Council of the European Union

Brussels, 3 October 2023
(OR. en)

13659/23
ADD 1

Interinstitutional File:
2023/0237(COD)

STATIS 60
ECOFIN 955

NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Technical Working Document OPINION OF THE EUROPEAN CENTRAL BANK of 28 September 2023 on a proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 223/2009 on European statistics (CON/2023/29)

Delegations will find attached the Technical Working Document on the opinion of the European Central Bank on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 223/2009 on European statistics.

EUROPEAN CENTRAL BANK

EUROSYSTEM

Technical working document

produced in connection with ECB Opinion CON/2023/29[1] on a proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 223/2009 on European statistics

Drafting proposals

Text proposed by the Commission	**Amendments proposed by the ECB[2]**
Amendment 1 Citations of the proposed regulation	
'THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION, Having regard to the Treaty on the Functioning of the European Union, and in particular Article 338(1) thereof, Having regard to the proposal from the European Commission, After transmission of the draft legislative act to the national parliaments, Acting in accordance with the ordinary legislative procedure,'	'THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION, Having regard to the Treaty on the Functioning of the European Union, and in particular Article 338(1) thereof, Having regard to the proposal from the European Commission, After transmission of the draft legislative act to the national parliaments, **Having regard to the opinion of the European Central Bank***, Acting in accordance with the ordinary legislative procedure, * **OJ C [...], [...], p. [...].**'
Explanation *This amendment is necessary in view of the Council's request of 20 July 2023 for the ECB's opinion on the proposal.* *See the first paragraph of the ECB Opinion (Introduction and legal basis).*	

1 This technical working document is produced in English only and communicated to the consulting Union institution(s) after adoption of the opinion. It is also published on EUR-Lex alongside the opinion itself.

2 Bold in the body of the text indicates where the ECB proposes inserting new text. Strikethrough in the body of the text indicates where the ECB proposes deleting text.

Text proposed by the Commission	Amendments proposed by the ECB[2]
Amendment 2 Recital 13a of the proposed regulation (new)	
No text	**'(13a) European statistics are also developed, produced and disseminated by the European System of Central Banks (ESCB), but under a separate legal framework reflecting the ESCB's governance structure. Close cooperation and appropriate coordination is required between the ESS and the ESCB, notably to foster the exchange of confidential data between the two systems for statistical purposes, in the light of Article 338(1) of the Treaty and of Article 5 of Protocol (No 4) on the Statute of the European System of Central Banks and of the European Central Bank annexed to the Treaty. Furthermore, this Regulation should apply without prejudice to Council Regulation (EC) No 2533/98* .** *** Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank (OJ L 318, 27.11.1998, p. 8).'**
Explanation *The recitals of the proposed regulation should mention and acknowledge that European statistics are also developed, produced and disseminated by the ESCB for its own statistical functions under its own legal framework.* *The proposed amendment therefore clarifies the relationship of the proposed regulation with Council Regulation (EC) No 2533/98, namely that the proposed regulation applies without prejudice to the ESCB's legal framework for the collection of statistical information under Article 5 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB') and Regulation (EC) No 2533/98.* *The content of the proposed additional recital was included in the recitals to the original Regulation (EC) No 223/2009 (recitals 7 and 8). However, for clarity and consistency, it should be included in the recitals to the proposed regulation as well.* *See paragraph 2.1 of the ECB Opinion.*	

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Text proposed by the Commission	Amendments proposed by the ECB[2]
Amendment 3 Point (1)(e) of Article 1 of the proposed regulation (new) (Point (12a) (new definition) of Article 3 of Regulation (EC) No 223/2009)	
No text	'(1) […] **(e) the following point 12a is inserted:** **"12a. 'other core identification and classification variables' means data attributes which comprise entity identifiers, principal economic activity and ESA sector classifications."'**
Explanation *The core identification and classification variables specified in this definition are core microdata that are useful to the ECB/ESCB not only for statistical purposes, but also for performing ESCB and prudential supervisory tasks, such as implementing monetary policy, carrying out market operations, conducting risk management and conducting the prudential supervision of credit institutions. These data variables should not be considered confidential and should be made available to the ESS, the ESCB, the reporting agents and other relevant authorities and users.* *It should therefore be clarified in Regulation (EC) No 223/2009 that the ESCB is entitled to use such defined variables not only for the production of 'European statistics' as defined in point 1a of Article 1 of Regulation (EC) No 2533/98, but also for performing ESCB tasks pursuant to Article 127(2) and (5) TFEU and the prudential supervisory tasks assigned to the ECB under Article 127(6) TFEU and Council Regulation (EU) No 1024/2013[3].* *It would be consistent with the proposed exclusion of the core identification and classification variables from the provisions on statistical confidentiality provided for in Article 21 of Regulation (EC) No 223/2009 to amend Article 10(1) and 10(4) of Regulation (EU) 2019/2152 of the European Parliament and of the Council to ensure these variables are consistently considered not confidential in the statistical legal framework. [4]* *See paragraph 2.4 of the ECB Opinion.*	

3 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 institutions (OJ L 287, 29.10.2013, p. 63).

