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To:	Delegations
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Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Council Regulation (EC) No 1217/2009 as regards conversion of the Farm Accountancy Data Network into a Farm Sustainability Data Network - Comments from the German delegation

Delegations will find in the annex the comments from the German delegation on the above-mentioned proposal.

REMARKS BY THE GERMAN DELEGATION ON THE PROPOSAL FOR A**REGULATION OF THE EUROPEAN PARLIAMENT AND THE COUNCIL****amending Council Regulation (EC) No 1217/2009 as regards conversion of the Farm Accountancy Data Network into a Farm Sustainability Data Network**

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<p>Article 1</p> <p>1. A Union farm sustainability data network ('FSDN' or 'data network') is set up to collect farm level economic, environmental and social data.</p> <p>2. The data obtained pursuant to this Regulation shall contribute to the assessment of EU agriculture's sustainability.</p>	<p>The purpose of the new regulation should be worded and specified as in the currently valid regulation. From a data protection perspective, the proposed version is problematic to the extent that in subsequent provisions reference is made to the "purposes" in Article 1 (see in particular Article 16).</p> <p>Likewise, the type and scope of the data to be collected should already be specified here in the basic instrument – not solely in delegated and implementing acts.</p>	

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<p>3. FSDN data shall be made publicly available in a manner consistent with Articles 7 and 8 of the Charter of Fundamental Rights of the European Union and Regulations (EU) 2016/679* and 2018/1725</p> <p>4. Where relevant, the processing, management and use of data collected under this Regulation shall comply with Regulations (EU) 2016/679, (EU) 2018/1725 and (EC) 223/2009</p>	<p>We propose rewording to the effect that consistency with the Charter and data protection law must be established and does not exist de lege lata.</p> <p>Why do the publication requirements make no reference to the European Statistics Regulation 223/2009?</p> <p>For the data protection provisions (own processing concept) we also propose a separate sentence which states that the GDPR and EUDPR (Regulation 2018/1725) must be taken into account in the processing of personal data.</p> <p>The restriction that “where applicable” data be in compliance with the aforementioned legislation appears inappropriate. We propose rewording as follows:</p>	<p>(3) FSDN data shall be made publicly available <u>to the extent permitted in accordance</u> with Articles 7 and 8 of the Charter of Fundamental Rights of the European Union and Regulations (EU) 2016/679 and (EU) 2018/1725.</p> <p>(4) Where <u>applicable</u>, the processing, management and use of data collected <u>pursuant</u> to this Regulation <u>shall be carried out in accordance with</u> Regulation (EU) 2016/679, (EU) 2018/1725 and (EC) No 223/2009. <u>With regard to the processing of personal data within the scope of this Regulation, Regulations (EU) 2016/679 and (EU) 2018/1725 remain unaffected.</u></p>
Article 2		

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<p>For the purposes of this Regulation, the following definitions shall apply:</p> <p>(a) ‘farmer’ means the natural person responsible for the day-to-day management of an agricultural holding;</p> <p>(b) ‘holding’ means a farm business, in accordance with its general use in the context of Union agricultural surveys and censuses;</p> <p>(c) ‘category of holding’ means a group of agricultural holdings that belong to the same categories, as regards the type of farming and economic size as defined in the Union typology for agricultural holdings defined in Article 5b;</p> <p>(d) ‘farm return’ means the questionnaire filled in with the data of an agricultural holding according to the FSDN common methodology;</p> <p>(e) ‘returning holding’ means any agricultural holding making farm returns for the purposes of the</p>	<p>Unlike, for example, in Regulation (EU) 2021/2115 of 2 December 2021, according to this definition legal persons are explicitly not farmers. Would it not make sense to align the definition?</p> <p>Why is there no definition of “data collectors” here?</p> <p>Where, when and by what means is the “FSDN common methodology” described, defined, regulated?</p>	

