



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 21 October 2008

14606/08

**ECOFIN 437
STATIS 150**

NOTE

from:	The Presidency
to:	Working Party Group on Statistics
Subject:	Recommendation for a Council Regulation amending Council Regulation (EC) N° 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank - Consolidated text

Delegations will find attached the a consolidated text of Regulation (EC) N° 2533/98 with the amendments proposed by the new recommendation of the ECB.

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

Recommendation of the ECB :

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 referred to as the 'Statute') and in particular to Article 5.4 thereof,

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

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Commission,

Having regard to Regulation (EC) No [XX] of the European Parliament and of the Council on European Statistics,

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:

New recitals :

Recommendation of the ECB :

(1) Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank is a key component in the legal framework supporting the statistical information collection tasks of the 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).

Recommendation of the ECB :

(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 this 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 provided in this Regulation.

Recommendation of the ECB :

(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 conferred by the Statute. In line with this, the purposes for which statistical information may be collected need also to include the compilation of the macro-prudential statistics required for the performance of the ESCB's tasks under Article 105(5) of the Treaty.

Recommendation of the ECB :

(4) The scope of the reporting requirements necessary for the performance of the ESCB tasks should also take into account structural financial markets developments and address related statistical information requirements that were less apparent at the time 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.

Recommendation of the ECB :

(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.

Recommendation of the ECB :

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

Recommendation of the ECB :

(7) To minimise the reporting burden on reporting agents and to enable the efficient development, production and dissemination of high-quality statistics, and the proper performance of the ESCB tasks, it is necessary to allow the maximum use of existing information to compile statistics, including an exchange of confidential statistical information within the ESCB.

Recommendation of the ECB :

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

Recommendation of the ECB :

(9) European Statistics are and will be developed, produced and disseminated by both the ESCB and the ESS but under separate legal frameworks reflecting their respective governance structures. This Regulation should therefore apply without prejudice to Regulation (EC) No [XX],

HAS ADOPTED THIS REGULATION:

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

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;

Present Regulation :

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-a-vis residents of non-participating Member States and/or residents of third countries;

Recommendation of the ECB :

4. 'resident' and 'residing' shall mean having a centre of economic interest in the economic territory of a country as described in [...] **Council Regulation (EC) n°2223/96 of 25 June 1996 on the European system of national and regional accounts in the Community**; 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-a-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

Present Regulation :

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.

Recommendation of the ECB :

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 **for the development, production and dissemination of European Statistics** within the limits of the reference reporting population and of what is necessary to carry out the tasks of the ESCB. **In particular, information may be collected to fulfil the ECB's statistical reporting requirements including in the area of monetary and financial statistics, payments and payment systems statistics, financial stability statistics, balance of payments and international investment position statistics.**

Present Regulation :

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

Recommendation of the ECB :

2. **To the extent that the statistical information to be provided is necessary to fulfil the ECB's statistical reporting requirements,** the reference reporting population shall comprise the following reporting agents:

Present Regulation :

(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;

Recommendation of the ECB :

(a) legal and natural persons residing in a Member State and falling within [...] the sector 'financial corporations' as defined in ESA 95;

Present Regulation :

(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;

Recommendation of the ECB :

(b) post office giro institutions [...];

Present Regulation :

(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;

Recommendation of the ECB :

(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 [...];

Present Regulation :

(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.

Recommendation of the ECB :

(d) legal and natural persons residing in a Member State, to the extent that [...] they have issued securities [...] and electronic money [...];

Present Regulation :

[...]

Recommendation of the ECB :

(e) legal and natural persons residing in a 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 other residents of other participating Member States.

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

Present Regulation :

[...]

Recommendation of the ECB :

The principles of impartiality, objectivity, professional independence, cost-effectiveness, statistical confidentiality, alongside the principles of minimisation of reporting burden and high output quality shall govern the development, production and dissemination of statistics by the ESCB.

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:

Present Regulation :

(a) shall minimise the reporting burden involved, including by using existing statistics as far as possible;

Recommendation of the ECB :

(a) shall [...] **use** 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.

Present Regulation :

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.

