

Draft Council Regulation (EEC/Euratom) on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities

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(Submitted by the Commission on 15 March 1989)

(89/C 86/06)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 213 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 187 thereof,

Having regard to the draft Regulation submitted by the Commission,

Having regard to the opinion of the European Parliament,

Whereas to enable it to carry out the duties entrusted to it by the Treaties, and especially in the light of the internal market as provided for in Article 8a of the Treaty establishing the European Economic Community, the Commission must have full and reliable information; whereas, with a view to efficient management, the Statistical Office of the European Communities must be able to obtain all the national statistical information necessary in order to prepare Community statistics and carry out the necessary analyses;

Whereas Article 5 of the Treaty establishing the European Economic Community and Article 192 of the Euratom Treaty require the Member States to facilitate the achievement of the Community's tasks; whereas this obligation extends to providing all the requisite information; whereas Member States have hitherto opposed the transmission of confidential statistical data to the Statistical Office of the European Communities, invoking national legislation on statistical confidentiality; whereas this results in a considerable loss of information at Community level and makes it difficult to prepare statistics and carry out analyses on the Community;

Whereas the Member States will have no further cause to invoke national legislation on statistical confidentiality once it has been established that the Statistical Office of the European Communities offers the same data confidentiality guarantees as the national statistical institutes; whereas these guarantees are already to some extent enshrined in the Community Treaties and in the Staff Regulations applicable to officials of the European Communities and can be backed up by appropriate measures under this Regulation;

Whereas, in accordance with Article 214 of the Treaty establishing the European Economic Community and Article 194 (1) of the Treaty establishing the European Atomic Energy Community, the officials and other servants of the Community are required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy;

Whereas Article 17 of the Staff Regulations of officials of the European Communities requires them to respect the confidentiality of all facts and information coming to their knowledge in the course of or in connection with the performance of their duties, and they remain bound by this obligation after leaving the service;

Whereas any infringement of the rules binding officials and other servants working for the SOEC, whether committed wilfully or through negligence, renders them liable to disciplinary sanctions and, if appropriate, legal penalties for violation of professional secrecy, pursuant to the combined provisions of Articles 12 and 18 of the Protocol on the privileges and immunities of the European Communities;

Whereas, in accordance with Article 215 of the Treaty establishing the European Economic Community and Article 188 of the Treaty establishing the European Atomic Energy Community, the Community shall make good any damage caused by its institutions or by its servants in the performance of their duties;

Whereas this Regulation applies only to the transmission to the Statistical Office of the European Communities of statistical data which, in the national statistical institutes' field of competence, are covered by statistical confidentiality, and whereas it does not affect special national or Community provisions relating to the transmission of other types of information to the Commission;

Whereas this Regulation is without prejudice to the provisions of Article 223 of the Treaty establishing the European Economic Community, under which no Member State is required to supply information, the disclosure of which it considers contrary to the essential interests or its security;

Whereas, in accordance with Article 47 of the Treaty establishing the European Coal and Steel Community, the Commission has adopted in particular Decision 1566/86/ECSC⁽¹⁾ and whereas such decisions are not affected by this Regulation, in compliance with Article 232 of the Treaty establishing the European Economic Community;

⁽¹⁾ OJ No L 141, 28. 5. 1986, p. 1.

Whereas the establishment under this Regulation of an Advisory Committee on Statistical Confidentiality accords with Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of the implementing powers conferred on the Commission⁽¹⁾;

Whereas implementation of the provisions contained in this Regulation, and in particular those designed to ensure the protection of confidential statistical data transmitted to the Statistical Office of the European Communities, will require technical, human and financial resources,

HAS ADOPTED THIS REGULATION:

Article 1

1. The purpose of this Regulation is:

- to authorize national bodies to transmit confidential statistical data to the Statistical Office of the European Communities (hereinafter SOEC);
- to provide a guarantee that the Commission will take all the necessary measures to ensure the confidentiality of data thus transmitted.

2. This Regulation shall apply to statistical confidentiality only. It does not offset special Community or national provisions safeguarding confidentiality other than statistical confidentiality.

Article 2

For the purposes of the Regulation the terms given below are defined as follows:

1. *Confidential statistical data*: data declared confidential by the Member States in line with national legislation or practices governing statistical confidentiality.
2. *National authorities*: national statistical institutes and other public bodies responsible for collection of statistics for the Communities.
3. *Information on the private lives of natural persons*: information on the private and family lives of natural persons as defined by national legislation or practices in the various Member States.
4. *Use for statistical purposes*: use exclusively for the compilation of statistical tables or for statistical

economic analyses; may not be used for administrative, legal or tax purposes or for verification against the units surveyed.