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<p>data network;</p> <p>(f) ‘Farm Sustainability Data Network division’ or ‘FSDN division’ means the territory of a Member State, or any part thereof, delimited with a view to the selection of returning holdings;</p> <p>(g) ‘FSDN data’ means economic, environmental and social farm level data relating to agricultural holdings derived from accounts, and/or from other data sources collected systematically and regularly;</p>	<p>We request that you specify what is meant by “other data sources” and by “systematically and regularly”.</p> <p>Also, in line with the principle of “collecting data once and using it several times”, which we advocate, we would like an explanation as to how and by whom the necessary legal basis is to be created to enable other data sources to be used.</p> <p>The following aspects should be considered when using data sources and in designing the new survey:</p> <ul style="list-style-type: none"> - Avoidance of duplicate surveys - Avoidance of overlapping characteristics between official statistics (IFS, SAIO, etc.) and FSDN, also for reasons of additional burden on respondents (code of practice). 	

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<p>(h) ‘standard output’ means standard value of gross production;</p> <p>(i) ‘personal data’ means personal data as defined in Regulations (EU) 2016/679 and (EU) 2018/1725, however extending protection to the legitimate interests of farmers who are legal persons;</p>	<p>Why is no reference made to the European Statistics Regulation 223/2009 at this point? (also in Art. 1 (3))</p> <p>The “extension” in the second sentence is not acceptable. Legal persons are not covered by the scope of the GDPR and EUDPR, which are directly applicable (including under Article 1 of this Regulation!). The “extension” in the definition leads to a whole range of systematic contradictions and considerable ensuing problems. Also, the need to extend the definition to take in legal persons is not evident. In particular, it is unclear what the “legitimate interests of legal persons” might be with regard to the protection of privacy that is linked to the individual. Where legitimate interests exist that must be legally protected, a separate provision can be provided for legal persons in the relevant places.</p> <p>For the scope of this Regulation to apply for legal persons operating agricultural holdings, it would be conceivable to order applicability of the GDPR. This was not included in the definitions, however.</p>	<p>(i) ‘personal data’ means personal data as <u>defined in Article 4 (1) of Regulation (EU) 2016/679 and Article 3 (1) of Regulation (EU) 2018/1725</u> however extending protection to the legitimate interests of farmers who are legal persons;</p>

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<p>(j) ‘farm ID’ means the unique identification number for an individual holding, with regards to processing of data under this Regulation;</p> <p>(k) ‘processing data’ means any operation or set of operations which is performed on data of persons, according to Article 3(3) of Regulation (EU) 2018/1725;</p> <p>(l) ‘primary data’ means data associated with individual farms, natural or legal persons or individual samples;</p>	<p>Checks on the origin and use of the holder identification number, including clarification of the definition of the units to be linked, should not be carried out solely under the secondary instrument, but should also be specified in key places in the basic instrument.</p> <p>We propose aligning the terminology used with that contained in the GDPR and EUDPR, and to expand the GDPR definition.</p>	<p>(k) ‘processing data’ means any operation or set of operations performed on data of persons, <u>as referred to in Article 4 (2) of Regulation (EU) 2016/679 and Article 3 (3) of Regulation (EU) 2018/1725;</u></p>

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<p>(m) ‘metadata’ means data giving qualitative and quantitative information about the collected primary data;</p> <p>(n) ‘anonymised data’ means data based on primary data in a form which does not allow natural or legal persons to be identified directly or indirectly;</p> <p>(o) ‘pseudonymised data’ means personal data that cannot be longer attributed to a specific subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the personal data are not attributed to an identified or identifiable natural or legal person;</p>	<p>The definition provided here is seen as problematic. It also applies to personal data. But when looked at from a data protection perspective, for data anonymisation it does not suffice that the data cannot be immediately assigned to a person either directly or indirectly; data anonymisation is also not provided for if a person can be identified from the data after reasonable effort. The following definition should thus be used:</p> <p>This provision should also apply to farm data, provided that there is a natural person behind the holding.</p> <p>Irrespective of whether this information is kept separately, its assignment to a specific person or</p>	<p>(n) ‘anonymised data’ means data based on primary data in a form which does not allow natural or legal persons to be identified directly or indirectly; <u>such data from which specific details of personal or material circumstances can no longer be attributed to an identified or identifiable natural or legal person, or can only be attributed to such a person with the disproportionate investment of time, cost and effort;</u></p> <p>Proposed wording for German language version: ‚pseudonymisierte Daten‘ personenbezogene Daten, die ohne Hinzuziehung zusätzlicher Informationen nicht mehr einer</p>

