



## EUROPEAN UNION

THE EUROPEAN PARLIAMENT

THE COUNCIL

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### LEGISLATIVE ACTS AND OTHER INSTRUMENTS

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Subject: REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EC) No 638/2004 on Community statistics relating to trading of goods between Member States as regards conferring delegated and implementing powers on the Commission for the adoption of certain measures, the communication of information by the customs administration, the exchange of confidential data between Member States and the definition of statistical value

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**REGULATION (EU) No .../2014  
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of**

**amending Regulation (EC) No 638/2004  
on Community statistics relating to trading of goods between Member States  
as regards conferring delegated and implementing powers on the Commission  
for the adoption of certain measures, the communication of information  
by the customs administration, the exchange of confidential data  
between Member States and the definition of statistical value**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 338(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure<sup>1</sup>,

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<sup>1</sup> Position of the European Parliament of 15 April 2014 (not yet published in the Official Journal) and decision of the Council of ...

Whereas:

- (1) As a consequence of the entry into force of the Treaty on the Functioning of the European Union (TFEU), powers conferred on the Commission should be aligned with Articles 290 and 291 TFEU.
- (2) In connection with the adoption of Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>1</sup>, the Commission has committed itself to reviewing, in the light of the criteria laid down in the TFEU, legislative acts which currently contain references to the regulatory procedure with scrutiny.
- (3) Regulation (EC) No 638/2004 of the European Parliament and of the Council<sup>2</sup> confers powers on the Commission in order to implement some of its provisions.
- (4) In order to align Regulation (EC) No 638/2004 with Articles 290 and 291 TFEU, implementing powers conferred on the Commission by that Regulation should be replaced by powers to adopt delegated and implementing acts.

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<sup>1</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

<sup>2</sup> Regulation (EC) No 638/2004 of the European Parliament and of the Council of 31 March 2004 on Community statistics relating to the trading of goods between Member States and repealing Council Regulation (EEC) No 3330/91 (OJ L 102, 7.4.2004, p. 1).

- (5) In order to provide a satisfactory response to users' needs for statistical information without imposing excessive burdens on economic operators, to take into account changes necessary for methodological reasons and the necessity to set up an efficient system for the collection of data and the compilation of statistics, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the adoption of different or specific rules applying to specific goods or movements, the adaptation of the Intrastat coverage rates, the specification of the conditions for defining the thresholds referred to in Article 10(4) of Regulation (EC) No 638/2004, the specification of the conditions for simplifying the information to be provided for small individual transactions and the definition of the aggregated data.
- (6) When adopting delegated acts, it is particularly important for the Commission to carry out appropriate consultations during its preparatory work, including at expert level. When preparing and drawing up delegated acts, the Commission should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council. The Commission should also ensure that the delegated acts provided for in the legislative acts do not impose a significant additional burden on the Member States or on the respondents and that they remain as economical as possible.

- (7) In order to ensure uniform conditions for the implementation of Regulation (EC) No 638/2004, implementing powers should be conferred on the Commission enabling it to adopt the arrangements for collecting information, particularly concerning the codes to be used, the determination of the breakdown of the estimates, technical provisions for compiling annual statistics on trade by business characteristics and any measures necessary to ensure that the quality of the statistics transmitted meets the quality standards. Those powers should be exercised in accordance with Regulation (EU) No 182/2011.
- (8) The Committee for the statistics on the trading of goods between Member States (the 'Intrastat Committee') referred to in Article 14 of Regulation (EC) No 638/2004 provides advice to the Commission and assists it in exercising its implementing powers.

- (9) Under the strategy for a new European Statistical System (ESS) structure intended to improve coordination and partnership in a clear pyramid structure within the ESS, the European Statistical System Committee (ESSC), established by Regulation (EC) No 223/2009 of the European Parliament and of the Council<sup>1</sup>, should have an advisory role and should assist the Commission in exercising its implementing powers. Improving coordination between national authorities and the Commission (Eurostat) is key to producing higher quality statistics in the Union.
- (10) Regulation (EC) No 638/2004 should be amended by replacing the reference to the Intrastat Committee with a reference to the ESSC.
- (11) Simplifications of customs clearance schemes have led to the non-availability, at customs level, of statistical information about goods under customs processing procedures. To assure coverage of the data, movements of those goods should be included in the Intrastat system.

