



EUROPEAN CENTRAL BANK  
EUROSYSTEM

## Template for comments

### Public consultation on the draft ECB Regulation amending the Regulation on payments statistics

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#### General comments

Deutsche Börse Group (DBG) welcomes the opportunity to comment on the “Draft ECB Regulation amending the Regulation (EU) No 1409/2013 of the ECB of 28 November 2013 on payments statistics (ECB/2013/43)” published 27 February 2020.

DBG operates in the area of financial markets along the complete chain of trading, clearing, settlement and custody for securities, derivatives and other financial instruments and acts as such as operator of settlement and clearing systems, classifying as payment systems according to Article 10 (1) of the Settlement Finality Directive 98/26/EC. Moreover, several entities of DBG constitute credit institutions and therefore classify as payment service provider according to Article 1(1) of Directive (EU) 2015/2366 (PSD2) generally falling into the scope of ECB/2013/43. Although classifying as payment institutions and payment system operator, DBG entities’ payment transactions are almost exclusively related to the provision of clearing and settlement or depository services and are excluded from application of PSD2.

We support the European Central Bank’s (ECB) approach for amending the requested information on payment statistics in order to be able to account for recent developments in payment instruments and payment pattern and ensure confidence in payment instruments. We further support ECB’s intention to align the amended reporting requirements with existing requirements, most notably the EBA Guidelines on fraud reporting (EBA/GL/2018/05), as the implementation of consistent and harmonized requirements contributes to minimizing implementation effort of reporting agents as well as avoid inconsistencies in implementation.

Notwithstanding this, we are of the opinion that the envisaged changes to reporting on payment statistics will result in disproportionately high implementation costs, particularly for reporting agents benefiting today from national central bank’s (NCB) derogations. While we are not generally against the introduction of minimum reporting requirements, we consider the suggested tables 4b and 5b as far too comprehensive in scope and level of detail. Particularly, the detailed breakdown of information might constitute a high implementation burden, while it is likely that there will not be any substantial value for the ECB to exercise its oversight function considering the nature of reporting agents benefitting from derogations as well as their contribution to payment transactions in number and volume.

We clearly support the explicit emphasis of a proportionate application of requirements introduced through the amended Article 4(1). However, NCBs’ ability to apply the requirements in a proportionate manner is considerably restricted through limiting the possibility for NCBs to grant a derogation by (i) allowing derogations for selected reporting requirements only (Article 4(3)) and (ii) restricting the population of reporting agents that could apply for derogation (Article 4(2) and (3)). Particularly, a mandatory consideration of the reporting agent’s mere size when granting derogation without considering its number and value of payment transactions conducted might result in a disproportionate implementing burden. Moreover, limiting potential derogations to reporting transactions with non-MFIs (Article 4 (3)) might disadvantage reporting agents with only limited reporting transactions with MFIs disproportionately, as a potential derogation for those is excluded. A proportionate application of the requirements is further limited by the introduction of minimum reporting tables, requesting information on payment transactions with non-MFIs. This actually contradicts the explicit possibility to grant derogation in regard to payment transactions with non-MFIs.

## Template for comments

### Public consultation on the draft ECB Regulation amending the Regulation on payments statistics

Please enter all your feedback in this list.

When entering feedback, please make sure that:

- each comment deals with a single issue only;
- you indicate the relevant article/chapter/paragraph, where appropriate;
- you indicate whether your comment is a proposed amendment, clarification or deletion.

