



Council of the  
European Union

051687/EU XXV. GP  
Eingelangt am 19/12/14

Brussels, 19 December 2014  
(OR. en)

17113/14

STATIS 143  
ECOFIN 1218  
CODEC 2556

#### NOTE

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From:	General Secretariat of the Council
To:	Delegations
Subject:	Proposal for a Council Regulation amending Regulation (EC) No 223/2009 on European statistics - AGREED TEXT endorsed by Coreper on 19 December 2014

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With a view to an early second reading agreement with the European Parliament, delegations will find attached a text for a Council Regulation amending Regulation (EC) No 223/2009 on European statistics as endorsed by a qualified majority of delegations at the meeting of the Permanent Representatives Committee on 19 December 2014.

**Proposal for a Council Regulation amending Regulation (EC) No  
223/2009 on European statistics**

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,*

Having regard to the opinion of the European Central Bank,

[...]

Acting in accordance with the ordinary legislative procedure

- (1) The European Statistical System (the ESS), as a partnership, has in general successfully consolidated its activities to ensure the development, production and dissemination of high-quality European statistics, including by improving the governance of the system.
- (2) Some weaknesses have, however, recently been identified, in particular with regard to the statistical quality-management framework.
- (3) The Commission suggested action to address those weaknesses ***and to strengthen governance of the ESS*** in its Communication of 15 April 2011 ‘Towards robust quality management for European Statistics’. In particular, it suggested a targeted amendment of Regulation (EC) No 223/2009 of the European Parliament and of the Council
- (4) In its conclusions of 20 June 2011, the ECOFIN Council welcomed the Commission’s initiative and stressed the importance of continuously improving the governance and efficiency of the ESS.

- (5) In addition, the impact on the statistical domain of recent developments in the context of the economic-governance framework of the Union should be taken into account, in particular aspects related to professional independence such as transparent recruitment and dismissal processes, budgetary allocations and [...] release calendars, as laid down in Regulation (EU) No 1175/2011 of the European Parliament and the Council of 16 November 2011 amending Regulation (EC) No 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies,

as well as those related to the requirement for bodies in charge of monitoring the implementation of national fiscal rules to enjoy functional autonomy, as laid down in Regulation (EU) No 473/2013 of the European Parliament and the Council on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area.

- (6) Those aspects that relate to professional independence, such as transparent recruitment and dismissal processes, budgetary allocations and release calendars should not remain limited to the statistics produced for the purposes of the fiscal-surveillance system and the excessive-deficit procedure but should apply to all European statistics developed, produced and disseminated by the ESS.
- (7) Moreover, the adequacy of resources attributed on an annual or a multiannual basis and available to meet statistical needs is a necessary condition for ensuring professional independence of statistical authorities and the high quality of statistical data.
- (8) To that effect, the professional independence of statistical authorities should be strengthened and minimum standards, applicable across the Union, should be ensured. Specific guarantees should be provided to the heads of national statistical institutes (NSIs), in terms of the performance of statistical tasks, organisational management and resource allocation. The procedures for recruitment of heads of NSIs should be transparent and based on professional criteria only. They should ensure that there are equal opportunities, notably as regards gender.
- (8a) ***While credible European statistics require strong professional independence on the part of statisticians***, European statistics should respond to policy needs and provide statistical support for new policy initiatives at national and at Union level.

