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NOTE

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Subject:	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 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.

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)

Introduction and legal basis

On 20 July 2023 the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on a proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 223/2009 on European statistics¹ (hereinafter the 'proposed regulation').

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union (TFEU) since the proposed regulation contains provisions affecting the ECB's tasks concerning the collection of statistical information pursuant to Article 5 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB'). In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

1. General observations

- 1.1 In accordance with Regulation (EC) No 223/2009 of the European Parliament and of the Council² and Council Regulation (EC) No 2533/98³, European statistics are developed, produced and disseminated by both the European Statistical System (ESS) and the European System of Central Banks (ESCB). The ESS and the ESCB operate under two separate legal frameworks reflecting their respective governance structures and the importance of ensuring close cooperation and appropriate coordination in the performance of their statistical functions.
- 1.2 The proposed regulation aims to make the legal framework for developing, producing and disseminating European statistics and the ESS 'fit for the future'. The proposed regulation aims to achieve this by enabling the ESS to respond more quickly and effectively to urgent statistical needs in crisis situations; facilitating access to privately held data; and enabling the ESS to meet user expectations for more detailed information, produced more quickly, at a higher frequency and with more in-depth insights. Such production of more detailed information is made possible by

¹ COM(2023) 402 final.

² Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities (OJ L 87, 31.3.2009, p. 164).

³ 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).

technological developments, such as the emergence of digital and internet-generated data. The ECB fully supports and shares these objectives with the ESS and considers that they are equally relevant to the development, production and dissemination of European statistics by the ESCB within its respective sphere of competence.

- 1.3 Moreover, the ECB emphasises that the proposed regulation and the governance of European statistics in the ESS and the ESCB should align with the larger European data strategy⁴. The data strategy aims to make the Union a leader in a data-driven society by creating a single market for data where data is allowed to flow freely within the Union and across sectors for the benefit of businesses, researchers and public administrations. The data strategy recognises that to capture the benefits of better use of data, the Union will have to improve its governance structures for handling data and to increase its pools of quality data available for use and re-use⁵. These important, overarching objectives should continue to shape the reform of the legal frameworks governing European statistics.
- 1.4 In view of these shared objectives, the ECB considers it all the more important that the ESS and the ESCB members continue to cooperate closely to minimise the reporting burden and guarantee the coherence necessary to produce European statistics.⁶ This is especially the case in areas of statistical production where the ESS and the ESCB have joint responsibility, such as the production of financial accounts and balance of payments statistics. But these objectives are also served through close cooperation where the ECB has prime responsibility for the production of statistics, namely by ensuring that members of the ESCB may use, directly or indirectly, data used and produced by the ESS, as long as the necessity has been justified.
- 1.5 Close cooperation is also essential to improve the way in which data is made available and used for tackling societal, climate and environment-related challenges.⁷ In the field of statistics, this requires secure and timely data sharing across public institutions as well as across sectors to ensure that more and better integrated data becomes available for use, while keeping the corresponding safeguards of the data in place. If the opportunity provided by the revision of Regulation (EC) No 223/2009 to enhance the shareability of data across trusted producers of official statistics is not taken, this may have clear implications for the achievement of relevant policy goals at Union level.
- 1.6 Against this background, and in view of the ESCB's role as one of the pillars, together with the ESS, for the production of European statistics, the ECB considers that the ESS and the ESCB should jointly tackle the new challenges that the proposed regulation aims to address. This should be done on three fronts.
- 1.7 Firstly, the updates of the respective legal frameworks, that is Regulation (EC) No 223/2009 and Regulation (EC) No 2533/98, need to be coordinated, in particular, to enhance the current data

⁴ See 'European data strategy: Making the EU a role model for a society empowered by data', available on the European Commission's website at www.commission.europa.eu.

⁵ See 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A European strategy for data', COM/2020/66 final.