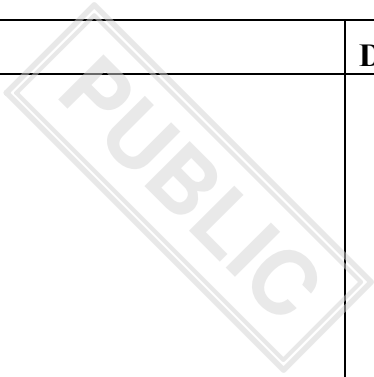
COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
(p) ‘aggregated data’ means the output resulting from summarising the primary or detailed data for specific analytic purposes.’;	<p>their identification must be prevented, especially when linking data from different sources.</p> <p>For the German language version: The terminology should be aligned with that contained in the GDPR and EUDPR (see Art. 4 No. 5 GDPR).</p>	<p>konkreten-spezifisch betroffenen Person zugeordnet werden können, sofern diese zusätzlichen Informationen gesondert aufbewahrt werden und technischen und organisatorischen Maßnahmen unterliegen, die gewährleisten, dass die personenbezogenen Daten nicht einer identifizierten oder identifizierbaren natürlichen oder juristischen Person zugewiesen werden;</p>
<p><i>Article 2a</i></p> <p>A list of FSDN divisions is set out in Annex I.</p>		
<p><i>Article 3</i></p> <p>In order to ensure that the list of FADN divisions can be updated following a request by a Member State, the Commission shall be empowered to adopt delegated acts, in accordance with Article 19a, amending Annex I with respect to the list of FADN divisions per Member State.</p>		
<p>CHAPTER II</p> <p>DATA FOR THE DETERMINATION OF INCOMES OF AGRICULTURAL HOLDINGS</p>		

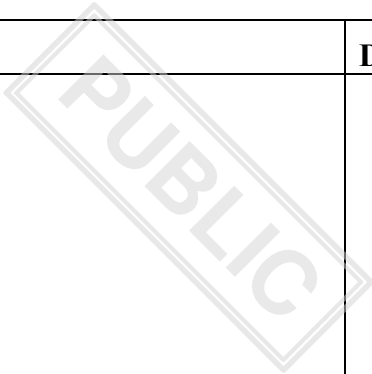
COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
AND COLLECTION OF OTHER SUSTAINABILITY INFORMATION		
<p><i>Article 4</i></p> <p>1. This Chapter shall apply to the collection of accountancy and other sustainability data. FSDN data shall be collected by means of regular and special surveys.</p> <p>2. The competent authority for FSDN may use other data sources in order to collect and re-use data to feed the FSDN surveys.</p> <p>3. The Commission shall be empowered to adopt delegated acts, in accordance with Article 19a supplementing this Regulation with the rules on the data management process, in particular the farm ID, data storage, data quality and validation, use of data,</p>	<p>The statement of purpose should be more specific and take the previous wording into account.</p> <p>The type and scope of the data to be collected should be specified right here in the basic instrument – not solely in delegated and implementing acts.</p> <p>With regard to personal data, we consider the extension to include any other data sources disproportionate; in theory, this kind of wording would also allow the use of Google, social media or a survey of neighbours. The sources from which data may be collected should be restricted.</p> <p>Here, essential (!) conditions for the processing of personal data are outsourced to delegated acts. The understanding here is that this obviously concerns</p> <ul style="list-style-type: none"> - Legal bases, purposes and means of processing (“use of data”), including for access 	