4 Regulation (EU) 2019/2152 of the European Parliament and of the Council of 27 November 2019 on European business statistics, repealing 10 legal acts in the field of business statistics (OJ L 327, 17.12.2019, p. 1).

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Text proposed by the Commission	Amendments proposed by the ECB[2]
Amendment 4 Point (7) of Article 1 of the proposed regulation (Article 17e (new) of Regulation (EC) No 223/2009)	
'(7) […] 1. The NSIs and the Commission (Eurostat) shall use data made available in accordance with Article 17b for the development and production of European statistics: (a) exclusively for statistical purposes; (b) in conformity with principles of statistical confidentiality and cost-effectiveness; and (c) with the obligation not to share them with third parties unless the data holder has agreed. 2. The NSIs and the Commission (Eurostat) shall: (a) take appropriate measures to protect statistical confidentiality and trade secrets and to preserve other legitimate concerns of private data holders including the cost and effort required to make the data available; (b) implement, insofar as the processing of personal data is necessary, technical and organisational measures which safeguard the rights and freedoms of data subjects. 3. Paragraphs 1 and 2 of this Article shall apply to an ONA that has received data following a request submitted on its behalf by a NSI in accordance with Article 17b(2). 4. The Commission (Eurostat) shall publish a description of the main categories of costs related to the data processing for which compensation may be granted to the data holder and the methodology for calculating these costs.'	'(7) […] 1. The NSIs and the Commission (Eurostat) shall use data made available in accordance with Article 17b for the development and production of European statistics: (a) exclusively for statistical purposes; (b) in conformity with principles of statistical confidentiality and cost-effectiveness; and (c) **in compliance** with the obligation, **subject to paragraph 2 of this Article,** not to share them with third parties unless the data holder has agreed. **2. Notwithstanding paragraph 1, point (c) of this Article, the ESS shall share the data with ESCB members, without the prior agreement of the data holder, where necessary for the development, production and dissemination of European statistics or for increasing the quality of European statistics, within the respective spheres of competence of the ESS and the ESCB, and this necessity has been justified.** ~~2.~~**3.** The NSIs and the Commission (Eurostat) shall: (a) take appropriate measures to protect statistical confidentiality and trade secrets and to preserve other legitimate concerns of private data holders including the cost and effort required to make the data available; (b) implement, insofar as the processing of personal data is necessary, technical and organisational measures which safeguard the rights and freedoms of data subjects.

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Text proposed by the Commission	Amendments proposed by the ECB[2]
	~~3.~~**4.** Paragraphs 1 and ~~2~~**3** of this Article shall apply to an ONA that has received data following a request submitted on its behalf by a**n** NSI in accordance with Article 17b(2). **5. Paragraph 3 of this Article shall apply to an ESCB member that has received data in accordance with paragraph 2 of this Article.** ~~4.~~**6.** The Commission (Eurostat) shall publish a description of the main categories of costs related to the data processing for which compensation may be granted to the data holder and the methodology for calculating these costs.'
<u>*Explanation*</u> *The proposed new Articles 17b to 17f of Regulation (EC) No 223/2009 would set up a specific mechanism allowing the ESS members to request a private data holder to make data available for the development and production of European statistics where the conditions specified under the new Article 17(b) are fulfilled.* *In order for the ESS and the ESCB to continue to cooperate closely to minimise the reporting burden and guarantee the necessary coherence in line with statistical principles, including the principle of high output data quality, this cooperation should be extended to take account of the new situation envisaged by Article 17e. In addition, the Eurosystem makes extensive use of official statistics produced by the ECB/ESCB and the ESS, as well as of non-traditional data sources such as high frequency population mobility indicators based on mobile network operators' data; statistics on household consumption or national accounts supported by financial transactions data like purchase orders, invoices, card charges and journal entries, when conducting its statutory tasks.* *For these reasons, the ECB sees merit in amending the proposed Article 17e to require the ESS to transmit to ESCB members, without the prior agreement of the data holder, the data that may be made available to ESS members by a private data holder for the compilation of European statistics. This would increase the transparency for the private data holder. It is also appropriate to ensure that members of the ESCB take equivalent measures to protect the data which they may receive.* *See paragraph 2.2 of the ECB Opinion.*	

