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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)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The Treaty on the Functioning of the European Union (TFEU) makes a distinction between powers which may be delegated to the Commission to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of a particular legislative act, as laid down in Article 290(1) of the TFEU (delegated acts), and the implementing powers which shall be conferred on the Commission where uniform conditions for implementing legally binding Union acts are needed, as laid down in Article 291(2) of the TFEU (implementing acts).

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 powers¹, the Commission has committed itself² to reviewing, in the light of the criteria laid down in the TFEU, legislative acts which currently contain references to the regulatory procedure with scrutiny.

The overall objective is to remove all provisions referring to the regulatory procedure with scrutiny from all legislative instruments by the end of Parliament's seventh term (June 2014).

In the context of the alignment of 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 1172/95³ with the new rules of the TFEU, implementing powers currently conferred upon the Commission by that Regulation should be provided for by conferring powers on the Commission to adopt delegated and/or implementing acts.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

The Committee on statistics relating to the trading of goods with non-member countries and the European Statistical System Committee were consulted.

There was no need for impact assessment.

3. LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

The objective of this proposal is to amend Regulation (EC) No 471/2009 so as to align it with the new institutional context.

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.

In particular, the aim is to identify the powers conferred on the Commission and put in place the appropriate procedure for adoption of measures on the basis of these powers.

As regards Regulation (EC) No 471/2009, it is proposed to empower the Commission to adopt delegated acts 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 according to paragraphs 2 and 4 of Article 4, the further specification of the data, the requirement for limited sets of data for specific goods or movements and data provided in accordance with Article 4(2), the characteristics of the sample, the reporting period and the level of aggregation for partner countries, goods and currencies for statistics on trade by invoicing currency, the adaptation of the deadline for transmitting statistics and of the content, coverage and revision conditions for statistics already transmitted, the deadline for transmitting statistics on trade by business characteristics and statistics on trade broken down by invoicing currency.

Furthermore, it is also proposed to confer implementing powers on the Commission enabling it to adopt, in accordance with Regulation (EU) No 182/2011, measures relating to the codes to be used for data referred to in Article 5(1) and also measures relating to the linking of the data on business characteristics with data recorded in accordance with the same Article.

- **Streamlining of the European Statistical System**

Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics⁴ defined the European Statistical System (ESS) as the partnership between the European statistical authority, which is the Commission (Eurostat), and the national statistical institutes (NSIs) and other national authorities responsible in each Member State for developing, producing and disseminating European statistics.

The European Statistical System Committee (ESSC), set up under Article 7 of Regulation (EC) No 223/2009, is regarded as the umbrella committee within the ESS. It assists the Commission in exercising its implementing powers for certain statistical domains. These exclude international trade in goods statistics.

In this domain, the Committee on statistics relating to the trading of goods with non-member countries (Extrastat Committee) assists the Commission, in accordance with Article 11 of Regulation (EC) No 471/2009.

The Commission is proposing a new ESS structure to improve coordination and partnership in a clear pyramid structure within the ESS, with the ESSC as the highest strategic body. One aspect of this streamlining is to concentrate comitology powers in the hands of the ESSC. In February 2012⁵, the ESSC supported this new approach.

Therefore it is also proposed to amend Regulation (EC) No 471/2009 by replacing the references to the Extrastat Committee by a reference to the ESSC.

- **Legal basis**

Article 338(1) of the Treaty on the Functioning of the European Union.

- **Choice of instrument**

⁴ OJ L 87, 31.3.2009, p. 164.

⁵ 12th meeting of the ESSC, 12 February 2012.

Regulation of the European Parliament and of the Council.

4. BUDGETARY IMPLICATION

The proposal has no implications for the EU budget.

5. OPTIONAL ELEMENTS

None.

European Economic Area

The proposed act concerns an EEA matter and should therefore extend to the European Economic Area.

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(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 powers⁶, the Commission has committed itself⁷ 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 1172/95⁸ 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

⁶ OJ L 55, 28.2.2011, p.13.

⁷ OJ L 55, 28.2.2011, p. 19.

⁸ OJ L 152, 16.6.2009, p.23.

provided for by conferring powers on the Commission to adopt delegated and implementing acts.

- (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 according to paragraphs 2 and 4 of Article 4, the further specification of the statistical data, the requirement for limited sets of data for specific goods or movements and data provided in accordance with Article 4(2), the characteristics of the sample, the reporting period and the level of aggregation for partner countries, goods and currencies for statistics on trade by invoicing currency, the adaptation of the deadline for transmitting statistics and of the content, coverage and revision conditions for statistics already transmitted, the deadline for transmitting statistics on trade by business characteristics and statistics on trade broken down by invoicing currency.
- (6) It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (7) The Commission should ensure that these delegated acts do not impose a significant additional administrative burden on the Member States and on the respondent units.
- (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 to be used for data referred to in Article 5(1) of that Regulation and measures relating to the linking of the data on business characteristics with data recorded in accordance with the same Article. 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 statistics⁹, should have an advisory role and assist the Commission in exercising its implementing powers.

⁹ OJ L 87, 31.3.2009, p. 164.

- (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,

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 shall be empowered to adopt, in accordance with Article 10a, delegated acts, to adapt 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:

‘The Commission shall be empowered to adopt, in accordance with Article 10a, delegated acts 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:

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

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

‘5. The Commission shall be empowered to adopt, in accordance with Article 10a, delegated acts relating to the data collection according to paragraphs 2 and 4.’

(3) Article 5 is amended as follows:

(a) Paragraph 2 is replaced by the following:

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

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

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

(b) Paragraph 4 second subparagraph is replaced by the following:

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

(4) Article 6 is amended as follows:

(a) In paragraph 2, the last 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) In paragraph 3, the last subparagraph is replaced by the following:

‘The Commission shall be empowered to adopt, in accordance with Article 10a, delegated acts relating to the characteristics of the sample, the reporting period and the level of aggregation for partner countries, goods and currencies.’

(5) Article 8 is amended as follows:

(a) In paragraph 1, the last subparagraph is replaced by the following:

‘The Commission shall be empowered to adopt, in accordance with Article 10a, delegated acts to adapt the deadline for transmitting statistics, content, coverage and revision conditions for the statistics already transmitted.’

(b) Paragraph 2 is replaced by the following:

‘2. The Commission shall be empowered to adopt, in accordance with Article 10a, delegated acts 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).’

(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.

2. When exercising the powers delegated in Articles 3(2), (3) and (4), 4(5), 5(2) and (4), 6(3) and 8(1) and (2), the Commission shall ensure that the delegated acts do not impose a significant additional administrative burden on the Member States and on the respondents.

3. The power to adopt delegated acts referred to in Articles 3(2), (3) and (4), 4(5), 5(2) and (4), 6(3) and 8(1) and (2), shall be conferred on the Commission for an indeterminate period of time from ((Publication office: please insert the exact date of the entry into force of this Regulation).

4. The delegation of powers referred to in Articles 3(2), (3) and (4), 4(5), 5(2) and (4), 6(3) and 8(1) and (2), 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 powers 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.

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), 6(3) and 8(1) and (2), shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two 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 two months at the initiative of the European Parliament or the Council.’

(7) Article 11 is replaced by the following:

Article 11
Committee

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 (*) This 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
The President

For the Council
The President