Recommendation of the ECB :

2. **Without prejudice to Article 20 of Regulation (EC) No [XX],**

(a) transmission [...] within the ESCB of confidential statistical information that has been collected pursuant to Article 5 of the Statute shall take place: (i) to the extent and at the level of detail necessary for the [...] performance of the tasks [...] of the ESCB under Article 105 of the Treaty; or (ii) provided that such transmission is necessary for the efficient development, production or dissemination of statistics under Article 5 of the Statute or for increasing their quality;

(b) the Governing Council may decide on the collection and transmission, to the extent and level of detail necessary, within the ESCB of confidential information originally collected for purposes other than those of Article 5 of the Statute, provided that this is necessary for the efficient development or production of statistics or for increasing their quality and that these statistics are necessary for the performance of the tasks of the ESCB under Article 105 of the Treaty.

Present Regulation :

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.

Recommendation of the ECB :

3. **Without prejudice to Regulation (EC) No [XX]**, 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.

Present Regulation :

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

Recommendation of the ECB :

4. **Without prejudice to paragraph 12 of this Article, the ESCB** [...] shall use confidential statistical information transmitted to it exclusively for the exercise of the tasks of the ESCB except **in any of the following circumstances:**

Present Regulation :

(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

Recommendation of the ECB :

(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; [...]

Present Regulation :

(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

Recommendation of the ECB :

(b) [...] **for transmission to the members of the European Statistical System (ESS) in accordance with paragraph 11;**

Present Regulation :

(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.

Recommendation of the ECB :

(c) for granting scientific research bodies access to confidential statistical information which does not allow direct identification, [...] and with the [...] **prior** explicit consent of the [...] authority which provided the information;

Present Regulation :

[...]

Recommendation of the ECB :

(d) as regards NCBs, if the said statistical information is used in the field of prudential supervision or for the exercise of functions other than those specified in the Statute, in accordance with Article 14.4 of the Statute.

Present Regulation :

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.

Recommendation of the ECB :

5. [...] Confidential statistical information may be exchanged within the ESCB in order to grant scientific research bodies access to [...] such information, in accordance with paragraphs 3 and 4(c) of this Article.

[...]

[...]

[...]

[...]

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.

Present Regulation :

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.

Recommendation of the ECB :

8. This Regulation shall apply without prejudice to Directive 95/46/EC **and 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 of the free movement of such data.**

[...]

Present Regulation :

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.

Recommendation of the ECB :

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 implement** minimum standards to prevent unlawful disclosure and unauthorised use [...] **of data transmitted under paragraphs 1 and 2.**

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.

Present Regulation :

[...]

Recommendation of the ECB :

11. Without prejudice to national provisions on the exchange of confidential statistical information other than information covered in this Regulation, the transmission of confidential statistical information between an ESCB member that collected the information and an ESS authority may take place provided that this transmission is necessary for the efficient development, production or dissemination or for increasing the quality of European Statistics within the respective spheres of competence of the ESS and the ESCB. Any transmission beyond the first transmission must be explicitly authorised by the ESCB member that collected the information.

12. If confidential data are transmitted between an ESS authority and an ESCB member, these data shall be used exclusively for statistical purposes and only be accessible to staff working in statistical activities within their specific domain of work.

13. The protection measures referred to in Article 19 of Regulation (EC) No [XX] shall apply to all confidential data transmitted between an ESS authority and an ESCB member pursuant to paragraphs 11 and 12 above, and to Article 20(1a) of Regulation (EC) No [XX]. The ECB shall publish an annual confidentiality report on the measures adopted to safeguard the confidentiality of the statistical data.

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.

Annexes which have been deleted in the recommendation.

ANNEX A

THE LIMITS OF THE NATIONAL ECONOMY

2.04. The units, whether institutional, local kind-of-activity or of homogeneous production, which constitute the economy of a country and whose transactions are recorded in the ESA, are those which have a centre of economic interest on the economic territory of that country. These units, known as resident units, may or may not have the nationality of that country, may or may not be legal entities, and may or may not be present on the economic territory of the country at the time they carry out a transaction. Having thus defined the limits of the national economy in terms of resident units, it is necessary to define the meaning of the terms economic territory and centre of economic interest.

2.05. The term economic territory means:

- (a) the geographic territory administered by a government within which persons, goods, services and capital move freely;
- (b) any free zones, including bonded warehouses and factories under customs control;
- (c) the national air-space, territorial waters and the continental shelf lying in international waters, over which the country enjoys exclusive rights (1);
- (d) territorial enclaves, i.e. geographic territories situated in the rest of the world and used, under international treaties or agreements between States, by general government agencies of the country (embassies, consulates, military bases, scientific bases, etc.);
- (e) deposits of oil, natural gas, etc. in international waters outside the continental shelf of the country, worked by units resident in the territory as defined in the preceding subparagraphs.