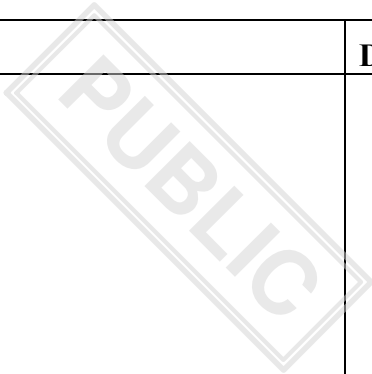
COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<p>access to and transmission of primary data, processing of primary data, combination of data with other data sources, procedure for ensuring availability of detailed and aggregated data, compatible data storage and exchange systems, review of refusal to provide data, obligations for end-users of scientific data and other interested parties.</p>	<p>to and transmission of primary data</p> <ul style="list-style-type: none"> - Legal bases for data exchange - Where appropriate, also provisions on the use of automated processes (“aggregated data”, “combination with other data sources”) - Legal bases for use for research purposes <p>With regard to data protection, this rather vague provision on data collection, use and evaluation gives cause for considerable concern.</p> <p>The question arises as to what “review of refusal to provide data” refers to – the provision of data by member states or the individual holding?</p> <p>In addition, it should be clarified whether mandatory provision of the holding identification number and the objective of evaluating and advising individual farms allow for their re-anonymisation by means of delegated acts.</p> <p>“Data sharing”</p> <p>To the extent that the national statistics authorities, the national central banks, the Commission (Eurostat) and the ECB receive confidential data, they must treat the relevant information as confidential and use it solely for statistical purposes in accordance with Articles 20 to 26 of</p>	

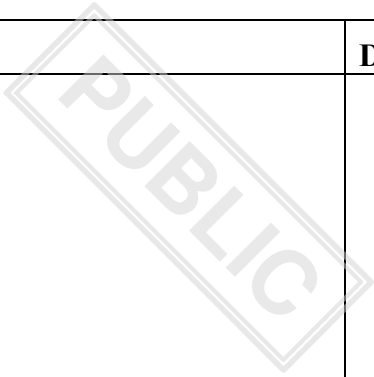
COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<p>4. The Commission shall adopt implementing acts establishing and updating form and content of common regular and special surveys as well as methods and requirements for reusing and sharing data. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19b(2).’;</p>	<p>Regulation (EC) No 223/2009.</p> <p>The “regular surveys” and “special surveys” should be defined in Article 2..</p>	
<p><i>Article 5</i></p> <p>1. The field of the survey shall cover agricultural holdings having an economic size equal to, or greater than, a threshold expressed in euro corresponding to one of the lower limits of the economic size classes of the Union typology for agricultural holdings defined in Article 5b.</p> <p>The Commission shall be empowered to adopt delegated acts, in accordance with Article 19a, supplementing this Regulation with the rules on fixing the threshold referred to in the first subparagraph of this paragraph.</p> <p>The Commission shall adopt, on the basis of data received from Member States, implementing acts fixing the threshold referred to in the first subparagraph. Those implementing acts shall be</p>	<p>An evaluation of the provisions set out in Article 5 is not possible without more detailed information on the actual process design, especially where a requirement to participate is concerned. The Commission is thus asked to provide clarification on the following issues:</p> <ul style="list-style-type: none"> - How will an agricultural holding, qualifying as returning holding, be treated in the plan for the selection of returning holdings? - What does representativeness refer to? Is it – as up to now – standard output or will other aspects be important in the future? (And does this also apply to special surveys)? - Why not start with a sub-sample for the collection of new environmental and social information? - What is the basis for the special surveys selection plan? - Are additional criteria for the classification of agricultural enterprises provided for and if so, which and for what purpose? 	

