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'I' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. Cion doc.:	13517/13 STATIS 88, COMPET 648, UD 231, CODEC 1991 8066/13 PI 52 CODEC 711
No. prev. doc.:	16787/14 STATIS 138, COMPET 673, UD 282, CODEC 2482
Subject:	Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 471/2009 on Community statistics relating to external trade with non-member countries as regards conferring of delegated and implementing powers upon the Commission for the adoption of certain measures - Confirmation of the final compromise text with a view to agreement

1. On 8 August 2013, the Commission submitted to the Council and the European Parliament a proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 471/2009 on Community statistics relating to external trade with non-member countries as regards conferring of delegated and implementing powers upon the Commission for the adoption of certain measures.

2. The 1st reading position of the European Parliament was adopted in the Plenary on 12 March 2014.

3. On 11 June 2014, the outcome of the discussions of the Working Group was submitted to COREPER who granted the mandate to the Presidency to start the negotiations with the European Parliament.

4. Two informal trilogue meetings took place on 17 November and 8 December 2014 with representatives of the three institutions. During the second meeting, a final compromise text, set out in doc. 16787/14, was agreed.

5. On 19 December 2014, The Committee discussed but did not endorse the final compromise set out in doc. 16787/14, mandating the Presidency to continue negotiations with Parliament notably on the open issue of the consultation of experts of the Member States by the Commission to be included in Article 1 (6) Article 10a para. 2. It was then decided to put the negotiations on this file on hold, pending on the outcome of the Inter-Institutional agreement on better law-making.

6. The Inter-Institutional agreement on better law-making, agreed on 15 December 2015 between the three institutions, has been adopted at EP plenary on 09/03/2016, and by the Council on 15/03/2016. The final compromise set out in doc. 16787/14 has been redrafted accordingly. Delegations have been consulted by e-mail on 15/03/2016 and agreed to the proposal which is annexed to this note.

7. In view of the above, it is recommended that the Permanent Representatives' Committee approve the final compromise text in the annex with a view to reaching an early second reading agreement on the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 471/2009 on Community statistics relating to external trade with non-member countries as regards conferring of delegated and implementing powers upon the Commission for the adoption of certain measures.

ANNEX

2013/0279 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EC) No 471/2009 on Community statistics relating to external trade with non-member countries as regards conferring of delegated and implementing powers upon the Commission for the adoption of certain measures

(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,

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) As a consequence of the entry into force of the Treaty on the Functioning of the European Union ('the Treaty'), the powers conferred upon the Commission should be aligned with Articles 290 and 291 of the Treaty.

(2) In connection with the adoption of Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers[1], the Commission has committed itself[2] to reviewing, in the light of the criteria laid down in the Treaty, legislative acts which currently contain references to the regulatory procedure with scrutiny.

(3) Regulation (EC) No 471/2009 of the European Parliament and of the Council of 6 May 2009 on Community statistics relating to external trade with non-member countries and repealing Council Regulation (EC) No 1172/95[3] confers powers upon the Commission in order to implement some of the provisions of this Regulation.

(4) In the context of the alignment of Regulation (EC) No 471/2009 with the new rules of the Treaty, implementing powers currently conferred upon the Commission should be provided for by conferring powers on the Commission to adopt delegated and implementing acts.

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1 *OJ L 55, 28.2.2011, p.13.*
2 OJ L 55, 28.2.2011, p. 19.
3 OJ L 152,16.6.2009, p.23.

(5) In order to take into account changes in the Customs Code or provisions deriving from international conventions, changes necessary for methodological reasons and the necessity to set up an efficient system for the collection of data and the compilation of statistics, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of the adaptation of the list of customs procedures or customs-approved treatment or use, specific goods or movements and different or specific provisions applicable to them, the exclusion of goods or movements from external trade statistics, the data collection referred to in paragraphs 2 and 4 of Article 4 of Regulation (EC) No 471/2009, the further specification of the statistical data, the requirement for limited sets of data for specific goods or movements referred to in Article 3(3) of that Regulation and data provided in accordance with Article 4(2) of that Regulation, the level of aggregation for partner countries, goods and currencies for statistics on trade by invoicing currency. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of [*date*]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(7) The Commission should ensure that the delegated acts provided for in the legislative acts do not impose a significant additional burden on the Member States or on the respondent and that they remain as economical as possible.

(8) In order to ensure uniform conditions for the implementation of Regulation (EC) No 471/2009, implementing powers should be conferred upon the Commission enabling it to adopt measures relating to the codes and their format to be used for data referred to in Article 5(1) of that Regulation, measures relating to the linking of the data on business characteristics with data recorded in accordance with the same Article and measures relating to the uniform content and coverage. These powers should be exercised in accordance with Regulation (EU) No 182/2011.

(9) The Committee on statistics relating to the trading of goods with non-member countries (Extrastat Committee) referred to in Article 11 of Regulation (EC) No 471/2009 provides advice to the Commission and assists it in exercising its implementing powers.

(10) Under the strategy for a new European Statistical System (hereinafter referred to as 'ESS') structure intended to improve coordination and partnership in a clear pyramid structure within the ESS, the European Statistical System Committee (hereinafter referred to as 'ESSC'), established by Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics[4], should have an advisory role and assist the Commission in exercising its implementing powers.