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<sup>1</sup> Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities (OJ L 87, 31.3.2009, p. 164).

- (12) The exchange of confidential data relating to intra-Union trade statistics should be allowed between Member States with a view to increasing the efficiency of the development, production and dissemination or to improving the quality of those statistics. Such exchanges of confidential data should be voluntary, be treated carefully and not per se entail an increased administrative burden on undertakings.
- (13) The definition of statistical value should be clarified and aligned with the definition of that data element under the extra-Union trade statistics in order to enable better comparability between intra-Union and extra-Union trade statistics. Uniform definitions are essential for the harmonised recording of cross-border trade and are especially important as a prerequisite to enable national authorities to make concordant interpretations of rules having an impact on the cross-border activities of businesses.
- (14) In accordance with the principle of proportionality, it is necessary and appropriate to lay down harmonised rules on the communication of information by the customs administration, the exchange of confidential data between Member States and the definition of statistical value in the domain of intra-Union trade statistics. This Regulation does not go beyond what is necessary to achieve that objective, in accordance with Article 5(4) of the Treaty on European Union.

- (15) Data transmission by the national authorities should be free of charge for the Member States and for the Union institutions and agencies.
- (16) It is important to guarantee the security of the modes of transmission of sensitive statistical data, including economic data.
- (17) To ensure legal certainty, procedures for the adoption of measures which have been initiated but not completed before the entry into force of this Regulation should not be affected by this Regulation.
- (18) Regulation (EC) No 638/2004 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:



## *Article 1*

Regulation (EC) No 638/2004 is amended as follows:

- (1) in Article 3, paragraph 4 is replaced by the following:
  - '4. The Commission shall be empowered to adopt delegated acts in accordance with Article 13a relating to different or specific rules applying to specific goods or movements.';
- (2) Article 5 is amended as follows:
  - (a) in paragraph 1, the word 'Community' is deleted;
  - (b) paragraph 2 is replaced by the following:
    - '2. The statistical information on dispatches and arrivals of goods which are the subject of a single administrative document for customs or fiscal purposes shall be provided directly by customs to the national authorities, at least once a month';
  - (c) the following paragraph is inserted:
    - '2a. The customs administration responsible in each Member State shall, on its own initiative or at the request of the national authority, provide the national authority with any available information to identify the person who carries out dispatches and arrivals of goods covered by the customs procedures of inward processing or processing under customs control.';

(3) Article 6 is replaced by the following:

*'Article 6*

*Reference period*

The reference period for the information to be provided in accordance with Article 5 shall be:

- (a) the calendar month of dispatch or arrival of the goods;
- (b) the calendar month during which the chargeable event occurs for the Community goods on which VAT becomes chargeable on intra-Community acquisitions and supplies; or
- (c) the calendar month during which the declaration is accepted by customs where the customs declaration is used as data sources.';

(4) in Article 9(1), the second subparagraph is replaced by the following:

'Definitions of the statistical data referred to in points (e) to (h) are laid down in the Annex. The Commission shall adopt, by means of implementing acts, the arrangements to collect that information, in particular the codes and the format to be employed.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14(2).';

(5) the following Article is inserted:

*'Article 9a*

*Exchange of confidential data*

The exchange of confidential data, as defined in Article 3(7) of Regulation (EC) No 223/2009 of the European Parliament and of the Council<sup>\*</sup>, may take place for statistical purposes only, between the national authorities responsible in each Member State, where the exchange serves the efficient development, production and dissemination of European statistics relating to the trading of goods between Member States or improves their quality.

National authorities that have obtained confidential data shall treat that information confidentially and shall use it exclusively for statistical purposes in accordance with Chapter V of Regulation (EC) No 223/2009.