2.06. The economic territory does not include extraterritorial enclaves (i.e. the parts of the country's own geographic territory used by general government agencies of other countries, by the institutions of the European Union or by international organisations under international treaties or agreements between States (2)).

2.07. The term centre of economic interest indicates the fact there exists some location within the economic territory on, or from, which a unit engages, and intends to continue to engage, in economic activities and transactions on a significant scale, either indefinitely or over a finite but long period of time (a year or more). It follows that a unit which carries out such transactions on the economic territory of several countries is deemed to have a centre of economic interest in each of them. The ownership of land and buildings within the economic territory is deemed to be sufficient in itself for the owner to have a centre of economic interest there.

2.08. On the basis of these definitions, units deemed to be residents of a country can be sub-divided into:

(a) units which are principally engaged in production, finance, insurance or redistribution, in respect of all their transactions except those relating to ownership of land and buildings;

(b) Units which are principally engaged in consumption (3), in respect of all their transactions except those relating to ownership of land and buildings;

(c) all units in their capacity as owners of land and buildings with the exception of owners of extraterritorial enclaves which are part of the economic territory of other countries or are States sui generis (see paragraph 2.06).

2.09. In the case of units which are principally engaged in production, finance, insurance or redistribution, in respect of all their transactions except those relating to ownership of land and buildings, the following two cases may be distinguished:

(a) activity conducted exclusively on the economic territory of the country: units which carry out such activity are resident units of the country;

(b) activity conducted for a year or more on the economic territories of several countries: only that part of the unit which has a centre of economic interest on the economic territory of the country is deemed to be a resident unit. It may be:

1. either an institutional resident unit, whose activities conducted for a year or more in the rest of the world are excluded and treated separately (4), or

2. a notional resident unit, in respect of the activity conducted in the country for a year or more by a unit which is resident in another country.

2.10. In the case of units which are principally engaged in consumption, except in their capacity as owners of land and buildings, households which have a centre of economic interest in the country are deemed to be resident units, even if they go abroad for short periods (less than a year). They include, in particular, the following:

- (a) border workers, i.e. people who cross the frontier daily to work in a neighbouring country;
- (b) seasonal workers, i.e. people who leave the country for several months, but less than a year, to work in another country in sectors in which additional manpower is needed periodically;
- (c) tourists, patients, students (5), visiting officials, businessmen, salesmen, artists and crew members who travel abroad;
- (d) locally recruited staff working in the extraterritorial enclaves of foreign governments;
- (e) the staff of the institutions of the European Union and of civilian or military international organisations which have their headquarters in extraterritorial enclaves;
- (f) the official, civilian or military representatives of the government of the country (including their households) established in territorial enclaves.

2.11. All units in their capacity as owners of land and/or buildings which form part of the economic territory are deemed to be resident units or notional resident units of the country in which the land or buildings in question are located.

(1) Fishing boats, other ships, floating platforms and aircraft are treated in the ESA just like any other mobile equipment, whether owned and/or operated by units resident in the Country, or owned by non-residents and operated by resident units. Transactions involving the ownership (gross fixed capital formation) and use (renting, insurance, etc.) of this type of equipment are attributed to the economy of the country of which the owner and/or operator respectively are resident. In cases of financial leasing a change of ownership is assumed.

(2) The territories used by the institutions of the European Union and international organisations thus constitute the territories of States sui generis. The feature of such States is that the only residents are the institutions themselves (see paragraph 2.10(e)).

(3) Consumption is not the only possible activity of households. Households may as entrepreneurs engage in any kind of economic activity.

(4) It is only where such activity is carried on for less than a year that it should not be separated from the activities of the producer institutional unit. This may also be done where the activity, though conducted for a year or more, is insignificant, and in all circumstances for the installation of equipment abroad. However, a unit which is resident in another country and which is carrying out a construction activity in the country for a duration of less than a year is deemed to have a centre of economic interest on the economic territory of the country if the output of the construction activity constitutes gross fixed capital formation. Such a unit should therefore be treated as a notional resident unit.

(5) Students are always treated as residents, however long they study abroad.

ANNEX B

SUBSECTOR: THE CENTRAL BANK (S.121)

2.45. Definition: The subsector the central bank (S.121) consists of all financial corporations and quasi-corporations whose principal function is to issue currency, to maintain the internal and external value of the currency and to hold all or part of the international reserves of the country.