- (8b) It is necessary for the independence of Eurostat to be consolidated and guaranteed *by means of effective parliamentary scrutiny and it is necessary for the independence of NSIs to be consolidated and guaranteed by means of democratic accountability.*
- (9) Furthermore, the coordinating role already attributed to the NSIs should be clarified as regards its scope, so as to achieve more efficient coordination of statistical activities at national level, including quality management, while duly taking into account the statistical tasks performed by the European System of Central Banks (ESCB). To the extent that European statistics may be compiled by National Central Banks (NCBs) *in their capacity as members of the ESCB,* the NSIs and the NCBs should cooperate closely *according to national arrangements with a view to ensuring production of complete and coherent European statistics, while ensuring the necessary cooperation between the ESS and the ESCB as set out in Article 9.*
- (10) In order to reduce the burden on statistical authorities and respondents, the NSIs and other national authorities should be able to access and use administrative records, including those filled electronically, promptly and free-of-charge, as well as to integrate these records with statistics.
- (10a) European statistics should be easy to compare and to access and should be updated promptly and regularly so as to ensure that Union policies and funding initiatives take full account of developments in the European Union.
- (11) The NSIs should furthermore be consulted at an early stage on the design of new administrative records that could provide data for statistical purposes and on planned changes to, or cessation of, existing administrative sources. They should also receive relevant metadata from the owners of administrative data and coordinate standardisation activities concerning administrative records that are relevant for statistical data production.
- (12) The confidentiality of data obtained from administrative records should be protected under the common principles and guidelines applicable to all confidential data used for the production of European statistics. ***Transparency principles and*** quality-assessment frameworks applicable to these data should also be established ***and published.***
- (12a) All users should have access to the same data at the same time. NSIs should establish release calendars for the publication of periodical data.

- (13) The quality of European statistics could be strengthened and the confidence of users reinforced, by involving national governments in the responsibility of applying the European Statistics Code of Practice. To that end, a ‘Commitment on Confidence in Statistics’ established by a Member State, taking account of national specificities, should include specific undertakings by its government to improve or maintain the conditions for the implementation of the Code. That commitment, which should be updated as necessary, could include national high quality assurance frameworks, including self-assessments, improvement actions and monitoring mechanisms.
- (13a) *The Commission (Eurostat) should take all necessary measures to allow easy online access to complete, user-friendly data series. Where possible, periodic updates should provide year-on-year and month-on-month information on each Member State.*
- (14) As the production of European statistics must be based on long-term operational and financial planning in order to ensure a high degree of independence, the European statistical programme should cover the same period as the multiannual financial framework.
- (15) Regulation (EC) No 223/2009 confers powers on the Commission to implement some of the provisions of that Regulation in accordance with Council Decision 1999/468/EC of 28 June 1999. As a consequence of the entry into force of Regulation (EU) No 182/2011 which repeals Council Decision 1999/468/EC, the powers conferred upon the Commission need to be aligned to this new legal framework.

Those powers should therefore be exercised in accordance with Regulation (EU) No 182/2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission’s exercise of implementing powers. The Commission should ensure that those implementing acts do not impose a significant additional administrative burden on the Member States and on the respondent units.

- (16) The Commission should have the power to adopt [.....] implementing acts in accordance with Article 291(2)0 of the Treaty *on the Functioning of the European Union* in order to [.....] quality requirements by *defining the modalities, structure and periodicity of quality reports covered by sectoral legislation*, [.....] when sectoral statistical legislation does not provide for these. The Commission should ensure that these [.....] implementing acts do not impose a significant additional administrative burden on the Member States and on the respondent units.

(17) [...]

(18) There is a need for uniform conditions for implementing access to confidential data for scientific purposes. Implementing powers should be conferred on the Commission with a view to establishing the arrangements, rules and conditions governing such access at Union level, in accordance with the examination procedure laid down in Article 5 of Regulation (EU) No 182/2011 of the European Parliament and the Council laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers .

(19) Since the objective of this Regulation cannot be sufficiently achieved by the Member States and can be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(19a) The independence of the ESCB in the performance of their tasks as described in Protocol (No 4) on the Statute of the ESCB and of the ECB should be fully respected in the implementation of this Regulation, in conformity with Articles 130 and 338 TFEU.