**Deadline:** 7 May 2020

ID	Chapter	Article	Paragraph	Page	Type of comment	Detailed comment	Concise statement as to why your comment should be taken on board	Name of commenter	Personal data
1	Regulation		1b	3	Amendment	Article 1 of Regulation (EU) No. 1409/2013 sets the definitions applicable to this Regulation by referring to other applicable EU legislative acts to ensure consistency. While terms as 'payment service', 'payment service provider' and 'payment institution' are defined as part of Article 1 of Regulation (EU) No. 1409/2013, the term 'payment transaction' is defined in Annex II of Regulation (EU) No. 1409/2013. Since the Annexes underlie the simplified amendment procedure of Article 9 of Regulation (EU) No. 1409/2013, it would contribute to legal certainty to include the definition of the term 'payment transaction' as part of point (b) of Article 1 with reference to Article 4 of Directive (EU) 2015/2366 (Payment Services Directive II: PSD2).	For legal certainty and clarification purposes, the term 'payment transaction' should be included in the list of definitions in Article 1 of Regulation (EU) 1409/2013 rather than in Annex II.	Kozica, Marija	Publish
2	Regulation	4		2	4 Clarification	Article 4(2) states "NCBs may grant derogations to the following reporting agents in respect of certain reporting requirements set out in this Regulation and in accordance with paragraph 4, regardless of whether the reporting agents benefit from a waiver or exemption pursuant to the national law transposing the following measures [...]". We seek clarification on to which the last phrase refers to. In our view, two interpretations are possible: (1) NCBs may grant a derogation to certain reporting agents that could benefit from a possible exemption under PSD2 or Directive 2009/110/EC (E-Money Directive), even if such an exemption has not been transposed into national law; or (2) reporting agents that benefit from certain exemptions or a waiver relating to reporting of payment transactions under national law must nevertheless comply with the minimum reporting requirements in Table 4b and 5b of Annex III. We suggest that the text is adapted to be clear and unambiguous. Additionally, we would like to refer to our comment 4-6 where we strongly oppose to considerable limitations to an NCB's authority	As unclear or misleading wording in the regulation might lead to uncertainties and diverging implementation of the reporting requirements, we seek clarification on the phrase outlined.	Kozica, Marija	Publish

3	Regulation	4	3	4	<p>Deletion</p> <p>The envisaged changes to Article 4 limit the current scope of possible derogations NCBs can grant in terms of (i) reporting requirements as well as (ii) entities that could benefit from such a derogation. Generally, we consider those restrictions as too far reaching.</p> <p>The current draft foresees that NCBs can grant a derogation in respect of reporting transactions with non-MFIs only. We see no reasonable justification for limiting potentially exempted reporting requirements to such relating to transactions with non-MFIs only. This is inconsistent and does not follow the principle of proportionality, as the operational burden for reporting agents with no or only limited transactions to non-MFIs as well as no or only limited transactions to MFIs might be high while the contribution to ECB's fulfillment of its oversight task is likely to be neglectable. We are of the opinion that allowing for a derogation in regard of only selected reporting requirements disadvantages reporting agents with only few transactions to non-MFIs while it also limits NCBs in applying the requirements in an adequately proportionate manner. We consider the precondition listed under point (a) of paragraph 3 as sufficient to grant derogations in an adequate and proportionate manner without further restricting potential derogations to selected transactions. By applying the relevance threshold of 5% at national level for each service relevant it can be ensured that relevant data on any payment transactions generally in scope will be available for performing ECB's oversight task irrespective of the transactions' counterparty.</p> <p>We therefore suggest deleting the limitation to reporting transactions to non-MFIs, i.e., "NCBs may grant derogations to the reporting agents referred to in paragraph 1 and in accordance with paragraph 4, [...]".</p>	<p>Limiting potential derogations to transactions with non-MFIs creates inconsistencies and prevents the application of the principle of proportionality to payment transactions with MFIs. Therefore, potential derogations from reporting transactions should also be possible for transactions with MFIs as well.</p>	Kozica, Marija	Publish
4	Regulation	4	3	4	<p>Deletion</p> <p>Article 4(3) allows NCBs to grant reporting agents derogation with regard to reporting requirements only in case "(a) the value of each service specified in Table 4a of Annex III contributed by payment service providers benefiting from such derogation does not exceed 5 % at national level for each service; and (b) the reporting burden would be disproportionate in view of the size of such reporting agents".</p> <p>While we consider the introduction of a "relevance-threshold" as adopted in point (a) of Article 4(3) as reasonable and decisive, we would like to note that the size of a reporting agent should not be considered as an equivalently important criteria for assessing proportionality as indicated in point (b) <i>ibid</i>. A reporting agent's mere size does not provide comprehensive information for granting a derogation in a proportionate manner as it excludes reporting agents per se, which might be large in size but do not provide any or only few payment transactions while being classified as reporting agents. The implementation effort for those reporting agents would be disproportionate to their nature as well as to their contribution to ECB's oversight function for ensuring smooth operation of payment systems and maintenance of confidence in those.</p> <p>We are of the opinion that solely point (a) should be considered by NCBs when granting derogation in addition to the requirements specified in paragraphs 1 and 2. We therefore suggest deleting point (b) of Article 4(3).</p>	<p>The current limitations to granting derogation conflict with a proportionate application of reporting requirements and disadvantage large reporting agents that are only very limited engaged in payment transactions. We suggest deleting point b of paragraph 3 to enable NCBs to grant derogations related to payment transactions in a proportionate manner, also for large reporting agents who have a very limited payment transactions volume. This is in line with the ECB's overall goal of ensuring effective oversight over payment systems and confidence in those.</p>	Kozica, Marija	Publish