2.46. The following financial intermediaries are classified in subsector S.121:

(a) the national central bank, also in the case where it is part of a European System of Central Banks;

(b) central monetary agencies of essentially public origin (e.g. agencies managing foreign exchange or issuing currency) which keep a complete set of accounts and enjoy autonomy of decision in relation to central government. Mostly these activities are performed either within central government or within the central bank. In these cases no separate institutional units exist.

2.47. Subsector S.121 does not include agencies and bodies, other than the central bank, which regulate or supervise financial corporations or financial markets.

SUBSECTOR: OTHER MONETARY FINANCIAL INSTITUTIONS (S.122)

2.48. Definition: The subsector other monetary financial institutions (S.122) consists of all financial corporations and quasi-corporations, except those classified in the central bank subsector, which are principally engaged in financial intermediation and whose business is to receive deposits and/or close substitutes for deposits from institutional units other than monetary financial institutions, and, for their own account, to grant loans and/or to make investments in securities.

2.49. The monetary financial institutions (MFIs) comprise the subsector the central bank (S.121) and the subsector other monetary financial institutions (S.122), and coincide with the monetary financial institutions for statistical purposes as defined by the EMI.

2.50. MFIs cannot be described simply as 'banks', because they may possibly include some financial corporations which may not call themselves banks, and some which may not be permitted to do so in some countries, while some other financial corporations describing themselves as banks may not in fact be MFIs. In general, the following financial intermediaries are classified in subsector S.122:

- (a) commercial banks, 'universal' banks, 'all-purpose' banks;
- (b) savings banks (including trustee savings banks and savings banks and loan associations);
- (c) post office giro institutions, post banks, giro banks;
- (d) rural credit banks, agricultural credit banks;
- (e) cooperative credit banks, credit unions;
- (f) specialised banks (e.g. merchant banks, issuing houses, private banks).

2.51. The following financial intermediaries may also be classified in subsector S.122 where it is their business to receive repayable funds from the public whether in the form of deposits or in other forms such as the continuing issue of bonds and other comparable securities. Otherwise, they should be classified in subsector S.123:

- (a) corporations engaged in granting mortgages (including building societies, mortgage banks and mortgage credit institutions);
- (b) mutual funds (including investment trusts, unit trusts and other collective investment schemes, e.g. undertakings for collective investment in transferable securities-UCITS);
- (c) municipal credit institutions.

2.52. Subsector S.122 does not include:

- (a) holding corporations which only control and direct a group consisting predominantly of other monetary financial institutions, but which are not other monetary financial institutions themselves. They are classified in subsector S.123;
- (b) non-profit institutions recognised as independent legal entities serving other monetary financial institutions, but not engaged in financial intermediation.

SUBSECTOR: OTHER FINANCIAL INTERMEDIARIES, EXCEPT INSURANCE
CORPORATIONS AND PENSION FUNDS (S.123)

2.53. Definition: The subsector other financial intermediaries except insurance corporations and pension funds (S.123) consists of all financial corporations and quasi-corporations which are principally engaged in financial intermediation by incurring liabilities in forms other than currency, deposits and/or close substitutes for deposits from institutional units other than monetary financial institutions, or insurance technical reserves.

2.54. Subsector S.123 includes various types of financial intermediaries especially those which are predominantly engaged in long-term financing. In most cases this predominant maturity forms the basis of a distinction from the other monetary financial institutions subsector. Based on the non-existence of liabilities in the form of insurance technical reserves, the borderline with the insurance corporations and pension funds subsector can be determined.

2.55. In particular, the following financial corporations and quasi-corporations are classified in subsector S.123 unless they are MFIs:

- (a) corporations engaged in financial leasing;
- (b) corporations engaged in hire purchase and the provision of personal or commercial finance;
- (c) corporations engaged in factoring;
- (d) security and derivative dealers (on own account);
- (e) specialised financial corporations such as venture and development capital companies, export/import financing companies;
- (f) financial vehicle corporations, created to be holders of securitised assets;
- (g) financial intermediaries which receive deposits and/or close substitutes for deposits from MFIs only;
- (h) holding corporations which only control and direct a group of subsidiaries principally engaged in financial intermediation and/or in auxiliary financial activities, but which are not financial corporations themselves.

2.56. Subsector S.123 does not include non-profit institutions recognised as independent legal entities serving other financial intermediaries except insurance corporations and pension funds, but not engaged in financial intermediation.