(20) The European Statistical System Committee has been consulted,

(20a) ***Regulation (EC) No 223/2009 should therefore be amended accordingly,***

### Article 1

Regulation (EC) No 223/2009 is amended as follows:

(1) In Article 2(1), point (a) is replaced by the following:

‘(a) ‘professional independence’, meaning that statistics must be developed, produced and disseminated in an independent manner, particularly as regards the selection of techniques, definitions, methodologies and sources to be used, and the timing and content of all forms of dissemination, and that the performance of these tasks is free from any pressures from political or interest groups or from Union or national authorities;’

(2) In Article 5, paragraph 1 is replaced by the following:

1. The national statistical authority designated by each Member State as the body having the responsibility for coordinating all activities at national level for the development, production and dissemination of European statistics, which are determined in the European statistical programme in line with Article 1, (the NSI) shall act in this regard as the sole contact point for the Commission (Eurostat) on statistical matters.

The coordinating responsibility of the NSI shall cover all other national authorities responsible for the development, production and dissemination of European statistics, which are determined in the European statistical programme in line with Article 1. The NSI shall, in particular, be responsible at [...] national level for coordinating statistical programming and reporting, quality monitoring, methodology, data transmission and communication on ESS statistical actions. To the extent that some of the above European statistics may be compiled by National Central Banks (NCBs) in their capacity as members of the ESCB, the NSIs and the NCBs shall cooperate closely according to national arrangements with a view to ensuring production of complete and coherent European statistics, while ensuring the necessary cooperation between ESS and the ESCB as set out in Article 9.

(3) The following Article 5a is inserted:

"Article 5a

Heads of NSIs and statistical heads of other national authorities

1. Within their national statistical system, Member States shall ensure the professional independence, as defined in Article 2(1), point (a), of officials responsible for the tasks set out in this Regulation [...].
2. To this end, the heads of NSIs shall:

(a) have the sole responsibility for deciding on processes, statistical methods, standards and procedures, and on the content and timing of statistical releases and publications for European statistics developed, produced and disseminated by the NSI;

(b) be empowered to decide on all matters regarding the internal management of the NSI;

(c) act in an independent manner while performing their statistical tasks; they shall neither seek nor take instructions from any government or other institution, body, office or entity;

(d) be responsible for the statistical activities and budget execution of the NSI;

(e) publish an annual report and may express comments on budget allocation issues related to the statistical activities of the NSI;

(f) coordinate the statistical activities of all national authorities that are responsible for the development, production and dissemination of European statistics, as set out in Article 5, para 1;

(g) produce national guidelines, where necessary, for ensuring quality in the development, production and dissemination of all European statistics within their national statistical system and monitor (review) their implementation; however, they shall be responsible for ensuring compliance with these guidelines solely within the NSI; and

(h) represent their national statistical system within the ESS.

3. Member States shall ensure that other national authorities responsible for the development, production and dissemination of European statistics carry out such tasks in accordance with the national guidelines produced by the head of the NSI.

4. Member States shall ensure that the procedures for recruitment and appointment of heads of NSIs and, where appropriate, statistical heads of other national authorities producing European statistics, are transparent and based on professional *criteria* only. They shall ensure that there are equal opportunities, notably as regards gender. The reasons *for dismissal of heads of NSIs or their transfer to another position* shall not compromise professional independence.

4a. Member States may establish a national body for assuring the professional independence of the producers of European statistics in the Member State. The heads of NSIs and, where appropriate, the statistical heads of other national authorities producing European statistics may take advice from such bodies. The procedures for recruitment, transfer and dismissal of the members of such bodies shall be transparent and based on professional *criteria* only. They shall ensure that there are equal opportunities, notably as regards gender.



(4) in Article 6, paragraphs 2 and 3 are replaced by the following:

2. At Union level, the Commission (Eurostat) shall act independently in ensuring the production of European statistics according to established rules and statistical principles. . [...]
3. Without prejudice to Article 5 of the Protocol on the Statute of the European System of Central Banks (ESCB) and the European Central Bank, the Commission (Eurostat) shall coordinate the statistical activities of the institutions and bodies of the Union<sup>1</sup>, in particular with a view to ensuring consistency and quality of the data and minimising reporting burden. To that end, the Commission (Eurostat) may invite any institution or body of the Union to consult or cooperate with it for the purpose of developing methods and systems for statistical purposes in their respective field of competence. Any of those institutions or bodies which propose to produce statistics shall consult the Commission (Eurostat) and take into account any recommendation that it may make to this effect.

