



**COUNCIL OF
THE EUROPEAN UNION**

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COMMON POSITION adopted by the Council on 16 February 2009 with a view to the adoption of a Regulation of the European Parliament and of the Council on Community statistics relating to external trade with non-member countries and repealing Council Regulation (EC) No 1172/95

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

of

**on Community statistics relating to external trade
with non-member countries and repealing
Council Regulation (EC) No 1172/95**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 285(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Central Bank¹,

Acting in accordance with the procedure laid down in Article 251 of the Treaty²,

¹ OJ C 70, 15.3.2008, p. 1.

² Opinion of the European Parliament of 23 September 2008 (not yet published in the Official Journal) and Council Common Position of

Whereas:

- (1) The statistical information on Member States' trade flows with non-member countries is of essential importance for the Community's economic and trade policies and for analysing market developments for individual goods. The transparency of the statistical system should be improved to enable it to react to the changing administrative environment and to satisfy new user requirements. Council Regulation (EC) No 1172/95 of 22 May 1995 on the statistics relating to the trading of goods by the Community and its Member States with non-member countries¹ should therefore be replaced by a new Regulation in conformity with the requirements set out in Article 285(2) of the Treaty.
- (2) External trade statistics are based on data obtained from customs declarations, as provided for in Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code² (hereinafter referred to as the "Customs Code"). Progress in European integration and the resulting changes in customs clearance, including single authorisations for the use of the simplified declaration or the local clearance procedure, as well as centralised clearance, which will emanate from the current process of modernisation of the Customs Code as laid down in Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code)³ (hereinafter referred to as the "Modernised Customs Code") warrant a number of changes. In particular, they make it necessary to adjust the way external trade statistics are compiled, to reconsider the concept of the importing or exporting Member State, and to define more precisely the data source for compiling Community statistics.

¹ OJ L 118, 25.5.1995, p. 10.

² OJ L 302, 19.10.1992, p. 1.

³ OJ L 145, 4.6.2008, p. 1.

- (3) Simplifications of customs formalities and controls under the Modernised Customs Code can lead to customs declarations not being available. In order to keep the compilation of external trade statistics complete, measures should be adopted which ensure that those economic operators who benefit from the simplification provide statistical data.
- (4) Decision No 70/2008/EC of the European Parliament and of the Council of 15 January 2008 on a paperless environment for customs and trade¹ will set up an electronic customs system for the exchange of data contained in customs declarations. In order to record the physical trade flow of goods between Member States and non-member countries and to ensure that data on imports and exports is available in the Member State concerned, arrangements between customs and statistical authorities are necessary and should be specified. This includes rules on the exchange of data between Member States' administrations. This data exchange system should benefit as far as possible from the infrastructure established by the customs authorities.
- (5) In order to allocate Community exports and imports to a given Member State, it is necessary to compile data on the "Member State of destination", for imports, and the "Member State of actual export", for exports. In the medium term, those Member States should become the importing and the exporting Member State for external trade statistics purposes.

¹ OJ L 23, 26.1.2008, p. 21.

- (6) For the purposes of this Regulation, goods for external trade purposes should be classified in accordance with the Combined Nomenclature established by Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff¹ (hereinafter referred to as the "Combined Nomenclature").
- (7) To meet the needs of the European Central Bank and of the Commission for information on the share of the euro in international trade in goods, the invoicing currency of exports and imports should be reported at an aggregated level.
- (8) For the purposes of trade negotiations and internal market management, the Commission should be provided with detailed information on the preferential treatment of goods imported into the Community.
- (9) External trade statistics provide data for the compilation of balance of payments and national accounts. The characteristics which make it possible to adapt them to balance of payments purposes should become part of the mandatory and standard data set.
- (10) Member States' statistics on customs warehouses and free zones are not the subject of harmonised provisions. However, the compilation for national purposes of these statistics remains optional.

¹ OJ L 256, 7.9.1987, p. 1.

- (11) Member States should provide Eurostat with annual aggregated data on trade broken down by business characteristics, one of the uses of which is to facilitate the analysis of how European companies operate in the context of globalisation. The link between business and trade statistics is established by merging data on the importer and the exporter available on the customs declaration with data requested by Regulation (EC) No 177/2008 of the European Parliament and of the Council of 20 February 2008 establishing a common framework for business registers for statistical purposes¹.
- (12) Council Regulation (EC) No 322/97 of 17 February 1997 on Community Statistics² provides a reference framework for the provisions laid down in this Regulation. However, the very detailed level of information on trade in goods requires specific confidentiality rules if these statistics are to be relevant.
- (13) The transmission of data subject to statistical confidentiality is governed by the rules set out in Regulation (EC) No 322/97 and in Council Regulation (Euratom, EEC) No 1588/90 of 11 June 1990 on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities³. Measures which are taken in accordance with those Regulations ensure the physical and logical protection of confidential data and ensure that no unlawful disclosure and non-statistical use occur when Community statistics are produced and disseminated.

