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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

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- Adopted by the Council on 5 March 2015

REGULATION (EU) 2015/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

amending Regulation (EC) No 223/2009 on European statistics

(Text with relevance for the EEA and Switzerland)

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,

Having regard to the opinion of the European Central Bank¹,

Acting in accordance with the ordinary legislative procedure²,

¹ OJ C 374, 4.12.2012, p. 2.

² Position of the European Parliament of ... [(OJ ...)] [(not yet published in the Official Journal)] and position of the Council at first reading of 5 March 2015. [(OJ ...)] [(not yet published in the Official Journal)]. Position of the European Parliament of ... [(OJ ...)] [(not yet published in the Official Journal)] [and Decision of the Council of ...].

Whereas:

- (1) The European Statistical System ('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 governance of the ESS.
- (2) However, some weaknesses have recently been identified, in particular with regard to the statistical quality-management framework.
- (3) In its Communication of 15 April 2011 entitled ‘Towards robust quality management for European Statistics’ the Commission suggested action to address those weaknesses and to strengthen governance of the ESS. In particular, it suggested a targeted amendment of Regulation (EC) No 223/2009 of the European Parliament and of the Council¹.
- (4) In its conclusions of 20 June 2011, the Council welcomed the Commission’s initiative and stressed the importance of continuously improving the governance and efficiency of the ESS.

¹ 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).

- (5) 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 those 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 Council¹, as well as those aspects 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 Council².
- (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.

¹ Regulation (EU) No 1175/2011 of the European Parliament and of the Council of 16 November 2011 amending Council Regulation (EC) No 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies (OJ L 306, 23.11.2011, p. 12).

² Regulation (EU) No 473/2013 of the European Parliament and of the Council of 21 May 2013 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 (OJ L 140, 27.5.2013, p. 11).

- (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 the professional independence of statistical authorities and the high quality of statistical data.
- (8) To that end, 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 only on professional criteria. They should ensure that the principle of equal opportunities is respected, in particular with regard to gender.
- (9) While credible European statistics require strong professional independence on the part of statisticians, European statistics should also respond to policy needs and provide statistical support for new policy initiatives at national and at Union level.
- (10) It is necessary for the independence of the statistical authority of the Union (Eurostat) to be consolidated and guaranteed by means of effective parliamentary scrutiny and for the independence of NSIs to be consolidated and guaranteed by means of democratic accountability.

- (11) Furthermore, the coordinating role already attributed to the NSIs should be clarified as regards its scope, in order 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 in accordance with 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.
- (12) 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 promptly and free-of-charge, including those filed electronically, and to integrate those records with statistics.
- (13) 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 Union.

- (14) 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.
- (15) 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. Quality assessment frameworks applicable to those data, as well as principles of transparency, should also be drawn up and published.
- (16) All users should have access to the same data at the same time. NSIs should draw up release calendars for the publication of periodical data.
- (17) 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 (the Code of Practice). To that end, a ‘Commitment on Confidence in Statistics’(Commitment) by a Member State, taking account of national specificities, should include specific undertakings by the government of that Member State to improve or maintain the conditions for the implementation of the Code of Practice. The Commitment, which should be updated as necessary, could include national high quality assurance frameworks, including self-assessments, improvement actions and monitoring mechanisms.

- (18) The Commission (Eurostat) should take all necessary measures to allow easy online access to complete and user-friendly data series. Where possible, periodic updates should provide year-on-year and month-on-month information on each Member State.
- (19) 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.
- (20) 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/EC¹. As a consequence of the entry into force of Regulation (EU) No 182/2011 of the European Parliament and of the Council², which repeals Decision 1999/468/EC, the powers conferred upon the Commission should be aligned to that new legal framework. Those powers should be exercised in accordance with Regulation (EU) No 182/2011. The Commission should ensure that those implementing acts do not impose a significant additional administrative burden on the Member States or on the respondents.

¹ Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ L 184, 17.7.1999, p. 23).

² 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).

- (21) The Commission should have the power to adopt implementing acts in accordance with Article 291(2) of the Treaty on the Functioning of the European Union (TFEU) in order to ensure uniform application of quality requirements by laying down the modalities, structure and periodicity of quality reports covered by sectoral legislation, when sectoral statistical legislation does not provide for those. The Commission should ensure that those implementing acts do not impose a significant additional administrative burden on the Member States or on the respondents.
- (22) There is a need for uniform conditions for implementing access to confidential data for scientific purposes. In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission with a view to establishing the arrangements, rules and conditions governing such access at Union level. Those powers should be exercised in accordance with Regulation (EU) No 182/2011.
- (23) Since the objective of this Regulation, namely to strengthen governance of the ESS, cannot be sufficiently achieved by the Member States but can rather, by reason of the requirement to have credible data established at the Union level, 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.

