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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EC) No 223/2009 on European statistics - Draft Presidency compromise text

Delegations will find attached the draft Presidency compromise text on the amending Regulation on European Statistics.

DRAFT PRESIDENCY COMPROMISE

2023/0237 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

(Text with EEA relevance)

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,

Having regard to the opinion of the European Central Bank,

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Regulation (EC) No 223/2009 of the European Parliament and of the Council establishes the legal framework at Union level for the development, production and dissemination of European statistics.

(2) Regulation (EC) No 223/2009 was amended in 2015 to further strengthen the governance in the European Statistical System (ESS) in particular its professional independence, and since then the strengthened governance has proven to be effective.

(3) Digital transformation has ushered in radically different realities and created a new environment with new needs for European statistics. Moreover, ~~the recent Covid-19 crisis and the energy crisis triggered by the Russian military aggression against Ukraine~~ humanitarian and political events have amplified the demands and expectations for timelier, more frequent and more detailed European statistics needed to ~~inform~~ support EU decision-making and ensure the best possible Union response to crises.

(4) To address growing expectations for timelier, more frequent and more detailed European statistics as well as for a faster and more coordinated ESS response to urgent statistical demands in times of crisis, it is necessary to amend Regulation (EC) No 223/2009. The purpose of this Regulation is to ensure that European statistics stay relevant by taking into account those changing and more demanding user needs, notably by tapping the full potential of digital data sources and technologies, by enabling their ~~re-use~~ for European statistics, by making the ESS more agile and able to respond effectively and swiftly to crises, and by ~~promoting~~ **allowing** data sharing and strengthening coordination among ESS partners.

(5) To reflect today's realities and the digital age in which the ESS operates, new or updated definitions should be introduced into Regulation (EC) No 223/2009 to clarify the concepts of 'data',

‘metadata’, ‘**private** data holders’, ~~‘reuse of data’~~, ‘data sharing’, ‘data source’, ~~‘multi-source statistics’~~, **and** ‘use for statistical purposes’, ~~and ‘crisis’~~.

(6) The recent Covid pandemic demonstrated that **the availability of** timely, reliable and comparable European statistics ~~are~~ **is** vital to the effectiveness of public authorities’ response to emergency situations. Therefore, the ESS should be given the possibility to swiftly initiate coordinated actions if urgent data and statistics needs arise outside the regular planning framework, especially in times of crisis **recognised by Union legal acts, such as the Integrated Political Crisis Response Arrangements (IPCRA) Council implementing decision (EU 2018/1993); the Union civil protection mechanism under Decision 1313/2013/EU of the European Parliament and of the Council; the emergency support under Council Regulation (EU) 2016/36918; the emergency framework under Council Regulation (EU) 2022/237219; the market correction mechanism under Council Regulation (EU) 2022/257820; the emergency mode under Regulation of the European Parliament and of the Council (EU) [xxx/xxx]. The Commission (Eurostat) should be able to undertake urgent statistical actions in close cooperation with the ESS Committee, which NSIs and other statistical authorities should be able to join on a voluntary basis**. In such situation, a data holder should make, upon request, data available to a national statistical institute (NSI) or the Commission (Eurostat) that demonstrates an exceptional need to use the data requested, in accordance with the rules laid down in the Data Act.

(7) Accessing and re-using new data sources, **including big data**, which ~~emerge as by-products of~~ **from** digital services and the Internet of Things (IoT), is becoming vital for producing timely, suitably frequent and sufficiently detailed European statistics in a more efficient and less costly way. **Such new data sources are also an important contribution to building statistical sampling frames.** Therefore, access to new data sources in general and particularly to privately held data for the development and production of European official statistics on a sustainable basis and according to fair, clear and predictable rules should be ensured.

(7a) Privately held data are data held by private entities obtained as a result of their activity and not referred to the own entity. Privately held data may include data held by Civil Society Organisations (CSOs) that are committed to promoting the interests of citizens, consumers, marginalised populations, workers, grassroots movements and social causes in an effort to find collaborative solutions. Using this data can provide access to detailed, localised information and therefore can be key to complement official statistics and track economic, social and environmental progress and in particular on the Sustainable Development Goals. Such use should therefore be strongly promoted.

(8) Access to new data sources, including particularly to privately held data, has been a longstanding request by the ESS as demonstrated by the ESS Position Paper on access to privately held data which are of public interest from November 2017, and the ESS Position Paper on the future Data Act proposal from June 2021.

