



Council of the European Union  
General Secretariat

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**Interinstitutional files:  
2023/0363 (COD)**

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**Brussels, 14 February 2024**

**WK 2498/2024 INIT**

**LIMITE**

**EF  
ECOFIN  
CODEC**

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## **WORKING DOCUMENT**

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**From:** General Secretariat of the Council

**To:** Working Party on Financial Services and the Banking Union (Reporting Requirements)  
Financial Services Attachés

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**Subject:** Presidency note for the Council Working Party – 19 February 2024  
- Proposal regarding certain reporting requirements in the fields of financial services and investment support

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# Proposal regarding certain reporting requirements in the fields of financial services and investment support

Presidency note for the Council Working Party - 19 February 2024



## **1. INTRODUCTION**

In January 2024 the Presidency launched a written procedure on the Commission's proposal regarding certain reporting requirements in the fields of financial services and investment support.

While Member States expressed overall support for the proposal during the written procedure, some comments on specific provisions of the proposal were shared. Based on these comments, the Presidency now takes the opportunity to discuss a way forward in the Council Working Party of the 19<sup>th</sup> of February, with this note and the drafting suggestions in annex as the starting point of the discussion.

## **2. SCOPE**

Several Member States asked to clarify which authorities should share the information and which authorities should be able to submit a request for information. Additionally, several Member States requested to clarify the role of the national competent authorities (NCAs), both in terms of responsibilities for data sharing and the inclusion of national reporting requirements in the proposal.

### **2.1 NATIONAL AUTHORITIES**

Several Member States referred in their comments to the potential additional burden for NCAs to deal with the different requests on data sharing. In this regard – and to limit the burden for the NCAs – the question can be raised whether NCAs should be a “sharing” party, or whether NCAs should only be a “receiving party”. NCAs would then not (directly) be subject to the mandatory data sharing provisions between authorities. Instead, the ESRB and the (sectoral) ESAs could share the data, with the NCAs having the possibility to request data from the other authorities (*see lines 27, 48, 73 & 98 of the annex*).

This option could build on the fact that the current ESA Regulations already foresee an exchange of data between the sectoral NCAs and sectoral ESAs<sup>1</sup>. Hence the sectoral ESAs already receive large amounts of information from the NCAs. Additionally, legal questions might arise whether the ESAs Regulations would be the appropriate legal instruments to amend the duties of the NCAs. From a legal perspective, the duties from the NCAs are set out in the broader supervisory framework, in which the ESAs Regulations are a part.

### **National Data Collections**

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<sup>1</sup> See article 15 (1)-(7) from Regulation (EU) No 1092/2010, and article 35 of Regulations (EU) No 1093/2010, EU No 1094/2010 and EU No (1095/2010).

Additionally, and following the same reasoning, the question can be raised whether national data requests should be part of the information to be shared (see lines 27, 48, 73 & 98 of the annex). Operational questions in this regard might arise, given that national reporting requirements are not always based on the same concepts and definitions across the EU (rather they are based in some cases on specific national provisions and legislations). Also, in terms of interpretation of the reporting instructions there might be a possible barrier, as the instructions of national reporting requirements might not always be available in English. In this case, the focus of the legislative proposal would then fully be on the European reporting requirements and the working of the ESAs.

Along the same lines Member States requested to clarify the scope of data collections subject to revision (and especially regarding to the proposed amendment for article 30(3)(e) of the ESA Regulations)<sup>2</sup>. While Members States seemed to agree that the data collections stemming from Union law (including data collections stemming from relevant regulatory and implementing technical standards adopted by the European Commission, as well as Guidelines and recommendations issued by the ESAs that could be incorporated in national law) could be included in such a revision and Peer Review, there seemed to be more reluctance towards the inclusion of national reporting requirements. In their comments, some Members States suggested to delete this amendment, while others suggested to clarify the scope. Including national requirements in the framework of peer reviews might not be appropriate given the fact that national authorities can request any sector-specific information in accordance with sectoral legislation. Moreover, there might be legal doubts on whether amendments to ESAs Regulation, (which lay down the duties of the ESAs) can amend the regular tasks of NCAs.

The Presidency could support the deletion of the draft amendment of article 30(3)(e). Alternatively, the drafting of this article could be amended to clarify that the focus lies on data collections stemming from Union law. National reporting requirements (whenever they are not implementing Union Law) would be left out of the scope (see lines 42, 67 and 92 of the annex).

**Q 1 – The delegations are invited to share their opinions:**

- **Q 1.1 – On the roles and responsibilities of the NCAs in the proposal. Should NCAs be considered as a “sharing” and “requesting” party. Or could NCAs only be “requesting” party (i.e., that NCAs should not be obliged to share information)?**
- **Q 1.2 – Should national requirements (whenever they are not implementing Union Law) be in scope of the information to be shared amongst authorities?**

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<sup>2</sup> Lines 42, 67 and 92 of the annex.

- **Q 1.3 – Should the proposed article 30 (3) (e) be deleted, or should it be redrafted to indicate that the focus of this paragraph lies on data collections stemming from Union law?**

## **2.2 EUROPEAN AUTHORITIES**

In addition to the different authorities foreseen in the Commissions' Proposal several member States asked to clarify which authorities could submit a request for information. Additional proposals were made by Member States to include the ECB (as competent authority in the Single Supervisory Mechanism), the SRB, the national resolution authorities (NRAs), the AMLA and the national competent authorities working with the AMLA. In this regard the Presidency would like to clarify that all ESAs (including all the sectoral NCAs), the to-be established AMLA (and respective NCAs), as well as the ECB and SRB (and respective NRAs) would be entitled to submit a request for data sharing (*see lines 27, 48, 73 & 98 of the annex*). Nevertheless, the inclusion of these additional authorities (and in particular the AMLA, which has not yet been officially established) should be conditional to the fact that it should not hamper the legislative way forward for this proposal.