	5 Regulation	4 3	4	Amendment	<p>In case deletion of point (b) of Article 4(3) is not pursued, we alternatively suggest rephrasing point (b) such that reporting agent's relative involvement in payment transactions should be considered, instead of its absolute size.</p> <p>As already outlined above in Comment 4, we are of the opinion that a reporting agent's mere size does not provide comprehensive information for granting a derogation in a proportionate manner as it excludes reporting agents per se, which might be large in size but do not provide any or only few payment transactions while being classified as reporting agents. The implementation effort for those reporting agents would be disproportionate to their nature. Rather, its size, nature, internal organization and complexity related to payment transactions conducted should be considered for assessing the appropriateness for granting derogation related to reporting of payment transactions.</p> <p>We therefore suggest rephrasing paragraph 3 such that the absolute size of a reporting agent does not constitute an obstacle for requesting derogation.</p> <p>A potential rephrasing could be "[...] (b) the reporting burden would be disproportionate in view of the size, nature, internal organization and complexity of such reporting agent's payment transactions business."</p>	<p>The current limitations to granting derogation conflict with a proportionate application of reporting requirements and disadvantage large reporting agents that are only very limited engaged in payment transactions. If deletion of point (b) of paragraph 3 is not pursued, we suggest amending point b of paragraph 3 to enable NCBs to grant derogations related to payment transactions in a proportionate manner, also for large reporting agents who have a very limited payment transactions volume. This is in line with the ECB's overall goal of ensuring effective oversight over payment systems and confidence in those.</p>	Kozica, Marija	Publish
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6	Regulation	4	4	4	Amendment	<p>According to Article 4(2) in conjunction with Article 4 (4), reporting agents must provide information on payment transaction as outlined in Tables 4b and 5b of Annex III irrespective of derogations potentially granted by NCBs. Tables 4b and 5b of Annex III contain minimum reporting requirements for certain payment transactions with non-MFIs. At the same time, Article 1 strengthens the application of the principle of proportionality.</p> <p>We fully support strengthening the proportionate application of regulatory requirements including reporting requirements and therefore object introducing comprehensive minimum reporting requirements. Considering the level of detail as well as the scope of Tables 4b and 5b of Annex III, reporting those might result in a disproportionate burden for reporting agents while the reported information might not add any valuable benefit for the ECB's oversight function.</p> <p>The introduction of minimum reporting requirements for exempted reporting agents conflicts with the possibility for NCBs to introduce such an exemption in the first place. We suggest leaving NCBs room for a comprehensive derogation from all reporting requirements of the regulation at hand, as it is the case already as of today to be able to apply requirements in a truly proportionate manner. NCBs are already as of today restricted to granting derogation from reporting requirements under consideration of potential risks resulting from non-reporting as well as potential unjustified burdens for reporting agents. We rather support introducing materiality- or relevance thresholds (comparable to the one introduced in point (a) of Article 4 (3)) above to which derogation from reporting Tables 4b and 5b of Annex III should not be granted. Tables 4b and 5b could be applied to reporting agents with only a specifically limited amount or volumes in payment transactions while such reporting agents with neglectable amount or volumes in payment transactions could be fully exempted.</p> <p>We therefore suggest rephrasing Article 4(4) as follows:  "Derogations granted pursuant to paragraphs 2 and 3 shall only apply to the reporting requirements in Tables 4b and 5b of Annex II in case reporting agents' contribution by payment services does not exceed, [for example,] 0,5% at national levels in terms of amount and volume of each respective payment service."</p>	<p>NCB's ability as well as its decision to grant a derogation from all or selected reporting requirements is already as of today subject to comprehensive considerations to potential risks or limitations to supervisory tasks or oversight functions.</p> <p>As such, a derogation will not be granted where potential risks might arise from non-reporting.</p> <p>Introduction of comprehensive minimum reporting requirements as requested by Tables 4b and 5b of Annex III limits the application of proportionality considerably and undermines NCBs' competencies for granting exemptions without impeding the ECB's oversight function.</p> <p>Allowing for granting derogation progressively will enhance the proportionate application of reporting requirements without undermining the ECB's possibilities to ensure comprehensive oversight over payment systems.</p>	Kozica, Marija	Publish
7	Regulation	8	1+2	5	Amendment	<p>Considering the currently ongoing implementation of the requirements of the new banking package, we would like to point out that we consider the envisaged first reporting dates as ambitious as implementation deadlines coincide and might lead to conflicts in resource allocation. We suggest postponing the implementation deadline by at least six months and amend Article 8 respectively.</p>	<p>Under consideration of the currently challenging situation related to Covid 19 as well as the implementation deadlines for the new banking package, the envisaged tight implementation deadlines might create additional pressure to reporting agents and should be postponed by at least six months.</p>	Kozica, Marija	Publish