(9) The reuse of privately held data and other new data sources should be subject to strict legal, technical and procedural safeguards and guarantees, including applying a high level of security, confidentiality and respect for privacy, as already enshrined in Regulation (EC) No 223/2009. ~~The possibility to request.~~ Access to privately held data should be limited to the national statistical institutes (NSIs), acting on their own or on behalf of ~~another~~ **other** national authority **authorities** of the ESS, and the Commission (Eurostat) only. ~~and should, as a pre-requisite, be established in an annual work programme and restricted to cases where, on the one hand requested is necessary for the~~

development, and production of European statistics, and, on the other hand, the data cannot be readily obtained otherwise or the data reuse would result in a considerable reduction in the response burden on data holders and other businesses.

(10) **Articles 17b to 17e are just applicable to new data sources of private data holders.** Data requests by the NSIs or the Commission (Eurostat) should be transparent and proportionate in terms of their scope and level of detail. In that connection, it is necessary to specify and explain the purpose of the request, the intended use of the data requested, the frequency with which and deadlines by which the data should be made available as well as the operational arrangements for making them available. **As official statistics are public good, the data are free of charge. This is without prejudice to the possible compensation to the private data holder for providing a service of processing data, except when statistical national legislation does not allow the statistical authorities to do so. As a guide, the Commission (Eurostat) in close consultation with the ESS Committee should publish a description of the main categories of data processing and the methodology for calculating the compensation.**

(11) With the data requests, the NSI or the Commission (Eurostat) should invite the **private** data holder to a dialogue to specify the concrete parameters of data requests, ~~and other~~ arrangements, ~~measures to offset potential costs incurred~~ **including how** to make data available as well as any organisational and technical measures to protect data confidentiality and trade secrets, with a view to concluding an agreement on those aspects. If no agreement is concluded within three months, **or if the private data holder does not comply with the agreement**, the NSI or the Commission should have the possibility to adopt a decision requiring **formally require** the private data holder to make data available. If the data holder intentionally or negligently fails to transmit the requested data within the **deadline** set period or transmits incorrect, incomplete or misleading data, the NSI or the Commission should, **respectively**, have the possibility to adopt penalties that should be effective, proportionate and dissuasive, taking into account the nature, gravity, recurrence and duration of the violation, in view of the public interest pursued. The penalties adopted by the NSIs should be equivalent to penalties regarding infringements of similar national rules. **The penalties adopted by the Commission should not be higher than EUR 25 000 or EUR 50 000 in case of recurrence within three years. The Commission may issue guidelines on the calculation of the fines.** All decisions taken by the Commission under this Regulation are subject to review by the Court of Justice of the European Union in accordance with the Treaty on the Functioning of the European Union. The Court of Justice of the European Union should have unlimited jurisdiction in respect of fines adopted by the Commission in accordance with Article 261 of the Treaty on the Functioning of the European Union.

(12) The further integration of statistics and geospatial information should also be encouraged to enable a more efficient use of resources and improved integration of data by different public organisations and to produce new statistical outputs, such as spatial analysis, and visualisation and dissemination of data. These will support decision-making and the monitoring of policy goals at both Union and national level.

(13) It is necessary to ensure that national ~~public~~ bodies in charge of administrative data sources, **databases, interoperability systems or any data** relevant for development, production and dissemination of European statistics allow national statistical **institutes and other national** authorities to access, reuse and integrate this data free of charge in time and with sufficient frequency for the purpose of **developing, producing and disseminating European statistics** ~~producing and transmitting statistics to the Commission (Eurostat) within based on the deadlines and in accordance~~

with quality the requirements laid down in Union statistical legislation. **The possibility of building statistical sampling frames based on relevant administrative data by the national statistical institutes and other national authorities should be ensured by the Member States.**

(13a) The use of multi-source statistics should be further encouraged, with statistics developed or produced on the basis of a variety of data sources, including by means of modelling techniques and other statistical methods or innovative approaches.

(13b) European statistics are developed, produced and disseminated by the ESS and the ESCB but under separate legal frameworks reflecting their respective governance structures. Therefore, close cooperation and appropriate coordination is required between the ESS and the ESCB, notably the exchange of data between both systems for statistical purposes.

(14) ~~Where the~~ **The** activities to be carried out under this Regulation involve the processing of personal data, **as statistical authorities are mandated to request personal data for official statistical purposes pursuant to specific methodological descriptions of each statistical product.** **This processing is** ~~such processing should comply with~~ **subject to** the relevant EU legislation on personal data protection, namely Regulation (EU) 2018/1725 of the European Parliament and of the Council and Regulation (EU) 2016/679 of the European Parliament and of the Council. ~~In accordance with the data minimisation principle set out in these regulations, data provided under this Regulation should normally be aggregated to such a degree that individuals cannot be identified.~~