⁶ Article 9 of Regulation (EC) No 223/2009 and Article 2a of Regulation (EC) No 2533/98.

⁷ The production of statistical information for climate risk analysis is an important step in the climate change action plan decided by the ECB's Governing Council in 2021 following the ECB's monetary policy strategy review. See 'ECB presents action plan to include climate change considerations in its monetary policy strategy', 8 July 2021, available on the ECB's website at www.ecb.europa.eu.

sharing regime for statistical purposes between both statistical systems in order to adapt them to the new challenges faced by European statistics⁸, to lower the burden of producers and of compiling high-quality official macroeconomic statistics, and to achieve better statistical outcomes.⁹

- 1.8 Secondly, the ECB notes that the proposed regulation would introduce a new set of rules to facilitate the collection of data to meet urgent statistical demands in times of crisis, to provide access to new data sources, including particularly to privately held data, and to enhance the sharing of data in the ESS¹⁰. At the same time, it is not just in the ESS that the current regime for the sharing of new sources of data for statistical purposes should be enhanced, but also – and in line with the duty of close cooperation – between the ESS and the ESCB. Each system comprises trusted institutions and authorities that have put in place rigorous and reliable systems and procedures for protecting data confidentiality.
- 1.9 Finally, a coordinated approach across both legal frameworks should be taken to ensure that statistical reporting uses a bi-directional communication between relevant authorities and reporting agents, with a view to minimising the reporting burden, avoiding double reporting and enhancing the quality of the data collected. The basis of such communication is the unique identification and classification of relevant corporate counterparties (i.e. excluding households). Accordingly, a general European framework should be defined in the context of Regulation (EC) No 223/2009 and Regulation (EC) No 2533/98 to facilitate data sharing in relation to a limited set of data attributes and core identification and classification variables, which is already established practice in several EU jurisdictions.
- 1.10 Establishing an effective bi-directional communication between relevant authorities and reporting agents is of particular importance to the ECB because the legal framework that applies to its statistical tasks permits the transmission of information which identifies relevant counterparties that has been collected under Article 5 of the Statute of the ESCB within the ESCB 'to the extent and at the level of detail necessary for the performance of tasks of the ESCB referred to in the Treaty or tasks in the field of prudential supervision given to the members of the ESCB'¹¹. By contrast, where such confidential data has been collected by an ESS member, it may only be transmitted to an ESCB member 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'¹². It must not be used for purposes that are not exclusively statistical.¹³ The clear exclusion of certain data attributes from these restrictions applicable to confidential data, where in most cases these are already available publicly and/or at a price or for a fee, would significantly enhance the

⁸ As outlined in the proposed regulation and in paragraph 1.2 above.

⁹ See 'CMFB opinion on the Exchange of confidential statistical information (ECI) on European Statistics for statistical purposes between the ESS and the ESCB', Committee on Monetary, Financial and Balance of payments statistics, 12 July 2023.

¹⁰ See Article 1, points (2) and (7), of the proposed regulation, which insert new Articles 16a and 17b to 17f in Regulation (EC) No 223/2009.

¹¹ Article 8(4), point a, of Regulation (EC) No 2533/98.

¹² Article 21(2) of Regulation (EC) No 223/2009.

¹³ Article 8a(3) of Regulation (EC) No 2533/98.

usability of such data and the quality and efficient production of statistics. It would also be a precondition for minimising the reporting burden.

- 1.11 In general, clearer recognition in the proposed regulation of the importance of the use of such information for the performance of the tasks of the ESCB as referred to in the Treaty, and the tasks of other Union institutions, bodies and agencies which are increasingly requesting access to information collected by the ESCB, would support the shared objectives of the ESCB and the ESS of producing high-quality statistics (requiring bi-directional communication with reporting agents) and meeting user expectations for more detailed information, offering more in-depth insights in support of evidence-based EU policies.