- (24) The independence of the ESCB in the performance of its tasks as described in Protocol No 4 on the Statute of the European System of Central Banks and of the European Central Bank should be fully respected in the implementation of this Regulation, in conformity with Articles 130 and 338 TFEU.
- (25) The ESS Committee has been consulted.
- (26) Regulation (EC) No 223/2009 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1
Amendments to Regulation (EC) No 223/2009

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 those 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 accordance 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 accordance with Article 1. The NSI shall, in particular, be responsible at the 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 those European statistics may be compiled by National Central Banks (NCBs) in their capacity as members of the European System of Central Banks (ESCB), the NSIs and the NCBs shall cooperate closely in accordance with national arrangements with a view to ensuring the production of complete and coherent European statistics, while ensuring the necessary cooperation between the ESS and the ESCB as set out in Article 9.”.

(3) The following Article 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 of officials responsible for the tasks set out in this Regulation.

2. To that 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; and 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(1);

- (g) produce national guidelines, where this is necessary to ensure quality in the development, production and dissemination of all European statistics within their national statistical system and monitor and review their implementation; while being responsible for ensuring compliance with those guidelines solely within the NSI; and
 - (h) represent their national statistical system within the ESS.
3. Each Member State 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 the recruitment and appointment of heads of NSIs and, where appropriate, statistical heads of other national authorities producing European statistics, are transparent and based only on professional criteria. Those procedures shall ensure that the principle of equal opportunities is respected, in particular with regard to gender. The reasons for dismissal of heads of NSIs or their transfer to another position shall not compromise professional independence.

5. Each Member State may establish a national body for assuring the professional independence of the producers of European statistics. 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 the recruitment, transfer and dismissal of the members of such bodies shall be transparent and based only on professional criteria. Those procedures shall ensure that the principle of equal opportunities is respected, in particular with regard to 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 No 4 on the Statute of the European System of Central Banks and of the European Central Bank, the Commission (Eurostat) shall coordinate the statistical activities of the institutions and bodies of the Union, 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.”.

(5) The following Article is inserted:

“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 the principle of equal opportunities is respected, in particular with regard to 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 those 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 or 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 appointment by the Commission, and annually thereafter, in the framework of the statistical dialogue before the relevant committee of the European Parliament to discuss matters pertaining to statistical governance, methodology and statistical innovation. The Director-General of Eurostat shall publish an annual report.”.

(6) In Article 11, the following paragraphs are 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’ (the Commitments) by Member States and by the Commission shall further aim to ensure public trust in European statistics and progress in the implementation of the statistical principles contained in the Code of Practice. The 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.
4. The Commitments by Member States shall be monitored regularly 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 by ...⁺, 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. Those progress reports shall be updated periodically, at least every two 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, by ...⁺⁺ and every two years thereafter.

⁺ OJ: please insert the date: 2 years after the entry into force of this Regulation.

⁺⁺ OJ: please insert the date: 3 years after the entry into force of this Regulation.

5. The Commitment established by the Commission shall be regularly monitored by European Statistical Governance Advisory Board (ESGAB). ESGAB's assessment of the implementation of the Commitment shall be included in its annual report submitted to the European Parliament and the Council in accordance with Decision No 235/2008/EC of the European Parliament and of the Council^{*}. ESGAB shall report to the European Parliament and the Council on the implementation of the Commitment by ...⁺.

^{*} Decision No 235/2008/EC of the European Parliament and of the Council of 11 March 2008 establishing the European Statistical Governance Advisory Board (OJ L 73, 15.3.2008, p. 17).”.

(7) Article 12 is amended as follows:

(a) paragraphs 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 to the data covered by sectoral legislation in specific statistical domains, the Commission shall adopt implementing acts laying down 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).

⁺ OJ: please insert the date: 3 years after the entry into force of this Regulation.

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:

- “4. In the interest of transparency, the Commission (Eurostat) shall, where appropriate, make public its assessment of the quality of national contributions to European statistics.
5. 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.”.

(8) 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 adopted by the European Parliament and the Council. Its impact and cost effectiveness shall be assessed with input from independent experts.”.

(9) In Article 14, paragraph 2 is replaced by the following:

“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 Union level with the adequate coordination with the NSIs and other national authorities; and

- (c) the Union makes financial contributions to the NSIs and other national authorities to cover the incremental costs incurred by them, in accordance with Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council*.

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

* 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 (OJ L 298, 26.10.2012, p. 1).”.

- (10) Article 17 is replaced by the following:

“Article 17

Annual work programme

The Commission shall submit to the ESS Committee its annual work programme by 30 April for the following year.

In preparing each annual 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. Each annual work programme 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, national and Union financial constraints and 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 annual work programme.”.

(11) The following Article 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 those 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 in accordance with Article 1.
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 those 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.”.

(12) 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 the 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).”.

(13) In Article 23, the second paragraph is replaced by the following:

“The Commission shall establish, by means of implementing acts, the arrangements, rules and conditions for access at Union level. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(2).”.

(14) Article 24 is deleted.

- (15) 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 penalise any violations of statistical confidentiality. The penalties provided for shall be effective, proportionate and dissuasive.”.

- (16) Article 27 is replaced by the following:

“Article 27

Committee procedure

1. The Commission shall be assisted by the ESS Committee. 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.

* 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).”.

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.

Done at ...

For the European Parliament
The President

For the Council
The President