(15) Personal data processed for statistical purposes in the public interest are statistical confidential data ~~Processing data for the purposes of official statistics by national statistical authorities, which is considered to be in the public interest,~~ **subject to the statistical confidentiality principle, therefore, should only be used for statistical purposes and should never be used for supporting measures or decisions regarding any particular natural person.** ~~should be covered by derogations and subject to appropriate safeguards, in accordance with Regulation (EU) 2016/679. For instance, Further processing of personal data for~~ **official statistical purposes** ~~should not be considered to be~~ **is incompatible** with the initial purposes for which they were collected. In that context, the particular safeguards **set out in Article 89(1) of Regulation (EU) 2016/679 and Article 13 of Regulation (EU) 2018/1725 are always applied when** ~~which should be applied when data sharing according to this Regulation requires personal data~~ **are** to be processed. **These safeguards, including technical and organisational measures such as privacy-enhancing technologies and the respect of** the principles of purpose limitation, data minimisation, storage limitation and integrity and confidentiality as set out in Regulation (EU) 2016/679, **are already ensured by the statistical principles set out in Article 2 and further elaborated in the European Statistics Code of Practices.** ~~In that regard, the use of privacy enhancing technologies that are specifically designed to implement these principles should be the way to share data.~~ **Pursuant to Article 89(2) of Regulation (EU) 2016/679 and Article 25(3) of Regulation (EU) 2018/1725, derogations should be granted to the development, production and dissemination of European statistics by statistical authorities, under the safeguards laid down in these provisions.**

(16) To be on the forefront of integrating new technologies and new insights progressively, and thereby to ensure that European statistics continuously stay relevant rules should be established under which, as part of a collective effort by the ESS, statistics can be developed, **in accordance with user's needs,** in specific areas **in the form of statistics under development or experimental statistics** with the aim of integrating them in the regular production of European Statistics. Although not necessarily fulfilling all quality criteria laid down in Article 12(1) of Regulation (EC) No

223/2009, those statistics should be treated as European statistics. **Transparent information on their quality should accompany the publication of these statistics under development or experimental statistics.**

(17) While striving to ~~continuously~~ innovate and develop new statistical outputs, national statistical authorities should take the utmost account of users' needs as expressed notably by national statistical user councils **or other appropriate bodies**. At Union level, the European Statistical Advisory Committee (ESAC), established by Decision No 234/2008/EC of the European Parliament and of the Council as the main Union body representing users, respondents and producers of European statistics, should be informed by the Commission on how it has taken into account the ESAC's opinions, particularly with regard to developing new European statistics.

(18) Statistical authorities should also promote, at both national and European level, a strong, structured and sustained interdisciplinary cooperation with academic and research institutions, especially when developing new statistics, testing new methods and technologies and promoting innovation and experimentation. **For the purpose of this Regulation, scientific purposes cover research activities such as technological development and demonstration, fundamental research or applied research.**

(19) Given the trust granted to NSIs and their high technical expertise in data **and metadata** management, data quality and data protection, Member States should be encouraged, in accordance with the principle of subsidiarity, to assign to the NSIs **an important role** ~~certain functions~~ in the national data governance frameworks including those foreseen in **Regulation (EU) 2022/868** (Data Governance Act), with the objective of promoting **data sharing**, data integration and interoperability, metadata description, quality assurance and standard setting. In that regard, the involvement of NSIs ~~the National Statistical Institutes and other national authorities~~ in the initial design, subsequent development and discontinuation of administrative **data** ~~records~~ should be recalled and reinforced when appropriate, with a view to ensuring, among other things, consistency and data quality and to minimising the reporting burden.

(20) Data that is lawfully available to the public **according to Union or national legislation**, should not be considered confidential when used for statistical purposes.

(21) In the interest of increased timeliness at Union level, the Commission (Eurostat) should be allowed to disseminate Member States' European statistics as soon as they have been published nationally, even if this was done ahead of the deadlines for providing the statistics that are set out in the relevant sectorial Union legislation.

(22) Since the objective of this Regulation, namely the amendment of the legal framework for developing, producing and disseminating European statistics, cannot be sufficiently achieved by the Member States but can rather, for reasons of consistency and comparability, be better achieved at Union level, the Union may adopt measures to achieve that objective, 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.

(23) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission in respect of the ~~temporary~~ **urgent** statistical actions to be undertaken, including the relevant timespan, frequency and quality requirements **and of the extension of the crisis, of the list and description of the privately held data needed for**

elaborating European Statistics of the general technical arrangements for making privately held data available to the NSIs and the Commission (Eurostat) and of the technical aspects of **non-confidential** data sharing between the statistical authorities. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.

(24) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council and delivered an opinion on 6 September 2023.

(25) The European Statistical System (ESS) Committee was consulted.