¹ OJ L 61, 5.3.2008, p. 6.

² OJ L 52, 22.2.1997, p. 1.

³ OJ L 151, 15.6.1990, p. 1.

- (14) In the production and dissemination of Community statistics under this Regulation, the national and Community statistical authorities should take account of the principles set out in the European Statistics Code of Practice, which was adopted by the Statistical Programme Committee on 24 February 2005 and appended to the Recommendation of the Commission of 25 May 2005 on the independence, integrity and accountability of the national and Community statistical authorities.
- (15) Specific provisions should be formulated to remain in force until such time as changes in customs legislation result in additional data on the customs declaration and until Community legislation requires the electronic exchange of customs data.
- (16) Since the objective of this Regulation, namely establishing the common framework for the systematic production of Community external trade statistics, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the Regulation, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. 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.
- (17) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission¹.

¹ OJ L 184, 17.7.1999, p. 23.

- (18) In particular, the Commission should be empowered to adapt the list of customs procedures or customs-approved treatment or use which determine an export or import for external trade statistics; to adopt different or specific rules for goods or movements which, for methodological reasons, call for specific provisions; to adapt the list of goods and movements excluded from external trade statistics; to specify the data sources other than the customs declaration for records on imports and exports of specific goods or movements; to specify the statistical data, including the codes to be used; to establish requirements for data related to specific goods or movements; to establish requirements on the compilation of statistics; to specify the characteristics of samples; to establish the reporting period and the level of aggregation for partner countries, goods and currencies; and also to adapt the deadline for transmitting statistics, content, coverage and revision conditions for statistics already transmitted; and to establish the deadline for transmitting statistics on trade by business characteristics and statistics on trade broken down by invoicing currency. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, *inter alia* by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC,

HAVE ADOPTED THIS REGULATION:

Article 1
Subject-matter

This Regulation establishes a common framework for the systematic production of Community statistics relating to trade in goods with non-member countries (hereinafter referred to as "external trade statistics").

Article 2
Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (a) "goods" means all movable property, including electricity;
- (b) "statistical territory of the Community" means the "customs territory of the Community" as defined in the Customs Code with the addition of the Island of Heligoland in the territory of the Federal Republic of Germany;
- (c) "national statistical authorities" means the national statistical institutes and other bodies responsible in each Member State for producing external trade statistics;
- (d) "customs authorities" means the "customs authorities" as defined in the Customs Code;

- (e) "customs declaration" means the "customs declaration" as defined in the Customs Code;
- (f) "decision by customs" means any official act by customs authorities relating to accepted customs declarations and having legal effect on one or more persons.

Article 3

Scope

1. External trade statistics shall record imports and exports of goods.

An export shall be recorded by Member States in the event that goods leave the statistical territory of the Community in accordance with one of the following customs procedures or customs-approved treatment or use, laid down in the Customs Code:

- (a) exportation;
- (b) outward processing;
- (c) re-exportation following either inward processing or processing under customs control.

An import shall be recorded by Member States in the event that goods enter the statistical territory of the Community in accordance with one of the following customs procedures laid down in the Customs Code:

- (a) release for free circulation;
- (b) inward processing;
- (c) processing under customs control.

2. The measures designed to amend non-essential elements of this Regulation relating to the adaptation of the list of customs procedures or customs-approved treatment or use referred to in paragraph 1 in order to take into account changes in the Customs Code or provisions deriving from international conventions, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11(3).
3. For methodological reasons, certain goods or movements call for specific provisions. This concerns industrial plants, vessels and aircraft, sea products, goods delivered to vessels and aircraft, staggered consignments, military goods, goods to or from offshore installations, spacecraft, electricity and gas and waste products (hereinafter referred to as "specific goods or movements").

The measures designed to amend non-essential elements of this Regulation, *inter alia* by supplementing it, relating to specific goods and movements and to different or specific provisions applicable to them, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11(3).

4. For methodological reasons, certain goods or movements shall be excluded from external trade statistics. This concerns monetary gold and means of payment which are legal tender; goods the intended use of which is diplomatic or similar nature; movements of goods between the importing and exporting Member State and their national armed forces stationed abroad as well as certain goods acquired and disposed of by foreign armed forces; particular goods which are not the subject of a commercial transaction; movements of satellite launchers before their launching; goods for and after repair; goods for or following temporary use; goods used as carriers of customised information and downloaded information; and goods declared orally to customs authorities which either are of a commercial nature, provided that their value does not exceed the statistical threshold of EUR 1 000 in value or 1 000 kilograms in net mass, or are of a non-commercial nature.

