, concerning the powers of the European Central Bank to impose sanctions ⁽⁵⁾, in accordance with Article 34.3 of the Statute; whereas in the event of a conflict between the provisions of the said Regulation and this Regulation enabling the ECB to impose sanctions, the provisions of this Regulation will prevail; whereas the sanctions for non-compliance with the obligations set out in this Regulation are without prejudice to the possibility of the ESCB establishing appropriate enforcement provisions in its relations with counterparties, including the partial or total exclusion of a reporting agent from monetary policy operations in the case of a serious infringement of statistical reporting requirements;

(14) Whereas regulations made by the ECB under Article 34.1 of the Statute do not confer any rights or impose any obligations on non-participating Member States;

(15) Whereas Denmark, referring to paragraph 1 of the Protocol (No 12) on certain provisions relating to Denmark, has given notification, in the context of the Edinburgh Decision of 12 December 1992, that it will not participate in the third stage of Economic and Monetary Union; whereas, therefore, in accordance with paragraph 2 of the said Protocol, all Articles and provisions of the Treaty and the Statute referring to a derogation will be applicable to Denmark;

(16) Whereas under paragraph 8 of the Protocol (No 11) on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland, Article 34 of the Statute does not apply to the United Kingdom unless it participates in the third stage of Economic and Monetary Union;

(17) Whereas, while it is recognised that the statistical information needed to fulfil the ECB's statistical reporting requirements is not the same for the participating as for the non-participating Member States, Article 5 of the Statute applies to both participating and non-participating Member States; whereas this fact, together with Article 5 of the Treaty, implies an obligation to design and implement at the national level all the measures that Member States consider appropriate in order to carry out the collection of the statistical information needed to fulfil the ECB's statistical reporting requirements and the timely preparations in the field of statistics in order for them to become participating Member States;

(18) Whereas confidential statistical information which the ECB and the national central banks must obtain for the performance of the tasks of the ESCB must be protected in order to gain and maintain the confidence of the reporting agents; whereas once this Regulation is adopted there will be no further cause to invoke provisions on confidentiality preventing the exchange of confidential statistical information relating to the tasks of the ESCB, subject to the provisions of 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 ⁽⁶⁾;

(19) Whereas Article 38.1 of the Statute provides that 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 and Article 38.2 of the Statute provides that persons having access to data covered by Community legislation imposing an obligation of secrecy shall be subject to such legislation;

(20) Whereas any infringement of the rules binding members of the staff of the ECB, whether committed wilfully or through negligence, renders them liable to disciplinary sanctions and, if appropriate, legal penalties for the violation of professional secrecy, subject to the combined provisions of Articles 12 and 18 of the Protocol on the privileges and immunities of the European Communities;

(21) Whereas the possible use of statistical information for the execution of the tasks to be carried out through the ESCB in accordance with Article 105 of the Treaty, while reducing the overall reporting burden, implies that the confidentiality regime defined in this Regulation must differ to some extent from the general Community and international principles on statistical confidentiality, and in particular from the provisions on statistical confidentiality in Council Regulation (EC) No 322/97 of 17 February 1997 on Community Statistics ⁽⁷⁾; whereas, subject to this point, the ECB will take into account the principles underlying Community statistics set out in Article 10 of Regulation (EC) No 322/97;

(22) Whereas the confidentiality regime defined in this Regulation applies only to confidential statistical information transmitted to the ECB for the performance of the tasks of the ESCB and does not affect special national or Community provisions relating to the transmission of other types of information to the ECB; whereas the rules on statistical confidentiality applied by the national statistical institutes and the Commission on the statistical information they collect on their own behalf must be respected;

(23) Whereas, for the purposes of Article 5.1 of the Statute, the ECB is required to cooperate in the field of statistics with the Community institutions or bodies and with the competent authorities of the Member States or third countries and with international organisations; whereas the ECB and the Commission will establish appropriate forms of cooperation in the field of statistics in order to carry out their tasks in the most efficient

way, trying to minimise the burden on reporting agents;

(24) Whereas the ESCB and ECB have been entrusted with the task of preparing the statistical reporting requirements for the euro area for their full operation in the third stage of Economic and Monetary Union (hereinafter referred to as ‘Stage Three’); whereas timely preparation in the statistical field is essential to enable the ESCB to fulfil its tasks in Stage Three; whereas an essential element of preparation is the adoption, ahead of Stage Three, of ECB statistical regulations; whereas it is desirable to inform market participants during 1998 of the detailed provisions the ECB may deem necessary to adopt for the implementation of its statistical reporting requirements; whereas it is therefore necessary to provide the ECB from the date of entry into force of this Regulation with a regulatory power;

(25) Whereas the provisions of this Regulation can be effectively applied only if participating Member States in their entirety have adopted the necessary measures with a view to ensuring that their authorities have the powers to assist and collaborate fully with the ECB in carrying out the verification and compulsory collection of statistical information, in conformity with Article 5 of the Treaty,

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

For the purposes of this Regulation:

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;
2. ‘reporting agents’ shall mean the legal and natural persons and the entities 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 Annex A; 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.