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EC) No 223/2009

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

(1) Article 3 is amended as follows:

(a) the following points 4a, 4b, 4c, 4d and 4e are inserted:

4a. ‘data’ means any digital or non-digital representation of acts, facts ~~and~~ **or** information **and any compilation of such acts, facts or information on the units observed;**

4b. ‘metadata’ means any **information** ~~data~~ that defines and describes data and processes, ~~or is used in this way;~~

4c. ‘**Private** data holder’ means a legal or natural person **or any other entity without legal personality** who has the right, in accordance with applicable Union **legal acts** or national legislation ~~implementing Union law, or~~ and the ability, to **manage and** make available ~~certain~~ data **obtained as a result of their activity and not referred to their own entity.**

~~4d. ‘reuse of data’ means the use by national statistical authorities and the Commission (Eurostat) of data held and made available by data holders for the development, production and dissemination of European statistics;~~

4e. ‘data sharing’ means the provision of data or the permission of data ~~reuse~~ by a national statistical authority or the Commission (Eurostat) to another national statistical authority or the Commission (Eurostat) for the purpose of joint or individual use of such data for statistical purposes;’

(b) the following points 5a, 5b ~~and 5e~~ are inserted:

5a. ‘data source’ means a source providing data that is relevant **and necessary**, in itself or in combination with data from other sources, for the development and production of statistics, including surveys, censuses, administrative **data** ~~records~~ or data made available by data holders on request;

5b. ‘data access’ means processing by a national statistical institute or **other national authorities or by** the Commission (Eurostat) of data that has been provided **or made available** by a ~~private~~ data holder, in accordance with specific technical, legal or

organisational requirements ~~without necessarily requiring the transmission or downloading of such data;~~

~~5c. ‘multi-source statistics’ mean statistics developed or produced on the basis of a variety of data sources, including by means of modelling techniques;’;~~

(c) point 8 is replaced by the following:

8. ‘use for statistical purposes’ means the exclusive use for the development, ~~and~~ production ~~and dissemination~~ of statistical results and analyses by the statistical authorities, including for ~~related~~ research and scientific activities, or the establishment of sampling frames;’

~~(d) the following point 8a is inserted:~~

~~8a ‘crisis’ means a situation of wide-ranging impact or political significance generating an immediate and unforeseen demand for European statistics;~~

(2) the following Article 16a is inserted:

Article 16a
Statistical response to crisis

1. The Commission (Eurostat) shall examine a crisis situation and may temporary undertake urgent statistical actions ~~and undertake them~~ as appropriate, subject to the procedures set out in this Article, where both of the following conditions are met:

(a) it is necessary to respond to urgent information needs which arise from ~~a~~ the crisis and the following, ~~existing or future~~, emergency mechanisms activated in accordance with Union legal acts, such as: the EU Integrated Political Crisis Response Arrangements¹ or other Union emergency legal acts.

- ~~(i) the temporary protection under Council Directive 2001/55/EC¹⁶;~~
- ~~(ii) the Union civil protection mechanism under Decision 1313/2013/EU of the European Parliament and of the Council¹⁷;~~
- ~~(iii) the emergency support under Council Regulation (EU) 2016/369¹⁸~~
- ~~(iv) the emergency framework under Council Regulation (EU) 2022/2372¹⁹;~~
- ~~(v) the market correction mechanism under Council Regulation (EU) 2022/2578²⁰;~~
- ~~(vi) the emergency mode under Regulation of the European Parliament and of the Council (EU) xx/xx (to be adopted²¹);~~
- ~~(vi) the emergency mode under Regulation of the European Parliament and of the Council (EU) xx/xx (to be adopted²¹);~~

(b) those urgent information needs cannot be met under the European statistical programme.

2. The temporary urgent statistical actions referred to in paragraph 1 shall may be carried out by the Commission (Eurostat) at Union level, in close cooperation with the National Statistical Institutes and other national authorities (hereafter referred to as ‘ONAs’), and may include:

(a) producing European statistics based on new data sources or data collections, taking into account the burden on respondents and the cost effectiveness for the Member States;

¹ Council Implementing Decision (EU) 2018/1993 of 11 December 2018 on the EU Integrated Political Crisis Response Arrangements

- (b) providing new statistical indicators and insights based on existing data;
- (c) developing ~~harmonised statistical methodologies and related~~ methodological guidelines, to ensure that statistics across the Member States affected by the crisis are comparable and consistent;
- (d) other coordinated action at Union level that aims to provide a timely and relevant statistical response to the specific situation.