The measures designed to amend non-essential elements of this Regulation, *inter alia* by supplementing it, relating to the exclusion of goods or movements from external trade statistics, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11(3).

Article 4
Data source

1. The data source for records on the imports and exports of goods referred to in Article 3(1) shall be the customs declaration, including possible amendments or changes to statistical data resulting from decisions by customs pertaining to it.
2. Where the further simplification of customs formalities and controls pursuant to Article 116 of the Modernised Customs Code results in records on the imports and exports of goods not being available at customs authorities, the economic operator to whom the simplification was granted shall provide the statistical data defined in Article 5 of this Regulation.
3. Member States may continue to use other data sources for the compilation of their national statistics until the date of implementation of a mechanism for mutual data exchange by electronic means referred to in Article 7(2).

4. For specific goods or movements as referred to in Article 3(3), data sources other than the customs declaration can be used.
5. The measures designed to amend non-essential elements of this Regulation, *inter alia* by supplementing it, relating to the data collection according to paragraphs 2 and 4 of this Article, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11(3). These measures shall take the utmost account of the necessity to set up an efficient system which would minimise the administrative burden on economic operators and administrations.

Article 5
Statistical data

1. Member States shall obtain the following set of data from records on imports and exports referred to in Article 3(1):
 - (a) the trade flow (import, export);
 - (b) the monthly reference period;
 - (c) the statistical value of the goods at the national border of the importing or exporting Member States;

- (d) the quantity expressed in net mass and in a supplementary unit if indicated on the customs declaration;
- (e) the trader, being the importer/consignee on import and the exporter/consignor on export;
- (f) the importing or exporting Member State, being the Member State where the customs declaration is lodged, if indicated on the customs declaration:
 - (i) on import, the Member State of destination;
 - (ii) on export, the Member State of actual export;
- (g) the partner countries, that is:
 - (i) on import, the country of origin and the country of consignment/dispatch;
 - (ii) on export, the country of last known destination;
- (h) the goods according to the Combined Nomenclature, being:
 - (i) on import, the goods code of the Taric subheading;
 - (ii) on export, the goods code of the Combined Nomenclature subheading;
- (i) the customs procedure code to be used for determining the statistical procedure;

- (j) the nature of the transaction if indicated on the customs declaration;
- (k) the preferential treatment on import where granted by customs authorities;
- (l) the invoicing currency if indicated on the customs declaration;
- (m) the mode of transport, detailing:
 - (i) the mode of transport at the frontier;
 - (ii) the internal mode of transport;
 - (iii) the container.

2. The measures designed to amend non-essential elements of this Regulation, by supplementing it, relating to further specification of the data referred to in paragraph 1 of this Article, including the codes to be used, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11(3).

3. Where not otherwise stated and without prejudice to customs legislation, the data shall be contained in the customs declaration.

4. For specific goods or movements as referred to in Article 3(3) and data provided in accordance with Article 4(2), limited sets of data may be required.

The measures designed to amend non-essential elements of this Regulation, by supplementing it, relating to these limited sets of data, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11(3).

Article 6

Compilation of external trade statistics

1. Member States shall compile for each monthly reference period statistics on imports and exports of goods expressed in value and quantity by:
 - (a) goods code;
 - (b) importing/exporting Member States;
 - (c) partner countries;
 - (d) statistical procedure;
 - (e) nature of the transaction;

- (f) preferential treatment on import;
- (g) mode of transport.

Implementing provisions for compiling the statistics may be determined by the Commission in accordance with the procedure referred to in Article 11(2).

2. Member States shall compile annual statistics on trade by business characteristics, namely the economic activity carried out by the enterprise according to the section or two-digit level of the common statistical classification of economic activities in the European Community (NACE) and size-class measured in terms of number of employees.

The statistics shall be compiled by linking data on business characteristics recorded according to Regulation (EC) No 177/2008 with the data recorded according to Article 5(1) of this Regulation on imports and exports. To this end, national customs authorities shall provide the relevant traders' identification number to national statistical authorities.

The measures designed to amend non-essential elements of this Regulation, by supplementing it, relating to the linking of the data and these statistics to be compiled, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11(3).

3. Every two years Member States shall compile statistics on trade broken down by invoicing currency.

Member States shall compile the statistics using a representative sample of records on imports and exports from customs declarations which contain the data on the invoicing currency. If the invoicing currency for exports is not available on the customs declaration, a survey shall be carried out to collect the required data.

The measures designed to amend non-essential elements of this Regulation, *inter alia* by supplementing it, relating to the characteristics of the sample, the reporting period and the level of aggregation for partner countries, goods and currencies, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11(3).

4. The compilation by Member States of additional statistics for national purposes may be determined where the data are available on the customs declaration.