#### Article 6a

##### Director-General of the Commission (Eurostat)

1. Eurostat is the statistical authority of the Union and a Directorate General of the Commission. It shall be headed by a Director-General.
2. The Commission shall ensure that the procedure for the recruitment of the Director-General of Eurostat is transparent and based on professional *criteria*. The procedure shall ensure that there are equal opportunities, notably as regards gender.
3. The Director-General shall have sole responsibility for deciding on processes, statistical methods, standards and procedures, and on the content and timing of statistical releases and publications for all statistics produced by Eurostat. When carrying out these statistical tasks, the Director-General shall act in an independent manner and shall neither seek nor take instructions from the Union institutions or bodies, from any government of a Member State or from any other institution, body, office or agency.
4. The Director-General of Eurostat shall be responsible for the statistical activities of Eurostat. The Director-General of Eurostat shall *appear immediately after his or her appointment by the Commission, and annually thereafter*, in the framework of Statistical Dialogue before the relevant committee of the European Parliament to discuss matters pertaining to statistical governance, methodology and statistical innovation and shall publish an annual report.

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<sup>1</sup> The paragraph is the existing wording of Article 6(3) in Reg. 223/2009 with only a change from "Community" to "Union"

(5) In Article 11, the following paragraph 3 is added:

3. Member States and the Commission [...] shall take all the necessary measures to maintain confidence in European statistics. To this effect, ***‘Commitments on Confidence in Statistics’ by Member States and by the Commission shall further aim at ensuring public trust in European Statistics and progress in the implementation of the statistical principles contained in the Code of Practice.*** These commitments shall include specific policy commitments to improve or maintain, as necessary, the conditions for the implementation of the Code of Practice and shall be published with a citizen’s summary.

- 5 (a) These commitments by Member States shall be regularly monitored by the Commission on the basis of annual reports sent by Member States and shall be updated as necessary.

In the absence of the publication of a ‘Commitment of Confidence in Statistics’, within 2 years of the entry into force of this Regulation, a Member State shall submit to the Commission and make public a progress report on the implementation of the Code of Practice and, where applicable on the efforts undertaken towards the establishment of a ‘Commitment on Confidence in Statistics’. These progress reports shall be updated periodically, at least every 2 years following their initial publication.

The Commission shall report to the European Parliament and the Council on the published commitments and, where appropriate progress reports, within 3 years of the entry into force of this Regulation and every 2 years thereafter.

- 5(b) This Commitment by the Commission shall be regularly monitored by ESGAB. ESGAB’s assessment of the implementation of this commitment shall be included in its annual report submitted to the European Parliament and the Council in accordance with Decision No 235/2008/EC. ESGAB shall report to the European Parliament and the Council on the implementation of this commitment within 3 years of the entry into force of this Regulation.

Article 12 [...] is hereby amended as follows:

- (a) paragraph 2 and 3 are replaced by the following "

- ‘2. Specific quality requirements, such as target values and minimum standards for the production of statistics, may also be laid down in sectoral legislation.

In order to ensure the uniform application of the quality criteria laid down in paragraph 1 of this Article to the data covered by sectoral legislation in specific statistical domains, the Commission shall adopt implementing acts defining the modalities, structure and periodicity of quality reports **covered by** sectoral legislation. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(2).’

3. Member States shall provide the Commission (Eurostat) with reports on the quality of data transmitted, including any concerns they have regarding the accuracy of the data. The Commission (Eurostat) shall assess the quality of the data transmitted, on the basis of appropriate analysis, and shall prepare and publish reports and communications on the quality of European Statistics.

(b) the following paragraphs are added:

‘3a. In the interest of transparency, the Commission (Eurostat) shall, where appropriate, disclose publicly its assessment of the quality of national contributions to European statistics.