3. When assessing the need for ~~temporary~~ **urgent** statistical actions, the Commission (Eurostat) shall promptly inform and consult the ESS Committee and take **duly** into account its professional guidance. **Urgent statistical actions to be undertaken are subject to prior examination of the ESS Committee. To this end, the Commission (Eurostat) will provide the ESS Committee with thorough information on the actions which the Commission intends to take, their justification on a cost-effectiveness basis, the means and timetables for achieving them, the assessment of the response burden on survey respondents and the financial contribution of the Union to cover the incremental costs incurred by the National Statistical Institutes and other national authorities.**

4. The NSIs **Member States** may decide, separately and on a voluntary basis, to participate in these ~~temporary~~ **urgent** statistical actions, ~~but shall, together with~~ **The Commission (Eurostat), shall ensure** ~~strive towards~~ the relevance and sufficient coverage of **the crisis situation in the EU** ~~those actions at Union level~~. When participating in ~~temporary~~ **urgent** statistical actions, the NSIs **Member States** shall comply with the **agreed** common timespan, frequency and quality requirements for the national data to be provided to the Commission (Eurostat).

5. The Commission may, by way of implementing acts, **specify** ~~define~~ the ~~temporary~~ **urgent** statistical actions and set out the procedure for undertaking them, including the relevant timespan, frequency and quality requirements to be applied by those NSIs **Member States** participating **voluntarily** in the ~~temporary~~ **urgent** statistical action. Those implementing acts shall **be** adopted in accordance with the examination procedure referred to in Article 27(2). **The Union shall provide financial contributions from the general budget of the Union to the national statistical institutes and other national authorities to cover the incremental costs derived from the implementation of these urgent statistical actions.**

6. Measures adopted under paragraph 5 shall remain in force for a period **not longer than the duration of the crisis**, not exceeding 24 **12** months **that may be extended by the Commission to a subsequent 12-month period in duly justified cases, by implementing acts.**

(3) in Article 17a, the title is replaced by the following:

‘Access, ~~reuse~~ **use** and integration of administrative ~~records~~ **data** for the development, and production **and dissemination** of European statistics’;

(4) in Article 17a, paragraph 1 is replaced by the following:

‘1. National ~~public~~ bodies in charge of administrative data sources, **databases, interoperability systems or any data** relevant **and necessary** for development, production and dissemination of European statistics shall allow the NSIs and other national authorities (hereafter ‘ONA’) referred to in Article 4, to access, ~~reuse~~ and integrate, free of charge, this data and the relevant metadata, in **a** timely manner and with sufficient frequency **and granularity** for the purpose of **developing, producing and disseminating European statistics** ~~and transmitting statistics to the Commission~~

(Eurostat) within the deadlines and in accordance with quality requirements laid down in Union statistical legislation.';

(5) in Article 17a, the following paragraph 2a is inserted:

2a. For the purpose of this Regulation, the Commission (Eurostat) shall be allowed, upon request, to access, ~~reuse~~ and integrate in a timely manner relevant data and metadata from databases and interoperability systems maintained by Union bodies and agencies, and without prejudice to the Union acts establishing these databases and interoperability systems, **including the central repository for reporting and statistics (CRRS)**. For this purpose, the Commission (Eurostat) shall cooperate with the relevant Union bodies and agencies to specify the customised data and metadata required, the operational modalities for data ~~reuse~~ and the necessary physical and logical safeguards. **When data and metadata needed for European statistics are only available in databases and interoperability systems maintained by EU bodies and agencies, the Commission (Eurostat) may, upon request, share these data with the relevant national statistical authorities responsible for the development, production and dissemination of European statistics, without prejudice to the Union acts establishing these databases and interoperability systems.**

(6) in Article 17a, paragraph 5 is replaced by the following:

5. The NSIs, **ONAs** and ~~owners of administrative records~~ **data holders** shall establish the necessary cooperation mechanisms, **in accordance with national specificities**. Those mechanisms shall also provide the possibility for the NSIs to perform data quality checks and build statistical frames based on **the** relevant administrative ~~records~~ **data accessed**.

(7) the following Articles 17b, 17c, 17d, 17e and 17f are inserted:

‘Article 17b

*Obligation of private data holders to make data available for developing, ~~and~~ producing **and disseminating** European statistics*

1. Without prejudice to reporting obligations, **data collections or any data access** laid down in sectorial statistical legislation of the Union nor to the obligation for data holders to make data available based on exceptional need in accordance with the **Regulation [XXX]** (Data Act), an NSI or the Commission (Eurostat) may request a private data holder to make data and the relevant metadata available **free of charge when necessary** for the development, ~~and~~ production **and dissemination** of European statistics, **if The Commission (Eurostat) may adopt implementing acts to list and describe the data in relation with specific statistical areas that are necessary for the development, production and dissemination of European statistics. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27 (2).**~~the annual work programme has established the following conditions: **Those data collections or data accesses may also be included by the Commission in the annual work programme.**~~

(a) the data requested is necessary for the development and production of European statistics; and

(b) the data cannot be readily obtained by alternative means such as surveys or reuse of administrative records, or their reuse will result in a considerable reduction in the response burden on data holders and other businesses.