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

(6) Article 10 is amended as follows:

(a) in paragraph 3, the second subparagraph is replaced by the following:

'The Commission shall be empowered to adopt delegated acts in accordance with Article 13a to adapt those Intrastat coverage rates to technical and economic developments whenever it is possible to reduce them, while maintaining statistics which meet the quality indicators and standards in force.';

(b) in paragraph 4, the second subparagraph is replaced by the following:

'The Commission shall be empowered to adopt delegated acts in accordance with Article 13a to specify the conditions for defining those thresholds.';

(c) paragraph 5 is replaced by the following:

5. Member States may, under certain conditions that meet quality requirements, simplify the information to be provided for small individual transactions provided that such simplification has no detrimental effects on the quality of the statistics. The Commission shall be empowered to adopt delegated acts in accordance with Article 13a to specify those conditions.';

(7) Article 12 is amended as follows:

(a) in paragraph 1, point (a) is replaced by the following:

'(a) 40 calendar days after the end of the reference month for the aggregated data to be defined by the Commission. The Commission shall be empowered to adopt delegated acts in accordance with Article 13a to define those aggregated data. Those delegated acts shall take into account the relevant economic and technical developments.';

(b) paragraph 2 is replaced by the following:

'2. Member States shall provide the Commission (Eurostat) with monthly results which cover their total trade in goods by using estimates, where necessary. The Commission shall by means of implementing acts, determine the breakdown for such estimates. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14(2).';

(c) in paragraph 4, the third subparagraph is replaced by the following:

'The Commission shall adopt, by means of implementing acts, technical provisions for compiling those statistics in the most economical way.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14(2).';

(8) in Article 13, paragraph 4 is replaced by the following:

'4. The Commission shall adopt, by means of implementing acts, any measures necessary to ensure the quality of the statistics transmitted in accordance with the quality criteria, avoiding excessive costs for the national authorities.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14(2).';

(9) the following Article is inserted:

*'Article 13a*

*Exercise of the delegation*

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. When exercising the power delegated in Article 3(4), Article 10(3), (4) and (5) and point (a) of Article 12(1) of this Regulation, the Commission shall act in accordance with Article 14(3) of Regulation (EC) No 223/2009, ensuring, inter alia, that the delegated acts do not impose a significant additional burden on the Member States and on the respondents.

It is of particular importance that the Commission follow its usual practice and carry out consultations with experts, including Member States' experts, before adopting those delegated acts.

3. The power to adopt delegated acts referred to in Article 3(4), Article 10(3), (4) and (5) and point (a) of Article 12(1) shall be conferred on the Commission for a period of five years from ...<sup>\*</sup>. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
4. The delegation of power referred to in Article 3(4), Article 10(3), (4) and (5) and point (a) of Article 12(1) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

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<sup>\*</sup> OJ: please insert the date of the entry into force of the amending Regulation.



6. A delegated act adopted pursuant to Article 3(4), Article 10(3), (4) and (5) and point (a) of Article 12(1) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council.’;

(10) Article 14 is replaced by the following:

*'Article 14*

*Committee procedure*

1. The Commission shall be assisted by the European Statistical System Committee established by Regulation (EC) No 223/2009. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council \*.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

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\* Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).';

(11) in the Annex, point 3(b) is replaced by the following:

‘(b) the statistical value, which is the value calculated at the national borders of the Member States. It shall be based on the taxable amount or, where applicable, the value replacing it. It includes only incidental expenses (freight, insurance) incurred, in the case of dispatches, in the part of the journey located on the territory of the Member State of dispatch and, in the case of arrivals, in the part of the journey located outside the territory of the Member State of arrival. It is said to be a fob value (free on board) for dispatches, and a cif value (cost, insurance, freight) for arrivals.’

### *Article 2*

This Regulation shall not affect the procedures for the adoption of measures provided for in Regulation (EC) No 638/2004 that have been initiated but not completed before the entry into force of this Regulation.

*Article 3*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at .....

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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