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Text proposed by the Commission	Amendments proposed by the ECB[2]
Amendment 5 Point (7) of Article 1 of the proposed regulation (Article 17f (new) of Regulation (EC) No 223/2009)	
'(7) […] "[…] Data sharing in the ESS 1. Data shall be shared between NSIs and between NSIs and the Commission (Eurostat) exclusively for statistical purposes and for improving the quality of European statistics. 2. Data sharing shall take place upon request by an NSI or the Commission (Eurostat) where this is relevant and necessary. Data sharing shall also take place when the request is put forward by an NSI on behalf of an ONA and the data is used exclusively for statistical purposes and for improving the quality of European statistics developed and produced by that ONA. 3. The NSIs, and when relevant the ONAs, participating in the data sharing within the ESS shall provide all necessary safeguards with regard to the physical and logical protection of data confidentiality. The Commission (Eurostat) shall set up a secure infrastructure to facilitate data sharing. The NSIs, and when relevant the ONAs, may use that secure data sharing infrastructure for the purpose specified in paragraph 1. 4. When the data concerned is confidential data within the meaning of Article 3 of this Regulation or is personal data as defined in Regulations (EU) 2016/679 and (EU) 2018/1725, the sharing of such data shall be allowed and may take place on a voluntary basis provided it fulfils all of the following conditions:	'(7) […] "[…] Data sharing in the ESS **and between the ESS and the ESCB** 1. Data shall be shared between NSIs and between NSIs and the Commission (Eurostat) exclusively for statistical purposes and for improving the quality of European statistics. 2. Data sharing shall take place upon request by an NSI or the Commission (Eurostat) where this is relevant and necessary. Data sharing shall also take place when the request is put forward by an NSI on behalf of an ONA and the data is used exclusively for statistical purposes and for improving the quality of European statistics developed and produced by that ONA. **2a. Data sharing shall take place between the ESS and a member of the ESCB in areas of shared responsibility or common interest and where the data is used exclusively for statistical purposes and for improving the quality of European statistics developed and produced by that member of the ESCB.** 3. The NSIs, and when relevant the ONAs **or members of the ESCB**, participating in the data sharing within the ESS shall provide all necessary safeguards with regard to the physical and logical protection of data confidentiality. The Commission (Eurostat) shall set up a secure infrastructure to facilitate data sharing. The NSIs, and when relevant the ONAs **or members of the ESCB**, may

Text proposed by the Commission	Amendments proposed by the ECB[2]
(a) it is based on a request justifying the necessity to share the data in each individual case, in particular with regard to the quality issues that are to be specifically addressed; (b) it is based on privacy-enhancing technologies that are specifically designed to comply with Regulations (EU) 2016/679 and (EU) 2018/1725, with particular regard to purpose limitation, data minimisation, storage limitation, integrity and confidentiality; (c) it does not affect Chapter V of this Regulation. 5. The data requested under this Article shall not pertain to issues of national security and military matters. 6. The Commission shall, by means of implementing acts, set out the technical aspects of data sharing between the statistical authorities referred to in this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(2). 7. This Article is without prejudice to Article 21 of this Regulation.";'	use that secure data sharing infrastructure for the purpose specified in paragraph 1. 4. When the data concerned is confidential data within the meaning of Article 3 of this Regulation or is personal data as defined in Regulations (EU) 2016/679 and (EU) 2018/1725, the sharing of such data shall be allowed and may take place on a voluntary basis provided it fulfils all of the following conditions: (a) it is based on a request justifying the necessity to share the data in each individual case, in particular with regard to the quality issues that are to be specifically addressed; (b) it is based on privacy-enhancing technologies that are specifically designed to comply with Regulations (EU) 2016/679 and (EU) 2018/1725, with particular regard to purpose limitation, data minimisation, storage limitation, integrity and confidentiality; (c) it does not affect Chapter V of this Regulation. 5. The data requested under this Article shall not pertain to issues of national security and military matters. 6. The Commission shall, by means of implementing acts, set out the technical aspects of data sharing between the statistical authorities referred to in this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(2). 7. This Article is without prejudice to Article 21 of this Regulation.";'
Explanation *The proposed new Article 17f of Regulation (EC) No 223/2009 would set up a new regime to facilitate the sharing of data exclusively within the ESS. However, the new Article 17f does not address the need also to enhance data sharing between the ESS and the ESCB. In line with the duty of close cooperation between the ESS and the ESCB under Article 2a of Regulation (EC) No 2533/98 and Article 9 of*	