5. Member States shall not be obliged to compile and transmit to the Commission (Eurostat) external trade statistics on statistical data which, according to the Customs Code or to national instructions, are not yet recorded nor can be straightforwardly deduced from other data on the customs declaration lodged at their customs authorities. The transmission of the following data is therefore optional for Member States:
- (a) on import, the Member State of destination;
 - (b) on export, the Member State of actual export;
 - (c) the nature of the transaction.

Article 7

Data exchange

1. Without delay and at the latest during the month following the month the customs declarations were accepted or were subject to decisions by customs pertaining to them, national statistical authorities shall obtain from customs authorities the records on imports and exports based on the declarations which are lodged with those authorities.

The records shall contain at least those statistical data listed in Article 5 which are, according to the Customs Code or to national instructions, available on the customs declaration.

2. With effect from the date of implementation of a mechanism for mutual data exchange by electronic means, customs authorities shall ensure that records on imports and exports are transmitted to the national statistical authority of the Member State which is indicated on the record as:

- (a) on import, the Member State of destination;
- (b) on export, the Member State of actual export.

The mechanism for mutual data exchange shall be implemented at the latest when Title 1, Chapter 2, Section 1 of the Modernised Customs Code is applicable.

3. Implementing provisions for determining the transmission referred to in paragraph 2 of this Article may be determined in accordance with the procedure referred to in Article 11(2).

Article 8

Transmission of external trade statistics to the Commission (Eurostat)

1. Member States shall transmit to the Commission (Eurostat) the statistics referred to in Article 6(1) no later than 40 days after the end of each monthly reference period.

Member States shall ensure that the statistics contain information on all imports and exports in the reference period in question, making adjustments where records are not available.

Member States shall transmit updated statistics when statistics already transmitted are subject to revisions.

Member States shall include in the results transmitted to the Commission (Eurostat) any statistical information which is confidential.

The measures designed to amend non-essential elements of this Regulation, *inter alia* by supplementing it, relating to the adaptation of the deadline for transmitting statistics, content, coverage and revision conditions for the statistics already transmitted, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11(3).

2. The measures designed to amend non-essential elements of this Regulation, by supplementing it, relating to the deadline for transmitting statistics on trade by business characteristics referred to in Article 6(2) and statistics on trade broken down by invoicing currency referred to in Article 6(3), shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11(3).
3. Member States shall transmit the statistics in electronic form, in accordance with an interchange standard. The practical arrangements for the transmission of the results may be determined in accordance with the procedure referred to in Article 11(2).

Article 9
Quality assessment

1. For the purpose of this Regulation, the following quality dimensions shall apply to the statistics to be transmitted:
 - (a) "relevance" refers to the degree to which statistics meet current and potential needs of the users;
 - (b) "accuracy" refers to the closeness of estimates to the unknown true values;
 - (c) "timeliness" refers to the delay between the availability of the information and the event or phenomenon it describes;
 - (d) "punctuality" refers to the delay between the date of release of the data and the target date when it should have been delivered;
 - (e) "accessibility" and "clarity" refer to the conditions and modalities by which users can obtain, use and interpret data;
 - (f) "comparability" refers to the measurement of the impact of differences in applied statistical concepts and measurement tools and procedures when statistics are compared between geographical areas, sectoral domains or over time;

- (g) "coherence" refers to the adequacy of the data to be reliably combined in different ways and for various uses.
2. Member States shall provide the Commission (Eurostat) with a report on the quality of the statistics transmitted every year.
 3. In applying the quality dimensions laid down in paragraph 1 of this Article to the statistics covered by this Regulation, the modalities and structure of the quality reports shall be defined in accordance with the procedure referred to in Article 11(2).

The Commission (Eurostat) shall assess the quality of the statistics transmitted.

Article 10

Dissemination of external trade statistics

1. At Community level, external trade statistics compiled in accordance with Article 6(1) and transmitted by the Member States shall be disseminated by the Commission (Eurostat) by the Combined Nomenclature subheading at least.

Only where an importer or exporter so requests shall the national authorities of a given Member State decide whether the external trade statistics of that Member State which may make it possible to identify that importer or exporter are to be disseminated or are to be amended in such a way that their dissemination does not prejudice statistical confidentiality.

2. Without prejudice to data dissemination at national level, detailed statistics by the Taric subheading and preferences shall not be disseminated by the Commission (Eurostat) if their disclosure would undermine the protection of the public interest as regards the commercial and agricultural policies of the Community.

Article 11

Committee procedure

1. The Commission shall be assisted by the Committee on statistics relating to the trading of goods with non-member countries.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Article 12

Repeal

Regulation (EC) No 1172/95 shall be repealed with effect from 1 January 2010.

It shall continue to apply to data pertaining to reference periods before 1 January 2010.

Article 13

Entry into force

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

It shall apply from 1 January 2010.

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