(11) Regulation (EC) No 471/2009 should be amended by replacing the reference to the Extrastat Committee with a reference to the ESSC.

(12) To ensure legal certainty, procedures for adopting measures that have been initiated but not completed before the entry into force of this Regulation should not be affected by this Regulation.

(13) Regulation (EC) No 471/2009 should therefore be amended accordingly,

[4] OJ L 87, 31.3.2009, p. 164.

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 471/2009 is amended as follows:

(1) Article 3 is amended as follows:

(a) Paragraph 2 is replaced by the following:

‘2. In order to take into account changes in the Customs Code or provisions deriving from international conventions, the Commission is empowered to adopt delegated acts in accordance with Article 10a adapting the list of customs procedures or customs-approved treatment or use referred to in paragraph 1.’

(b) In paragraph 3, the second subparagraph is replaced by the following:

‘3. The Commission is empowered to adopt delegated acts in accordance with Article 10a relating to specific goods or movements and to different or specific provisions applicable to them.’

(c) In paragraph 4, the second subparagraph is replaced by the following:

‘4. The Commission is empowered to adopt, delegated acts in accordance with Article 10a relating to the exclusion of goods or movements from external trade statistics.’

(ca) The following paragraph is added:

‘5. When exercising the powers delegated in paragraphs 2, 3 and 4, the Commission shall ensure that the delegated acts do not impose a significant additional burden on the Member States and on the respondents.'

(2) In Article 4, paragraph 5 is replaced by the following:

‘5. The Commission is empowered to adopt delegated acts in accordance with Article 10a relating to the data collection according to paragraphs 2 and 4. When exercising these powers, the Commission shall ensure that the delegated acts do not impose a significant additional burden on the Member States and on the respondents.’

(3) Article 5 is amended as follows:

(a) Paragraph 2 is replaced by the following:

‘2. The Commission is empowered to adopt delegated acts in accordance with Article 10a relating to the further specification of the data referred to in paragraph 1.

2a The Commission shall adopt, by means of implementing acts, measures relating to the codes to be used for these data and their format.

Those implementing acts shall beadopted in accordance with the examination procedure referred to in Article 11(2).’

(b) In paragraph 4, the second subparagraph is replaced by the following:

‘The Commission is empowered to adopt delegated acts in accordance with Article 10a relating to these limited sets of data.’

(ba) The following paragraph is added:

‘5. When exercising the powers delegated in paragraphs 2 and 4, the Commission shall ensure that the delegated acts do not impose a significant additional burden on the Member States and on the respondents.'

(4) Article 6 is amended as follows:

(a) In paragraph 2, the third subparagraph is replaced by the following:

‘The Commission shall adopt, by means of implementing acts, measures relating to the linking of the data and these statistics to be compiled.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 11(2).’

(b) Paragraph 3 is replaced by the following:

'Every two years Member States shall compile annual 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 Commission is empowered to adopt delegated acts in accordance with Article 10a relating to the level of aggregation for partner countries, goods and currencies. When exercising these powers, the Commission shall ensure that the delegated acts do not impose a significant additional burden on the Member States and on the respondents.'

(5) Article 8 is amended as follows:

Article 8

'Transmission of external trade statistics to the Commission (Eurostat)"

(a) Paragraph 1 is replaced by the following:

'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.

Where the statistics transmitted are subject to revisions, Member States shall transmit the revised results no later than the last day of the month following the availability of the revised data month following the availability of the revised data.

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

The Commission shall adopt, by means of implementing act, measures relating to the uniform technical specifications for the content and coverage of the transmitted statistics. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 11(2).'

(b) Paragraph 2 is replaced by the following:

'2. The statistics on trade by business characteristics referred to in Article 6(2) shall be transmitted to the Commission (Eurostat) within 18 months of the end of the reference year.

The statistics on trade broken down by invoicing currency referred to in Article 6(3) shall be transmitted to the Commission (Eurostat) within three months of the end of the reference year.'

(6) The following Article 10a is inserted:

'Article 10a

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

3. The power to adopt delegated acts referred to in Articles 3(2), (3) and (4), 4(5), 5(2) and (4), and 6(3), shall be conferred on the Commission for a period of five years from ... [*date of entry into force of this Regulation*].

The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

4. The delegation of power referred to in Articles 3(2), (3) and (4), 4(5), 5(2) and (4), and 6(3) may be revoked at any time by the European Parliament or by the Council.

A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4a. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of [*date*].

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Articles 3(2), (3) and (4), 4(5), 5(2) and (4), and 6(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council.'

(7) Article 11 is replaced by the following:

'*Article 11*

Committee procedure

1. The Commission shall be assisted by the European Statistical System Committee established by Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics (*). That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers(**).

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

(*) OJ L 87, 31.3.2009, p. 164.
(**) OJ L 55, 28.2.2011, p. 13.'

Article 2

This Regulation shall not affect the procedures for the adoption of measures provided for in Regulation (EC) No 471/2009 that have been initiated but not completed before the entry into force of this Regulation.

Article 3

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	*For the Council*
The President	*The President*