2. Specific observations

2.1 *Incorporating the ECB's competences in the recitals to the proposed regulation*

The ECB considers that, in view of the duty of close cooperation between the ESS and ESCB, the recitals of the proposed regulation should mention and acknowledge that European statistics are also developed, produced and disseminated by the ESCB under its own statistical collection framework. The recitals of the proposed regulation should clarify that its provisions apply without prejudice to the ECB's competences under Regulation (EC) No 2533/98. This was explained in one of the recitals of the original Regulation (EC) No 223/2009; however, for clarity and consistency, it should be included in the recitals of the proposed regulation as well.

2.2 *Transmission of privately held data to the ESCB from the ESS without the prior consent of the data holder for compilation of European statistics*

- 2.2.1 The ECB notes that the proposed regulation¹⁴ includes a specific mechanism that would allow the ESS members to request a private data holder to make data and the relevant metadata available for the development and production of European statistics where the conditions specified under the proposed regulation are fulfilled. This mechanism is without prejudice to reporting obligations laid down in sectoral statistical legislation of the Union, or to the obligation for data holders to make data available based on exceptional need in accordance with the EU Data Act¹⁵.

- 2.2.2 The ECB has maintained that there are considerable benefits to allowing it to access and use privately held data when conducting its statutory tasks¹⁶, as the Eurosystem makes extensive use not only of official statistics produced by the ECB, the members of the ESCB and the ESS, but also 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 changes and journal entries.

- 2.2.3 Moreover, during the past few years, digitalisation and crisis management have also exponentially increased the need for the ESCB to have access to more detailed information, produced more quickly

¹⁴ See Article 1, point (7), of the proposed regulation, which inserts new Articles 17b to 17f in Regulation (EC) No 223/2009.

¹⁵ Proposal for a regulation of the European Parliament and of the Council on harmonised rules on fair access to and use of data (Data Act), (COM/2022/68 final).

¹⁶ See paragraph 2.3 of the Opinion of the European Central Bank of 5 September 2022 on a proposal for a regulation on harmonised rules on fair access to and use of data (Data Act) (CON/2022/30), (OJ C 402, 19.10.2022, p. 5).

and at a higher frequency, from non-traditional sources. This would allow the ESCB to respond more quickly to emergency and crisis situations and to produce more in-depth insights in its analysis when carrying out the ESCB's tasks. Access to privately held data is also relevant for statistical purposes, for example, to increase the quality of European statistics produced within the competence of the ESCB.

- 2.2.4 For these reasons, the ECB sees merit in amending the proposed regulation¹⁷ 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 the ESS members by a private data holder. Transmission would only take place where necessary for the ESCB to develop, produce and disseminate European statistics or increase their quality. This would ensure that the regime is effective in making this data available for the compilation of European statistics by the ESS and ESCB and would increase the transparency regarding the sharing for the private data holder. At the same time, members of the ESCB should be required to take equivalent measures to the national statistical institutes (NSIs) and the Commission (Eurostat) to protect any data it may receive in the interests of the private data holders.

2.3 *Enhancing the data sharing regime between the ESS and the ESCB*

The proposed regulation¹⁸ sets up a new regime to facilitate the sharing of data, including confidential data and the outputs of temporary statistical actions¹⁹, between the NSIs themselves and between the NSIs and the Commission (Eurostat). At the same time, it does not address the need to enhance data sharing between the ESS and the ESCB. In line with the duty of close cooperation between the ESS and the ESCB²⁰, the proposed new regime should be expanded to include and to enhance in a symmetric way the current cooperation on data sharing with the ESCB as a producer of European statistics. The provisions should require the sharing of data between the ESCB and the ESS in areas of shared responsibility or common interest, provided that equivalent measures to protect the data are in place in both the ESCB and the ESS.