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Text proposed by the Commission	Amendments proposed by the ECB[2]
Regulation (EC) No 223/2009, the proposed new regime should be expanded to facilitate also cooperation on data sharing with the ESCB by imposing a requirement to share data received by NSIs and/or the Commission (Eurostat) also with the ESCB. *See paragraph 2.3 of the ECB Opinion.*	
Amendment 6 Article 21 of Regulation (EC) No 223/2009	
No text.	'Article 21 Transmission of confidential data 1. Transmission of confidential data from an ESS authority, as referred to in Article 4, that collected the data to another ESS authority may take place provided that this transmission is necessary for the efficient development, production and dissemination of European statistics or for increasing the quality of European statistics. 2. Transmission of confidential data between an ESS authority that collected the data and an ESCB member ~~may~~ **shall** take place provided that this transmission is necessary for the efficient development, production and dissemination of European statistics or for increasing the quality of European statistics, within the respective spheres of competence of the ESS and the ESCB, and that this necessity has been justified. 3. Any further transmission beyond the first transmission shall require the explicit authorisation of the authority that collected the data. ~~4. National rules on statistical confidentiality shall not be invoked to prevent the transmission of confidential data under paragraphs 1 and 2 where an act of the European Parliament and of the Council acting in accordance with Article 251 of the Treaty provides for the transmission of such data.~~ 5. Confidential data transmitted in accordance with this Article shall be used exclusively for

Text proposed by the Commission	Amendments proposed by the ECB[2]
	statistical purposes and only accessible to staff working in statistical activities within their specific domain of work. 6. The provisions on statistical confidentiality provided for in this Regulation shall apply to all confidential data transmitted within the ESS and between the ESS and the ESCB. **7. This Article shall not apply if the data to be transmitted are key attributes on individual companies that Member States are required to make publicly available under Directive (EU) 2019/1024 of the European Parliament and of the Council* and its implementing regulations or other core identification and classification variables, which are not considered confidential data for the purposes of this Article.** *** Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information (OJ L 172, 26.6.2019, p. 56).'**
Explanation *In recognition of the importance of the exchange of confidential data so that the ESS and the ESCB have the information necessary to perform their tasks, while at the same time avoiding double reporting and ultimately reducing the reporting burden, together with the exponential increase in the availability of such data, the ESS and ESCB should be required to enhance their cooperation in this field by transmitting confidential data where this necessity is justified. As the equivalent provisions in Article 8a of Regulation (EC) No 2533/98 do not contain a paragraph that suggests that national law may hamper the transmission of the confidential data, the provision (paragraph 4 on national rules on statistical confidentiality) need not be retained.* *The high-value set of data attributes on individual companies that Member States are required to make publicly available under Directive (EU) 2019/1024 of the European Parliament and of the Council ('Open Data Directive')[5] are core microdata that are useful to the ECB/ESCB not only for statistical purposes, but also for performing ESCB and prudential supervisory tasks, such as implementing monetary policy, carrying out market operations, conducting risk management and conducting the prudential supervision*	

5 Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information (OJ L 172, 26.6.2019, p. 56).

Text proposed by the Commission	Amendments proposed by the ECB[2]
of credit institutions. When publicly available under Union law, these data variables should not be considered confidential statistical information and should be made available to the ESS, the ESCB, the reporting agents and other relevant authorities and users. The meaning of 'other core identification and classification variables' is set down in a new definition in Article 3. *It should therefore be clarified in Regulation (EC) No 223/2009 that the ESCB is entitled to use such defined core microdata variables not only for the production of 'European statistics', as defined in Article 1, point (1a), of Regulation (EC) No 2533/98, but also for performing ESCB tasks pursuant to Article 127(2) and (5) TFEU and the prudential supervisory tasks assigned to the ECB under Article 127(6) TFEU and Regulation (EU) No 1024/2013.* *The confidentiality of statistical data collected by the ECB under legal acts adopted on the basis of Article 5 of the Statute of the ESCB is safeguarded in accordance with Regulation (EC) No 2533/98.* *See paragraph 2.4 of the ECB Opinion.*	
Amendment 6 Point 10 of Article 1 of the proposed regulation (Article 25 of Regulation (EC) No 223/2009)	
'(10) […] "[…] Data that is lawfully available to the public shall not be considered confidential when used for statistical purposes.",'	'(10) […] "[…] Data that is lawfully available to the public shall not be considered confidential **data or confidential statistical information** when used for statistical purposes **or for the dissemination of statistics obtained from that data.**",'
Explanation *The proposed wording for Article 25 provides that data that is lawfully available to the public should not be considered confidential when used for statistical purposes. However, it should also apply to the dissemination of statistics obtained from that data, which is permitted under the current wording.* *See paragraph 2.5 of the Opinion.*	

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