Article 2

Reference reporting population

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.
2. The reference reporting population shall comprise the following reporting agents:

(a) legal and natural persons falling within the sub-sectors ‘central bank’, ‘other monetary financial institutions’ and ‘other financial intermediaries, except insurance corporations and pension funds’ as described in Annex B and residing in a Member State, to the extent necessary to fulfil the ECB’s statistical reporting requirements in the field of money and banking statistics and payment systems statistics;

(b) post office giro institutions, to the extent necessary to fulfil the ECB’s statistical reporting requirements in the field of money and banking statistics and payment systems statistics;

(c) legal and natural persons residing in a Member State, to the extent that they hold cross-border positions or carry out cross-border transactions and that statistical information relating to such positions or transactions is necessary to fulfil the ECB’s statistical reporting requirements in the field of balance of payments statistics or the International Investment Position;

(d) legal and natural persons residing in a Member State, to the extent that statistical information relating to the securities or the electronic money issued by them is necessary to fulfil the ECB’s statistical reporting requirements.

3. An entity that would otherwise be covered by the definition in paragraph 2, but which according to the national law of its country of residence is neither a legal person nor a collection of natural persons, while it can be the subject of rights and obligations, shall be a reporting agent. The reporting obligation of such an entity shall be fulfilled by the persons legally representing it.

Where a legal person, collection of natural persons or an entity as referred to in the first subparagraph has a branch resident in another country, the branch shall be a reporting agent in its own right irrespective of where the head office is located insofar as the branch satisfies the conditions defined in paragraph 2, with the exception of the need to possess separate legal personality. Any number of branches set up in the same Member State shall be regarded as a single branch when they belong to the same sub-sector of the economy. The reporting obligation of a branch shall be fulfilled by the persons legally representing it.

Article 3

Modalities for the definition of statistical reporting requirements

In defining and imposing its statistical reporting requirements, the ECB shall specify the actual reporting population within the limits of the reference reporting population as defined in Article 2. Without prejudice to the fulfilment of its statistical reporting requirements, the ECB:

- (a) shall minimise the reporting burden involved, including by using existing statistics as far as possible;
- (b) shall take into account Community and international statistical standards;
- (c) may fully or partly exempt specific classes of reporting agents from its statistical reporting requirements.

Article 4

Obligations of Member States

Member States shall organise themselves in the field of statistics and shall fully cooperate with the ESCB in order to ensure the fulfilment of the obligations arising out of Article 5 of the Statute.

Article 5

Regulatory power of the ECB

1. The ECB may adopt regulations for the definition and imposition of its statistical reporting requirements on the actual reporting population of participating Member States.
2. To guarantee the coherence necessary to produce statistics meeting their respective information requirements, the ECB shall consult the Commission on draft regulations whenever links with the statistical requirements of the Commission exist. The Committee on Monetary, Financial and Balance of Payments Statistics shall take part, within the limits of its competence, in the process of cooperation between the Commission and the ECB.

Article 6

Right of verification and compulsory collection of statistical information

1. If a reporting agent residing in a participating Member State is suspected of an infringement, as set out in Article 7(2), of the ECB's statistical reporting requirements, the ECB and, in accordance with Article 5.2 of the Statute, the national central bank of the participating Member State concerned shall have the right to verify the accuracy and quality of the statistical information and to carry out its compulsory collection. However, should the statistical information concerned be necessary in order to demonstrate compliance with minimum reserve requirements, the verification should be carried out in accordance with Article 6 of Council Regulation (EC) No 2531/98 of 23 November 1998 concerning the application of minimum reserves by the European Central Bank ⁽⁸⁾. The right to verify statistical information or to carry out compulsory collection thereof shall comprise the right to:

- (a) require submission of documents;
- (b) examine the books and records of the reporting agents;
- (c) take copies or extracts from such books and records; and
- (d) obtain written or oral explanations.

2. The ECB or the competent national central bank shall notify the reporting agent in writing of its decision to verify statistical information or to collect it compulsorily, specifying the time limit for compliance with the verification request, the sanctions applicable in the case of non-compliance and the right to review. The ECB and the national central bank concerned shall inform each other of such verification requests.

3. For the verification and the compulsory collection of statistical information, national procedures shall be followed. The costs of the procedure shall be borne by the reporting agent concerned if it is established that the reporting agent has breached statistical reporting requirements.

4. The ECB may adopt regulations specifying the conditions under which the right to verify or to carry out the compulsory collection of statistical information may be exercised.

5. Within the limits of their competence, national authorities of participating Member States shall give the necessary assistance to the ECB and national central banks in the exercise of the powers provided for in this Article.

6. When a reporting agent opposes or obstructs the verification process or the compulsory collection of the required statistical information, the participating Member State in which the reporting agent's premises are located shall afford the necessary assistance, including ensuring access to the reporting agent's premises by the ECB or the national central bank so that the rights mentioned in paragraph 1 can be exercised.