2. As coordinator of the national statistical system, an NSI may submit a request for data to a private data holder on behalf of an ONA, when the data requested is necessary for European statistics

developed, ~~and~~ produced **and disseminated** by that ONA. **The NSIs, and the ONAs of a Member State shall cooperate in order to avoid excessive burden on private data holders.**

3. The NSIs and the Commission (Eurostat) shall cooperate and mutually assist each other in order to avoid excessive requests on private data holders and to determine who is to submit requests for data. In particular, the request for data shall be submitted to a private data holder by **the NSI except when** the Commission (Eurostat), ~~in agreement with~~ **and** the **concerned** NSIs **agree that the request by the Commission (Eurostat)** ~~when such an approach is more efficient, for instance in the case of data holders operating on a Union wide scale.~~

4. The Commission (Eurostat) may, in agreement with the NSIs, set up a secure infrastructure to facilitate the further sharing with the NSIs **and the ONAs** of data that has been accessed in accordance with paragraph ~~23~~.

4a. Where data under paragraph 1 need a specific processing, Member States or the Commission (Eurostat) may provide a compensation to the private data holder for this specific processing service, except where national law prevents NSIs or ONAs responsible for the production of statistics from compensating data holders.

5. This Article shall not apply to small and micro enterprises as defined in Article 2 of the Annex to Commission Recommendation 2003/361/EC22, **except in duly justified cases when the data held by these small and micro enterprises are of specific interest for official statistics because of the nature and volume of those data at national level.**

Article 17c

*Requests for data and arrangements for making data available for development, ~~and~~ production **and dissemination** of European statistics*

1. When requesting data in accordance with Article 17b, the NSIs or the Commission (Eurostat) **respectively** shall:

- (a) specify what data **and metadata** is required;
- (b) ~~demonstrate~~ **specify** the statistical need for which the data is requested in accordance with Article 17b(1);
- (c) specify the frequency with which and the deadlines by which the data is to be made available;
- (d) specify the operational arrangements for making the data available;
- ~~(e) invite the data holder to the dialogue under paragraph 3.~~

2. Requests for data referred to in paragraph 1 shall: ~~(a)~~ follow the principle of data minimisation and be proportionate to the statistical need in terms of the level of detail, volume and frequency of the data;

- ~~(b) concern, insofar as possible, non personal data.~~

3. Following a request for data referred to in paragraph 1, a dialogue shall take place between the NSI, **the ONA** or the Commission (Eurostat) **respectively** and the concerned data holder to discuss **and agree on the measures needed for making data available for the development, production and dissemination of European statistics**, aspects such as the level of aggregation of the data, the

~~deadline and arrangements for the provision of the data, the security and confidentiality protection measures as well as possible cost compensation aspects, with the aim of concluding an **a written** agreement on those aspects.~~

4. If no agreement is concluded within three months following the notification of the request for data referred to in paragraph 1 **or if the written agreement is not fulfilled by the data holder,**

(a) When the NSI has requested the data, the NSI may formally require the private data holder to make the data available in a period no shorter than 15 days. This requirement shall be specific and coherent with the first request and shall, if appropriate, take into account issues on which views may have converged during the dialogue with the data holder. The requirement shall indicate the deadline for submitting its reply (right to be heard), the deadline for making the data available and, if it is the case, the fines that may be applied if the data are not provided in time, and the means of redress against it. The data holder shall make the relevant data available to the NSI within the deadline.

b). **When the Commission has requested the data,** ~~if no agreement is concluded within three months following the notification of the request for data referred to in paragraph 1, the NSI or the Commission may~~ **adopt a** ~~by decision~~ **to** require the private data holder to make the data available **in a period no shorter than 15 days.** The decision shall be specific as required under paragraph 1 ~~letters (a) to (d) and shall take into account issues on which views may have converged during the dialogue with the data holder. The decision may also include compensation for the private data holder that shall not exceed the marginal costs related to the preparation required for making the data available. The period for making the data available may not be shorter than 15 days. Before adopting the decision, the NSI or the Commission shall give the data holder the opportunity of being heard on the measures that the NSI or the Commission intend to take. The decision shall indicate~~ **the deadline for the data holder to submit its reply (right to be heard), the deadline for making the data available,** the fines provided for under paragraph 6 **that may be applied if the data are not provided in time and the means of redress against it. The data holder shall make the relevant data available to the Commission (Eurostat) within the deadline specified in the decision.**