5. *Statistical unit*: basic unit covered by statistical data transmitted to the SOEC.
6. *Direct identification*: immediate identification of a statistical unit from its name or address.
7. *Indirect identification*: possibility of working out the identity of one or more statistical units from statistical data, even when aggregated.
8. *Officials of the SOEC*: officials of the Communities, within the meaning of Article 1 of the Staff Regulations for officials of the European Communities, working for the SOEC.
9. *Other servants of the SOEC*: servants of the Communities, within the meaning of Articles 2 and 5 of the Regulations governing other servants of the European Communities, working for the SOEC.
10. *Dissemination*: supply of data in any form whatever; publication, access to data bases, microfiches, telephone communications, etc.

Article 3

1. The national authorities shall be authorized to transmit confidential statistical data to the SOEC.
2. National rules on statistical secrecy shall not apply to the transmission of statistical data to the SOEC where there is a Community legal act relating to Community statistics and providing for such transmission.
3. Confidential data shall be transmitted to the SOEC in a form precluding direct identification of the units surveyed, unless a Community legal act decides otherwise.
4. National authorities shall not be obliged to forward information on the private lives of natural persons to the SOEC if this could enable these persons to be identified either directly or indirectly.

Article 4

1. The Commission shall take all the necessary regulatory, administrative, technical and organizational measures to ensure the confidentiality of data transmitted by the Member States in accordance with Article 3.
2. The protection measures referred to in Article 5 shall apply:

⁽¹⁾ OJ No L 197, 18. 7. 1987, p. 33.

- (a) to all confidential statistical data, the transmission to the SOEC of which is covered by a Community legal act;
- (b) to all confidential statistical data transmitted voluntarily by Member States to the SOEC.

3. The Commission shall establish the procedures for transmitting confidential statistical data to the SOEC after consultation with the Advisory Committee on Statistical Confidentiality provided for in Article 7.

Article 5

1. The Commission shall instruct the Director-General of the SOEC to ensure the confidentiality of data transmitted to the SOEC by national authorities, and shall establish the procedures for this after consultation with the Committee on Statistical Confidentiality provided for by Article 7.

2. Confidential statistical data transmitted to the SOEC shall only be accessible to officials of the SOEC and may only be used for exclusively statistical purposes.

3. However, the Commission may grant access to confidential statistical data to other servants of the SOEC and other natural persons working on the premises of the SOEC under contract, in special cases and exclusively for statistical purposes. The procedures for such access shall be laid down by the Commission after consulting the Committee on Statistical Confidentiality provided for by Article 7.

4. Confidential statistical data in the SOEC's possession may not be disseminated unless it can be guaranteed that the statistical units concerned cannot be identified either directly or indirectly.

5. Officials or other servants of and other natural persons working for the SOEC under contract may not use these data for purposes other than those laid down in this Regulation. This prohibition shall also apply following transfer, termination of service or retirement.

Article 6

Member States shall, by 1 January 1991, take appropriate measures to deal with any violations of the obligation to maintain secrecy on confidential statistical data transmitted in accordance with Article 3.

Member States shall inform the Commission without delay of the measures taken, and the Commission shall pass on this information to the other Member States.

Article 7

1. An Advisory Committee on Statistical Confidentiality shall be set up, composed of representatives of the Member States and chaired by a representative of the Commission (the Director-General of the SOEC or another person designated by him).

2. The Chairman shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the Chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

3. The opinion of the Committee shall be recorded in the minutes. Each Member State shall have the right to ask to have its position recorded in the minutes.

4. The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

Article 8

1. The Committee may be consulted by the Commission on all questions concerning this Regulation.

2. The Committee shall be consulted by the Commission prior to adopting the measures provided for in Article 4 (3) and in Article 5 (1) and (3).

3. The Committee may, at the request of the Chairman or one of its members, examine the procedures implemented to guarantee statistical confidentiality where confidential statistics have been transmitted to the SOEC.

4. The Committee shall lay down its rules of procedure.

Article 9

The financial resources to be allocated in the general budget of the European Communities, estimated as necessary for the Commission to implement this Regulation, are:

- ECU 1 million for the year 1990
- ECU 500 000 for each year 1991, 1992 and 1993.

Article 10

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Communities*.

However, Article 3 shall apply from 1 January 1991.

This Regulation shall be binding in its entirety and directly applicable in all Member States.