2.4 *Transmission of confidential data*

- 2.4.1 The proposed regulation does not amend the relevant provision of Regulation (EC) No 223/2009²¹ concerning the transmission of confidential data within the ESS and between the ESS and the ESCB. Consequently, when the ESS transmits confidential data to the ESCB pursuant to the relevant provision of Regulation (EC) No 223/2009²², the data may only be used by the ESCB 'exclusively for statistical purposes' and is 'only accessible to staff working in statistical activities within their specific domain of work'.
- 2.4.2 The ECB considers that the limited changes it suggests to the provisions governing the transmission of confidential data would be aligned with the general objective of the proposed regulation to make the legal framework governing European statistics fit for the future and significantly improve the responsiveness of the ESS to data needs. First, in recognition of the importance of the exchange of

¹⁷ See Article 1, point (7), of the proposed regulation, which inserts a new Article 17e in Regulation (EC) No 223/2009.

¹⁸ See Article 1, point (7), of the proposed regulation, which inserts a new Article 17f in Regulation (EC) No 223/2009.

¹⁹ See Article 1, point (2), of the proposed regulation, which inserts a new Article 16a in Regulation (EC) No 223/2009.

²⁰ See Article 2a of Regulation (EC) 2533/98 and Article 9 of Regulation (EC) 223/2009.

²¹ See Article 21 of Regulation (EC) No 223/2009.

²² See Article 21(5) of Regulation (EC) No 223/2009.

confidential data so that the ESS and the ESCB have the information necessary to perform their tasks, as well as of the exponential increase in the availability of such data, the ESS and the ESCB should be required to enhance their cooperation in this field by transmitting confidential data where this necessity is justified. Moreover, double reporting would be avoided, ultimately reducing the reporting burden.

- 2.4.3 Second, the changes would permit the wider use of selected reference data, in particular, key attributes on individual companies, which are in most cases publicly available and/or available at a price or for a fee.
- 2.4.4 The ECB itself aims to ensure that the legal framework governing its statistical collections is 'fit for the future'. In particular, the modernisation of the statistical reporting envisaged under the ESCB Integrated Reporting Framework (IReF)²³ project; the broader EBA Feasibility Study under Article 430c of the Capital Requirements Regulation (CRR)²⁴; and the EU strategy on supervisory data in EU financial services are important initiatives in which the ESCB is involved.
- 2.4.5 These initiatives require bi-directional communication between relevant authorities and reporting agents on the core reference data to be used to fulfil their reporting requirements. This is a technical precondition for achieving a common reporting regime for banks for statistical, prudential and resolution purposes.
- 2.4.6 The basis for such communication is the ability to refer to unique information on the counterparty in the form of a set of key attributes on individual companies such as: name of the company, Member State where the company is registered, registered office address and legal form. Directive (EU) 2019/1024 of the European Parliament and of the Council (hereinafter the 'Open Data Directive')²⁵ and its implementing regulation²⁶ require Member States to ensure that high-value datasets, including key attributes on individual companies, such as the above, are made publicly available. The ECB would also include key attributes, such as entity identifiers, principal economic activity and ESA sector classifications, going beyond those covered by the Open Data Directive. In addition, information on the location of local units that is relevant for the valuation of climate change risks and for the production and analysis of climate change risk indicators should be included in this category.
- 2.4.7 Moreover, in several EU jurisdictions, reference data sharing practices (covering the abovementioned set of key attributes and core identification and classification variables, including those collected by NSIs and national central banks (NCBs)) in the context of statistical reporting are

²³ The ESCB Integrated Reporting Framework (IReF) for banks' statistical reporting aims to consolidate a number of statistical data collections. This strategic project of the ESCB is a first step towards a common reporting by banks for statistical, prudential and resolution purposes, which is also based on the capacity to interchange and rely on the same set of core reference data. Such a strategic move would reduce the reporting burden considerably while, at the same time, maximising the usefulness of data for users.