### ***Q 2 – Delegations are invited to share their views:***

- **Q 2.1 – On the proposal to include, the ESAs, the respective NCAs, the ECB (as competent authority in the SSM, the SRB, respective NRAs, the to-be established AMLA and its respective NCAs (and as drafted in the annex);**
- **Q 2.2 – On the possibility to include the AMLA (and respective NCAs), even if it has not yet been established (and for which there is not yet a legal basis).**

## **3. SHARING MODALITIES**

### **3.1 AMONGST (EUROPEAN) AUTHORITIES**

Member states requested to clarify if the data sharing foreseen in the Commission's proposal (and conditional on several conditions<sup>3</sup>) would be on a voluntary or mandatory basis. Some member states want to keep the sharing of data voluntary as they expressed concerns on the confidentiality of the shared data. In case the provisions would be mandatory, Member States referred to the increased burden for (national) authorities to comply with the different demands and requirements for data sharing.

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<sup>3</sup> Data sharing would only be possible when the sharing and receiving authorities would be entitled to collect the information concerned.

The Presidency acknowledges these concerns but proposes to keep data sharing mandatory between the authorities (by using “shall” in the proposal, see *lines 27, 48, 73 & 98 of the annex*), given that the current proposal foresees safeguards with regard to confidentiality and professional secrecy. Furthermore, the mandatory nature of the data sharing could result in incentives to standardize sharing practices across the different authorities involved (which might lower the day-to-day burden for authorities). In case of voluntary data sharing, the question would arise in which cases a request for data sharing from another authority could be rejected, resulting in an additional burden for the (national competent) authorities to analyze each request received. The voluntary nature of the data sharing could also lower the incentive to invest in the standardization of data sharing, making the handling of requests more time-consuming.

Member States stressed that data sharing should be done via a technical solution that supports seamless and secure data sharing while also accounting for GDPR provisions and professional secrecy. Furthermore, the associated technicalities and costs related to the data sharing (and the anonymization of the data) for the authorities involved should be considered.

The authorities involved might want to establish a Memorandum of Understanding (MoU), in which the necessary requirements for the data sharing amongst different authorities can be defined (such as deadlines, reporting formats, technical solutions for the data sharing, etc.; as well as the necessary requirements on data protection, intellectual property, professional secrecy, and the provisions included in Regulation (EU) 2016/679) to enable efficient and seamless data sharing. However, the Presidency believes that sufficient flexibility in making such agreements should be given to the authorities involved, and therefore suggests adding a strong recommendation in the recitals (*see draft recital 5a in line 15 of the annex*) rather than requiring the use of an MoU.

***Q 3 – Delegations are invited to reflect on the Presidency’s proposals and drafting suggestions, in particular:***

- **Q 3.1 – That data sharing between the authorities would be mandatory (while taking the necessary conditions as set-out in the Commissions’ proposal into account);**
- **Q 3.2 – The need to standardize the data sharing (for example via a voluntary MoU between the authorities concerned).**

### **3.2 WITH THE EUROPEAN COMMISSION**

Member States expressed different views on sharing data with the European Commission. Some member states are reluctant to share data beyond supervisory purposes and want to have more

restrictions. However, no real way forward in this sense could be observed. The European Parliament, in its opinion on this legislative proposal, suggests that the ESRB, the ESAs and the competent authorities “may” share information with the Commission on a voluntary basis.

***Q 4 – Delegations are invited to express their opinion:***

- **Q 4.1 On whether to draft the sharing of information with the European Commission as mandatory (by using “shall), or rather to draft it as voluntary (by using “may”);**
- **Q 4.2. If there are other considerations that need to be taken into account when sharing information with the Commission.**

### **3.3 WITH THIRD PARTIES**

Member States shared different views on the issue of sharing data with third parties. Some members are reluctant to share data beyond supervisory purposes and want to have more restrictions, others requested to clarify different terms such as “relevant entities” and “legitimate interest”. The Presidency suggests leaving the current proposal as is and to leave it up to the ESRB, the ESAs and the competent authorities to decide on sharing these data. The current proposal suggests sharing data on a voluntary basis, while foreseeing the necessary safeguards on with regards to confidentiality of the data (see line 33, 54, 79, 104 of the annex).

***Q 5 – Delegations are invited to express their opinion on the proposals and whether they can agree with the Presidency’s proposals.***

## **4. OTHER POINTS**

With regard to the inclusion of draft article 35 (4), it is suggested to add that authorities should have the possibility to obtain information from financial institutions in periods of financial stress or in situations where the other authority, for operational reasons, is unable to share the data (see line 44, 69 & 94 of the annex).

With regard to the proposal in draft article 35a (2), and to keep the administrative burden for the concerned authority minimal, the Presidency suggests not to oblige the sharing authority to inform each relevant financial institution or other authority about an exchange of information without undue delay as long as the information has been anonymized, modified, aggregated or treated by any other method of disclosure control to protect confidential information, or if this exchange of information is explicitly agreed upon in a Memorandum of Understanding reached between the sharing authority and the requesting authority (*lines 28, 49, 74 & 99 of the annex*).

Throughout the text the Presidency has added some additional drafting suggestions to align the proposal with the suggestions made above.

***Q6 – Delegations are invited to share their views on these additional drafting suggestions.***

***Q7 – Delegations are invited to share their views on issues in the proposal other than those set out in this note.***