Article 7

Imposition of sanctions

1. The ECB shall have the power to impose the sanctions set out in this Article on reporting agents which are subject to reporting requirements and residing in a participating Member State and which fail to comply with the obligations resulting from this Regulation or from ECB regulations or decisions defining and imposing the ECB's statistical reporting requirements.
2. The obligation to transmit certain statistical information to the ECB or to the national central banks shall be deemed to have been infringed if:
 - (a) no statistical information is received by the ECB or national central bank by the established deadline; or
 - (b) the statistical information is incorrect, incomplete or in a form not complying with the requirement.
3. The obligation to allow the ECB and the national central banks to verify the accuracy and quality of the statistical information submitted by reporting agents to the ECB or national central bank shall be deemed to have been infringed whenever a reporting agent obstructs this activity. Such obstruction includes, but is not limited to, the removal of documents and prevention of physical access by the ECB or the national central bank which is necessary for them to carry out their verification task or compulsory collection.
4. The ECB may impose sanctions on a reporting agent as follows:
 - (a) in the event of an infringement as defined in paragraph 2(a), a daily penalty payment not exceeding EUR 10 000, with the total fine not exceeding EUR 100 000;
 - (b) in the event of an infringement as defined in paragraph 2(b), a fine not exceeding EUR 200 000; and
 - (c) in the event of an infringement as defined in paragraph 3, a fine not exceeding EUR 200 000.
5. The sanctions set out in paragraph 4 shall be additional to the obligation on the reporting agent to meet the costs of the verification and compulsory collection procedure as required in Article 6(3).
6. In exercising the powers provided for in this Article, the ECB shall act in accordance with the principles and procedures as set out in Regulation (EC) No 2532/98.

Article 8

Confidentiality regime

1. Within the scope of this Regulation and for the purposes of the confidentiality regime covering the statistical information which is necessary for the tasks of the ESCB to be performed, statistical information shall be confidential when it allows reporting agents or any other legal person, natural person, entity or branch to be identified, either directly from their name, 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 person, 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 person, natural person, entity or branch. Statistical information taken from sources which are available to the public in accordance with national law is not confidential.
2. Transmission from the national central banks to the ECB of confidential statistical information shall take place to the extent and at the level of detail necessary for the exercise of the tasks to be carried out through the ESCB, as described in Article 105 of the Treaty.
3. 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 on the legal basis for the transmission and the protective measures adopted.

4. The ECB shall use confidential statistical information transmitted to it exclusively for the exercise of the tasks of the ESCB except:

- (a) if the reporting agent or the other legal person, 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; or
- (b) for the production of specific Community statistics, following an agreement between the Commission and the ECB in accordance with Article 9 of Regulation (EC) No 322/97; or
- (c) for granting scientific research bodies access to confidential statistical information which does not allow direct identification, without prejudice to national legislation and with the previous explicit consent of the national authority which provided the information.

5. The national central banks shall use the confidential statistical information collected to fulfil the ECB's statistical reporting requirements exclusively for the exercise of the tasks of the ESCB except:

- (a) if the reporting agent or the other legal person, 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; or
- (b) if it is used at the national level for statistical purposes following an agreement between the national statistical authorities and the national central bank or for the production of Community statistics in accordance with Article 9 of Regulation (EC) No 322/97; or
- (c) if it is used in the field of prudential supervision or for the exercise in accordance with Article 14(4) of the Statute of functions other than those specified in the Statute; or
- (d) for granting scientific research bodies access to confidential statistical information which does not allow direct identification.

6. 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.

7. This Article shall apply only to the collection and transmission of confidential statistical information for the fulfilment of the ECB's statistical reporting requirements; it shall not affect special national or Community provisions relating to the transmission of other types of information to the ECB.

8. This Regulation shall apply without prejudice to Directive 95/46/EC.

In the case of data collected by national statistical institutes and the Commission, which are submitted to the ECB, this Regulation shall, as regards statistical confidentiality, apply without prejudice to Regulation (EC) No 322/97.

9. The ECB and the national central banks shall take all the necessary regulatory, administrative, technical and organisational measures to ensure the protection of confidential statistical information. The ECB shall define common rules and minimum standards to prevent unlawful disclosure and unauthorised use. The protection measures shall apply to all confidential statistical information as defined in paragraph 1.

10. Member States shall adopt all the necessary measures to ensure the protection of confidential statistical information, including the imposition of the appropriate enforcement measures by the Member States in the event of an infringement.

Article 9

Final provisions

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Article 5, Article 6(4) and Article 8(9) shall apply from the date of entry into force of this Regulation. The remaining Articles shall apply from 1 January 1999.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 23 November 1998.

For the Council
The President
R. EDLINGER

Annex A

[...]

Annex B

[...]

⁽¹⁾ OJ C 246, 6. 8. 1998, p. 12.

⁽²⁾ OJ C 328, 26. 10. 1998.

⁽³⁾ Opinion delivered on 8 October 1998 (not yet published in the Official Journal).

⁽⁴⁾ OJ L 310, 30. 11. 1996, p. 1.

⁽⁵⁾ See page 4 of this Official Journal.

⁽⁶⁾ OJ L 281, 23. 11. 1995, p. 31.

⁽⁷⁾ OJ L 52, 22. 2. 1997, p. 1.

⁽⁸⁾ See page 1 of this Official Journal.