²⁴ For a path towards achieving a common standardisation, integration and interoperability for banks' data reporting, see in particular the EBA's final 'Report on a feasibility study of an integrated reporting system under Article 430c CRR' (EBA/REP/2021/38) and the ESCB long-term strategy for banks' data reporting.

²⁵ 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).

²⁶ Commission Implementing Regulation (EU) 2023/138 of 21 December 2022 laying down a list of specific high-value datasets and the arrangements for their publication and re-use (OJ L 19, 20.1.2023, p. 43). The relevant datasets are specified in Section 5.1 of the Annex to the Implementing Regulation.

already functioning well across sources. These experiences show important benefits in terms of reporting burden reduction, the efficiency of the reporting, and improvements in overall data quality.

2.4.8 In the light of the above considerations, the ECB considers that selected reference data should not be subject to the restrictions applicable to 'confidential data' for the purposes of the proposed regulation, so that they can be shared between the ESS and the ESCB, the reporting agents and other relevant authorities and users^{27 28}.

2.4.9 The ECB proposes therefore that the relevant article of Regulation (EC) No 223/2009²⁹ provide that certain key attributes on individual companies and core identification and classification variables are not to be considered 'confidential data' for the purposes of the proposed regulation³⁰. Rather, they should be considered exceptions to the confidentiality regime between the ESS and the ESCB. Furthermore, being publicly available, the ESCB should be entitled to use this selected reference data for other than strictly statistical purposes, in other words not only for developing, producing and disseminating 'European statistics'³¹ but also for performing ESCB tasks pursuant to Article 127(2) and (5) TFEU and the ECB's tasks concerning the prudential supervision of credit institutions pursuant to Article 127(6) TFEU and Council Regulation (EU) No 1024/2013³².

2.5 *Re-use of publicly available data*

2.5.1 The ECB welcomes the proposal to amend the wording of Regulation (EC) 223/2009³³ to provide that data that is lawfully available to the public must not be considered confidential when used for statistical purposes. This is consistent with the objective of the European data strategy to ensure that data can flow freely within the Union and across sectors for the benefit of all. This proposed amendment allows for a more efficient use of publicly available data, as the current wording of Regulation (EC) No 223/2009 only applies to data that remain available to the public according to national legislation and does not explicitly include data that is increasingly available to the public under Union legislation.

2.5.2 At the same time, under the proposal, publicly available data is not to be considered confidential only when it is used for statistical purposes. The 'use for statistical purposes' definition is amended to mean the 'exclusive use for the development and production of statistical results and analyses, including for related research and scientific activities or the establishment of sampling frames'. The definition should also apply to the dissemination of statistics obtained from that data, which is permitted under the current provision. This would help to ensure that publicly available data which is disseminated by statisticians is not subject to unnecessary restrictions where such data is reused, including for non-statistical purposes, in line with the EU's strategy to increase data availability. Moreover, this would help to ensure that the ESCB can freely use publicly available data which

²⁷ Subject to the applicable personal data protections.

²⁸ See 'Minutes of the CMFB Workshop on Collaboration & exchange of business register data for statistical (and non-statistical) purposes between NSIs and NCBs', 29 June 2022 (point 26 and closing remarks).

²⁹ Article 21 of Regulation (EC) 223/2009.

³⁰ Or, for that matter, for the purposes of Regulation (EC) No 2533/98, which is now to be updated.

³¹ As defined in Art 1(1a) of Council Regulation (EC) 2533/98.

³² 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).

³³ See Article 1, point (10), of the proposed regulation, which replaces Article 25 of Regulation (EC) No 223/2009.

identifies legal persons not only to carry out its statistical tasks but also in the performance of its ESCB and prudential supervisory tasks.

Where the ECB recommends that the proposed regulation is amended, specific drafting proposals are set out in a separate technical working document accompanied by an explanatory text to this effect. The technical working document is available in English on EUR-Lex.

Done at Frankfurt am Main, 28 September 2023.



The President of the ECB

Christine LAGARDE