3b. ***Where sectoral legislation provides for fines in cases where Member States misrepresent statistical data, the Commission may, in accordance with the Treaties and such sectoral legislation, initiate and conduct investigations as necessary including, where appropriate, on-site inspections in order to establish whether such misrepresentation was serious and intentional or grossly negligent.***

(7) In Article 13, paragraph 1 is replaced by the following:

‘1. The European statistical programme shall provide the framework for the development, production and dissemination of European statistics, setting out the main fields and the objectives of the actions envisaged for a period corresponding to that of the multiannual financial framework. It shall be decided upon by the European Parliament and the Council. Its impact and cost effectiveness shall be assessed with input from independent experts.’

(8) In Article 14 paragraph 2

(2) The Commission may by means of implementing acts decide on a temporary direct statistical action provided that:

(a) the action does not provide for data collection covering more than three reference years;

(b) the data are already available or accessible within the NSIs and other national authorities responsible, or can be obtained directly, using the appropriate samples for the observation of the statistical population at European level with the adequate coordination with the NSIs and other national authorities; and

- (c) the Union shall, in accordance with Regulation (EU, EURATOM) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 make financial contributions to the NSIs and other national authorities to cover the incremental costs incurred by them.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(2).

#### ‘Article 17

##### Annual work programme"

Each year, before the end of April, the Commission shall submit to the ESS Committee its work programme for the following year.

In the preparation of the work programme, the Commission shall ensure effective priority setting, including reviewing, reporting on statistical priorities and allocation of financial resources. The Commission shall take the utmost account of the comments of the ESS Committee. That work programmes shall be based on the European statistical programme and shall indicate, in particular:

- (a) the actions which the Commission considers to have priority, taking account of Union policy needs and both national and Union financial constraints as well as the response burden;
- (b) initiatives regarding the review of priorities, including negative priorities, and the reduction of the burden on both data providers and producers of statistics; and
- (c) the procedures and any legal instruments envisaged by the Commission for implementation of the programme.

(9) The following Article 17a is inserted:

#### ‘Article 17a

##### Access, use and integration of administrative records"

- ‘1. In order to reduce the burden on respondents, the NSIs, other national authorities as referred to in Article 4 and the Commission (Eurostat) shall have the right to access and use, promptly and free of charge, all administrative records and to integrate these administrative records with statistics, to the extent necessary for the development, production and dissemination of European statistics, which are determined in the European Statistical Programme.

2. The NSIs and the Commission (Eurostat) shall be consulted on and involved in the initial design, subsequent development and discontinuation of administrative records built up and maintained by other bodies, thus facilitating the further use of these records for the purpose of producing European statistics. They shall be involved in the standardisation activities concerning administrative records that are relevant for the production of European statistics.
3. Access by and involvement of the NSIs, other national authorities and the Commission (Eurostat) pursuant to paragraphs 1 and 2 shall be limited to administrative records within their own respective public administrative system.
4. Administrative records made available by their owners to the NSIs, other national authorities and the Commission (Eurostat) in order to be used for the production of European statistics shall be accompanied by relevant metadata.
5. The NSIs and owners of administrative records shall establish the necessary cooperation mechanisms.'

(10) in Article 20(4), the second subparagraph is replaced by the following:

The NSIs, other national authorities and the Commission (Eurostat) shall take all necessary measures to ensure **alignment** of principles and guidelines with regard to the physical and logical protection of confidential data. The Commission shall ensure such **alignment** by means of implementing acts, ***without supplementing this regulation.*** Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(2).

(11) In Article 23, the second sub-paragraph is replaced by the following:

'The arrangements, rules and conditions for access at Union level shall be established in accordance with the examination procedure referred to in Article 27(2).'

(12) Article 24 is deleted.

(13) Article 26 is replaced by the following:

## ‘Article 26

### Violation of statistical confidentiality

Member States and the Commission shall take appropriate measures to prevent and sanction any violations of statistical confidentiality. The penalties provided for must be effective, proportionate and dissuasive.

(14) Article 27 is replaced by the following:

## ‘Article 27

### Committee

1. The Commission shall be assisted by the European Statistical System Committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission’s exercise of implementing powers shall apply.’
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011[...] shall apply.’

## Article 2

### Entry into force

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.

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