~~5. Without prejudice to reporting obligations laid down in sectoral statistical legislation of the Union, a data holder shall make the relevant data available to the NSI or the Commission (Eurostat) respectively within the period specified in the decision pursuant to paragraph 4 of this Article.~~

6. The Member States and the Commission shall **may** take appropriate measures to ensure the effective enforcement of the **formal requirements or** decisions adopted in accordance with paragraph 4. Those measures may include the adoption of fines **in accordance with paragraph 7,** where the private data holder intentionally or negligently fails to supply the data **required by decision** within the **deadline set period** or supplies incorrect, incomplete or misleading data. In fixing the amount of the fines, the Member State and the Commission shall have regard to the nature, gravity, duration and recurrence of the infringement. **Before adopting the measures, the Member States and the Commission, respectively, shall give the data holder the opportunity of being heard on preliminary findings and measures that the Member State or the Commission may intend to take.**

7. ~~In order to comply with paragraph 6:~~

(a) Where national legislation provides for the possibility of imposing fines, those fines shall be equivalent to the penalties for similar infringements in the Member States.

(b) The Commission may adopt decisions imposing fines ~~within one year following the deadline for the submission of data laid down in its decision under paragraph 4 where the data holder fails to submit any data or within one year of the submission of incorrect, incomplete or misleading data.~~ Fines may reach up to ~~of maximum~~ EUR 25 000 ~~and, in case of recurrence within three years, the fine may reach up to~~ EUR 50 000. The Commission may issue guidelines on the calculation of the fine. ~~The power of the Commission to enforce decisions imposing a fine shall be subject to a limitation period of five years since the day on which the decision becomes final.~~

~~8. The Commission may adopt a decision imposing a fine within one year following the deadline for the submission of data laid down in its decision under paragraph 4 where the data holder fails to submit any data or within one year of the submission of incorrect, incomplete or misleading data.~~

~~The power of the Commission to enforce decisions imposing a fine shall be subject to a limitation period of five years. Time shall begin to run on the day on which the decision becomes final.~~

~~9. Before adopting a decision pursuant to paragraph 5-6 of this Article, the Member States and the Commission shall give the data holder the opportunity of being heard on preliminary findings and measures that the Member State or the Commission may intend to take in view of the preliminary findings.~~

~~10. The Commission shall establish, by way of implementing acts, the general technical arrangements for making data available under this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(2).~~

Article 17d

Review of decisions imposing fines by the Court of Justice of the European Union

In accordance with Article 261 TFEU, the Court of Justice of the European Union has unlimited jurisdiction to review decisions by which the Commission has imposed fines. It may cancel, reduce or increase the fine imposed.

Article 17e

*Obligations of NSIs, **ONAs** and the Commission (Eurostat) in ~~reusing~~ data made available **by private data holders** for development, ~~and~~ production **and dissemination** of European statistics*

1. The NSIs and the Commission (Eurostat) shall use data made available in accordance with Article 17b for the development and production of European statistics

(a) exclusively for statistical purposes;

(b) in conformity with **statistical** principles **set out in Article 2** ~~of statistical confidentiality and cost-effectiveness~~; and

(c) with the obligation not to share them ~~with third parties outside the European Statistical System~~ unless the data holder has agreed.

2. The NSIs and the Commission (Eurostat) shall:

(a) take appropriate measures to protect statistical confidentiality and trade secrets ~~and to preserve other legitimate concerns of private data holders including the cost and effort required to make the data available;~~

(b) implement, insofar as the processing of personal data is necessary, technical and organisational measures which safeguard the rights and freedoms of data subjects.

3. Paragraphs 1 and 2 of this Article shall apply to an ONA that has received data following a request submitted on its behalf by a NSI in accordance with Article 17b(2).

4. ~~The Commission (Eurostat) shall publish a description of the main categories of costs related to the data processing for which compensation may be granted to the data holder and the methodology for calculating these costs.~~

Article 17f

Non-confidential ~~data~~ sharing in the ESS and between the ESS and the ESCB

1. **Non-confidential** data shall be shared, **if necessary and available in an aggregated form, upon request** between NSIs, **by its own or on behalf of an ONA**, and between NSIs and the Commission (Eurostat) exclusively for statistical purposes and for improving the quality of European statistics.