8	Annex I	1.1 and 2.3	-	2 and 6	Clarification	<p>Regarding the definition of the term 'payment service', reference is made to Article 4 PSD2. Article 3 PSD2 excludes specific payment transactions from the applicability of PSD2, although constituting (as the case may be) payment services in the sense of point (3) of Article 4 PSD2.</p> <p>We seek clarification on consideration of payment transactions explicitly excluded from PSD2 in reporting of payment statistics. For consistency reasons, we suggest excluding those transactions explicitly from reporting on payment statistics by adding a clarifying sentence to Part 1.1. on tables 4a/4b/5a/5b and before part 2.3.1. of Annex 1. Such clarifying sentence could be "Payment transactions subject to Article 3 of Directive (EU) 2015/2366 shall be excluded."</p>	<p>We fully support reference to and alignment with existing EU legislative acts in the field of payment transactions to lower the operational burden for reporting agents and reduce inconsistency in application. In order to further increase consistency, explicit clarification on the exclusion of payment transactions excluded from the applicability of the PSD2 should also be provided in Regulation (EU) 1409/2013.</p>	Kozica, Marija	Publish
9	Annex III	Tables 4b and 5b	-	-	Amendment	<p>As already outlined as part of our comment 6 we generally consider the scope and level of detail of Tables 4b and 5b of Annex III as too comprehensive for the type of reporting agents obliged to report those. The broad scope as well as the level of detail is potentially erasing benefits of granted derogation to reporting agents thereby creating a disproportionate burden for affected reporting agents. We therefore suggest particularly reducing the level of detail of the requested information. Considering that only such reporting agents granted derogation to will fill these tables, the breakdown of payment transactions in the envisaged level of detail will most probably not contribute to a considerably better statistical basis for ECB to exercise its oversight function. Hence, we suggest lowering the level of detail by deleting requested breakdown of types of payment transactions, if full exemptions from reporting obligations will not be considered by the ECB.</p>	<p>The envisaged level of detail of tables 4b and 5b, particularly targeting reporting agents benefiting from derogations seems to be too broad to ensure considerable relief for small reporting agents or such not related to payment services. In order to avoid disproportionate implementation and allow for a proportionate application of the reporting requirements, we suggest lowering the level of detail by erasing the breakdown of transactions.</p>	Kozica, Marija	Publish