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<p>adopted in accordance with the examination procedure referred to in Article 19b(2).</p> <p>2. To qualify as a returning holding, an agricultural holding shall:</p> <p>(a) be covered by the field of the survey referred to in paragraph 1;</p> <p>(b) be representative, together with the other holdings and at the level of each FSDN division, of the field of survey.</p> <p>3. An agricultural holding qualifying as returning holding in the plan for the selection of returning holdings shall provide the requested data.</p> <p>4. Member States may adopt national rules to address possible cases of non-compliance with paragraph 3.’;</p>	<ul style="list-style-type: none"> - Should identical (the same) farms be required to participate on an annual basis? - If so, is there a period of time after which the holdings change? - If so, how will any accusations of discrimination made against holdings required to participate be dealt with? - How is the administrative burden taken into account that arises from a requirement to participate? - How does the opening clause in Article 5 (4) relate to Article 4 (3)? - Can countries and/or farms be sanctioned in the event of under-fulfilment of the sampling plan/non-submission of data or non-achievement of sustainability targets? 	
<p><i>Article 5a</i></p> <p>(1) Each Member State shall draw up a plan for the selection of returning holdings that ensures a</p>		

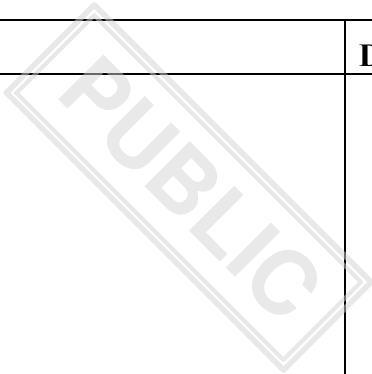
COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<p>representative sample of the field of survey, including both regular and, when relevant, special surveys.</p> <p>The Commission shall adopt delegated acts, in accordance with Article 19a, laying down the rules by which Member States are to draw up such plans. Such rules shall ensure that plans for the selection of returning holdings:</p> <ul style="list-style-type: none"> - are drawn up on the basis of the most recent statistical data, - are presented in accordance with the Union typology for agricultural holdings, and - specify, in particular, the distribution of returning holdings per category of holding and the detailed rules for their selection <p>2. In accordance with the rules adopted in accordance with paragraph 1, and on the basis of the data received from Member States, the Commission shall adopt implementing acts fixing the number of returning holdings per Member State and per FADN division. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19b(2).</p> <p>3. The number of returning holdings to be selected per FADN division may differ from the number laid</p>		

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<p>down in the implementing acts to be adopted pursuant to paragraph 2 by a maximum of 20 % in either direction, provided that the total number of the returning holdings of the Member State concerned is respected.</p> <p>4. The Commission shall adopt implementing acts establishing and updating models and methods relating to the form and content of the data to be notified to the Commission by Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19b(2).</p>		
<p><i>Article 5b</i></p> <p>1. Agricultural holdings shall be classified in a uniform manner according to the Union typology for agricultural holdings, such as type of farming, their economic size and the importance of other gainful activities directly related to them.</p> <p>The typology for agricultural holdings shall be used in particular for the presentation, by type of farming and by economic size class, of data collected through the Union farm structure surveys and the FSDN.</p> <p>2. The type of farming of a holding shall be</p>		

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<p>determined by the relative contribution of the standard output of the different characteristics of that holding to the total standard output of the holding.</p> <p>The Commission shall be empowered to adopt delegated acts, in accordance with Article 19a, fixing the reference period for the standard output.</p> <p>3. Holdings shall be classified by a limited number of types of farming. General types of farming shall be specified. Depending on the amount of detail required, the general types of farming shall be divided into principal types of farming.</p> <p>The Commission shall be empowered to adopt delegated acts, in accordance with Article 19a, concerning the determination of the general and principal types of farming.</p> <p>The correspondence between general and principal types of farming and particular types of farming specialisations corresponding to principal types of farming shall be specified.</p> <p>4. The economic size of the holding shall be determined on the basis of the total standard output of the holding.</p> <p>5. The importance of the gainful activities directly</p>		