2. ~~Data sharing shall take place upon request by an NSI or the Commission (Eurostat) where this is relevant and necessary. Data sharing shall also take place when the request is put forward by an NSI on behalf of an ONA and the data is used exclusively for statistical purposes and for improving the quality of European statistics developed and produced by that ONA.~~

3. ~~The NSIs, and when relevant the ONAs, participating in the data sharing within the ESS shall provide all necessary safeguards with regard to the physical and logical protection of data confidentiality. The Commission (Eurostat) shall set up a secure infrastructure to facilitate data sharing. The **and the** NSIs, and when relevant the ONAs, may use that secure data sharing infrastructure.~~

4. ~~When the data concerned is confidential data within the meaning of Article 3 of this Regulation, or is personal data as defined in Regulations (EU) 2016/679 and (EU) 2018/1725, the sharing of such data shall be allowed and may take place on a voluntary basis provided it fulfils all of the following conditions:~~

~~(a) it is based on a request justifying the necessity to share the data in each individual case, in particular with regard to the quality issues that are to be specifically addressed;~~

~~(b) it is based on privacy enhancing technologies that are specifically designed to comply with Regulations (EU) 2016/679 and (EU) 2018/1725, with particular regard to purpose limitation, data minimisation, storage limitation, integrity and confidentiality;~~

~~(c) it does not affect Chapter V of this Regulation.~~

5. ~~The data requested under this Article shall not pertain to issues of national security and military matters.~~

5a. Non-confidential data sharing shall take place between the ESS and ESCB members where the data is used exclusively for statistical purposes and for improving the quality of European statistics.

6. The Commission shall, by means of implementing acts, set out the technical aspects of data sharing between the statistical authorities referred to in this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(2).

~~7. This Article is without prejudice to Article 21 of this Regulation.²;~~

(8). The following Chapter IIIa is inserted:

CHAPTER IIIa
DEVELOPMENT OF EUROPEAN STATISTICS

Article 17g
Statistics under development

1. The NSIs, the ONAs and the Commission (Eurostat) shall endeavour to continuously innovate and develop new statistical outputs and insights based on all available data sources and to use state of the art technologies, with the aim of integrating them in the regular production of European statistics. **To this aim, the Commission (Eurostat) may initiate, in close cooperation with the ESS Committee, the development of new statistical outputs and insights across the ESS. Those statistical outputs and insights shall be included in the annual work programme and implemented through individual statistical actions referred to in Article 14(1).**

~~2. European statistics shall be developed in full compliance with the statistical principles, as set out in Article 2(1).²;~~ **Statistics** under development may not necessarily fulfil all the quality criteria set out in Article 12(1).

3. The Commission (Eurostat) shall **may** disseminate European statistics under development with the agreement of the NSIs **or ONAs** and shall explicitly indicate that these statistics are under development. **NSIs and ONAs may also disseminate European statistics under development produced by them.**

~~4. The Commission (Eurostat) may initiate, in close cooperation with the ESS Committee, the development of new statistical outputs and insights in a coordinated manner across the ESS. Those statistical outputs and insights shall be included in the annual work programme and implemented through individual statistical actions referred to in Article 14(1).²;~~

(9) in Article 18, the following paragraph 4 is inserted:

4. The Commission (Eurostat) may ~~use~~ **disseminate** European statistics **already** published at national level by the Member States ahead of the deadlines set out in the relevant sectorial legislation ~~and disseminate these statistics~~ before the time envisaged in that sectorial legislation, providing it complies with the definitions and classification.

(10) Article 25 is replaced by the following:

Article 25
Publicly available data

Data lawfully available to the public that remain available to the public according to national or Union legislation shall not be considered confidential ~~Data that is lawfully available to the public shall not be considered confidential~~ when used for statistical purposes.

(11) the following Article 26a is inserted:

Article 26a

Contribution to ~~new~~ national data governance frameworks

1. In compliance with the principle of subsidiarity, the NSIs may assume at national level functions as laid down in the national data governance frameworks with the goal of promoting data integration and inter-operability, metadata description, quality assurance and standard setting, **data sharing and re-use of data**, as well as other tasks and functions laid down in Regulation (EU) 2022/868 of the European Parliament and of the Council, ~~and identify new data sources to be used for the development and production of statistics.~~

2. The performance of such functions by the NSIs shall be compatible with **the exercise of the statistical functions performed according to** the statistical principles, as set out in Article 2(1).

(12) the following Article 27a is inserted:

Article 27a

Evaluation and review

By [five years after the entry into force of this amending Regulation], the Commission shall carry out an evaluation of this Regulation and submit a report on its main findings to the European Parliament and to the Council. That evaluation shall assess, in particular:

- (a) the statistical response to crisis under Article 16a;
- (b) the obligation of **private** data holders to allow their data to be reused for European statistics in accordance with Articles 17b, 17c, 17d and 17e;
- (c) the data sharing in the ESS under Article 17f;
- (d) the development of European statistics under Chapter IIIa.

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 Brussels,

For the European Parliament

The President

For the Council

The President