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<p>related to the holding other than the agricultural activities of the holding shall be determined on the basis of the contribution of those gainful activities to the output of the holding.</p> <p>6. The standard outputs and the data for their determination shall be transmitted to the Commission (Eurostat) by the liaison agency designated by each Member State in accordance with Article 7 or by the body to which that function has been delegated.</p> <p>7 The Commission shall adopt implementing acts laying down:</p> <ul style="list-style-type: none"> - methods for the calculation of particular types of farming specialisations referred to in paragraph 3 and for assigning the holding to a principal type of farming, - the method for the calculation of the economic size of the holding, - economic size classes for the holdings, referred to in paragraph 1, - methods for the calculation of the output of the holding, and for estimating the contribution of other gainful activities to that output, for the purposes of paragraph 5, - the method for the calculation to determine the standard outputs of each characteristic referred 		

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<p>in paragraph 2, the procedures for collecting the corresponding data and the means of, and deadlines for, the transmission of the standard outputs to the Commission, in accordance with paragraph 6.</p> <p>Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19b(2).</p>		
<p><i>Article 6</i></p> <p>1. Each Member State shall set up a national committee for the data network (hereinafter referred to as ‘the National Committee’).</p> <p>2. The National Committee shall be responsible for the selection of returning holdings. To this end, its duties shall, in particular, include approval of the plan for the selection of returning holdings.</p> <p>3. The chairman of the National Committee shall be appointed by the Member State from among the members of this Committee.</p> <p>The National Committee shall take its decisions unanimously. In the event of unanimity not being</p>		

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<p>achieved, decisions shall be taken by an authority appointed by the Member State.</p> <p>4. Member States which have several FADN divisions, may, for each of the FADN divisions under their jurisdiction, set up a regional committee of the data network (hereinafter referred to as ‘the Regional Committee’).</p> <p>The Regional Committee shall, in particular, have the duty of cooperating with the liaison agency referred to in Article 7 in selecting the returning holdings.</p> <p>5. The Commission shall adopt implementing acts laying down detailed rules for the application of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19b(2).</p>		
<p><i>Article 7</i></p> <p>1. Each Member State shall appoint a liaison agency whose tasks shall be:</p> <p>(a) to inform the National Committee, the Regional Committees and the data collectors such as</p>	<p>On what legal basis do data collectors operate? How is the link to agricultural statistics planned?</p>	

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<p>accountancy offices of the applicable regulatory framework and to ensure proper implementation thereof;</p> <p>(b) to draw up the plan for the selection of returning holdings, to submit it to the National Committee for its approval and, thereafter, to forward it to the Commission;</p> <p>(c) to compile:</p> <p>(i) the list of returning holdings;</p> <p>(ii) where applicable, the list of the data collectors able to complete farm returns;</p> <p>(d) to produce the farm returns sent to it by the data collectors including from data gathered from other data sources;</p> <p>(e) to verify that the farm returns have been duly completed;</p>	<p>(See note under Article 2).</p> <p>If processing and combination of/with individual data from official agricultural statistics is meant, this can only mean that this is done by the official statistics authority or that approval from the CESS must have been obtained.</p>	

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<p>(f) to forward the duly completed farm returns to the Commission in the required format and within the set deadline;</p> <p>(g) to transmit the requests for information provided for in Article 17 to the National Committee, to the Regional Committees and to the data collectors and to forward the relevant answers to the Commission;</p> <p>(h) to make available the obtained results for providing advice and feedback to farmers on their sustainability performance.;</p>	<p>Which body should make the results available and in what form? As far as the likes of national statistics offices are concerned, they have sole responsibility for deciding on processes, statistical methodologies, standards and procedures, and also on the content and timing of publications for all EU statistics developed, produced and disseminated by the national statistics office (Article 5a of Regulation (EC) No 223/2009).</p> <p>We would like to know whether there are plans to report individual farm data (after combining with other data) to participating farmers for advisory purposes or whether general results are to be used to improve agricultural advisory services overall.</p> <p>We also ask for clarification as to whether the</p>	

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<p>2 The Commission shall adopt implementing acts laying down detailed rules for the application of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19b(2).</p>	<p>possibility will be opened up for third parties to carry out an evaluation of the data collected – even against farmers’ will?</p> <p>It also remains unclear as to who is responsible for taking the discretionary decision to conduct an advisory session: the farms or third parties?</p>	