



Brussels, 8.8.2013  
COM(2013) 578 final

2013/0278 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Regulation (EC) No 638/2004 on Community statistics relating to trading of goods between Member States as regards conferring of delegated and implementing powers upon the Commission for the adoption of certain measures, the communication of information by the customs administration, the exchange of confidential data between Member States and the definition of statistical value.**

## **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 powers<sup>1</sup>, the Commission has committed itself<sup>2</sup> 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, by the end of Parliament's seventh term (June 2014), to remove all provisions referring to the regulatory procedure with scrutiny from all legislative instruments.

In the context of the alignment of Regulation (EC) No 638/2004 of the European Parliament and of the Council of 31 March 2004 on Community statistics relating to the trading of goods between Member States and repealing Council Regulation (EEC) No 3330/91<sup>3</sup> 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.

In addition, some other changes are proposed in order to improve the production of intra-EU trade statistics.

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

The Committee for the statistics on the trading of goods between Member States 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.

- **(i) Alignment**

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<sup>1</sup> OJ L 55, 28.2.2011, p. 13.

<sup>2</sup> OJ L 55, 28.2.2011, p. 19.

<sup>3</sup> OJ L 102, 7.4.2004, p.1.

The main objective of this proposal is to amend Regulation (EC) No 638/2004 so as to align it with the new institutional context.

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

As regards Regulation (EC) No 638/2004, it is proposed to empower the Commission to adopt delegated acts in respect of the adoption of different or specific rules applying to specific goods or movements, the adaptation of the reference period, the adaptation of the Intrastat coverage rates, the specification of the conditions for defining the thresholds referred to in Article 10(4), the definition of the conditions for simplifying the information to be provided for small individual transactions, the definition of the aggregated data and the definition of the criteria with which the results of the estimates should comply.

Furthermore, it is proposed to confer implementing powers on the Commission enabling it to adopt, in accordance with the examination procedure laid down in Article 5 of Regulation (EU) No 182/2011, the arrangements for collecting Intrastat information, particularly concerning the codes to be used, technical provisions for compiling annual statistics on trade by business characteristics and any measures necessary to ensure the quality of the statistics transmitted according to the quality criteria.

- **(ii) Additional changes**

Simplifications of customs clearance schemes have led to the non-availability, at customs level, of statistical information about goods under customs processing procedures. In order to assure the quality and the coverage of intra-EU trade statistics, it is proposed to collect information on movements of these goods through the Intrastat system.

Furthermore, intra-EU trade statistics could, in terms of quality of the statistics and the efficiency of the system, also benefit from an increased exchange of confidential data between the relevant national authorities of the Member States. Such exchanges for statistical purposes only, should therefore be explicitly allowed.

A uniform definition of the data element “statistical value” is necessary in all trade in goods statistics at Union level. It is therefore proposed to align the current definition of this data element in intra-EU trade statistics with that of the extra-EU trade statistics.

- **(iii) 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 statistics<sup>4</sup> 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.

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<sup>4</sup> OJ L 87, 31.3.2009, p. 164.

In this domain, the Committee for the statistics on the trading of goods between Member States (Intrastat Committee) assists the Commission, in accordance with Article 14 of Regulation (EC) No 638/2004.

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 2012<sup>5</sup>, the ESSC supported this new approach.

Therefore it is also proposed to amend Regulation (EC) No 638/2004 by replacing reference to the Intrastat 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**

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**

N/A

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<sup>5</sup> 12<sup>th</sup> meeting of the ESSC, 12 February 2012.

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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<sup>6</sup>, the Commission has committed itself<sup>7</sup> 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 638/2004 of the European Parliament and of the Council of 31 March 2004 on Community statistics relating to the trading of goods between Member States and repealing Council Regulation (EEC) No 3330/91<sup>8</sup> 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 638/2004 with the new rules of the Treaty, implementing powers currently conferred upon the Commission should be

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<sup>6</sup> OJ L 55, 28.2.2011, p.13.

<sup>7</sup> OJ L 55, 28.2.2011, p. 19.

<sup>8</sup> OJ L 102, 7.4.2004, p.1.

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

- (5) In order to provide a satisfactory response to users' needs for statistical information without imposing excessive burdens on economic operators, to take into account 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 adoption of different or specific rules applying to specific goods or movements, the adaptation of the reference period, the adaptation of the Intrastat coverage rates, the specification of the conditions for defining the thresholds referred to in Article 10(4), the definition of the conditions for simplifying the information to be provided for small individual transactions, the definition of the aggregated data and the definition of the criteria with which the results of the estimates should comply.
- (6) It is of particular importance that the Commission carries out the appropriate consultations during its preparatory work, including at expert level. When preparing and drawing-up delegated acts, the Commission should ensure the simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and 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 638/2004, implementing powers should be conferred on the Commission enabling it to adopt the arrangements for collecting information, particularly concerning the codes to be used, technical provisions for compiling annual statistics on trade by business characteristics and any measures necessary to ensure that the quality of the statistics transmitted is according to the quality criteria. These powers should be exercised in accordance with Regulation (EU) No 182/2011.
- (9) The Committee for the statistics on the trading of goods between Member States (Intrastat Committee) referred to in Article 14 of Regulation (EC) No 638/2004 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<sup>9</sup>, should have an advisory role and assist the Commission in exercising its implementing powers.
- (11) Regulation (EC) No 638/2004 should be amended by replacing the reference to the Intrastat Committee with a reference to the ESSC.

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<sup>9</sup> OJ L 87, 31.3.2009, p. 164.

- (12) Simplifications of customs clearance schemes have led to the non-availability, at customs level, of statistical information about goods under customs processing procedures. To assure coverage of the data, movements of those goods should be included in the Intrastat system.
- (13) The exchange of confidential data relating to intra-EU trade statistics should be allowed between Member States with a view to increasing the efficiency of the development, production and dissemination or to improving the quality of those statistics.
- (14) The definition of statistical value should be clarified and aligned with the definition of this data element under the extra-EU trade statistics.
- (15) In accordance with the principle of proportionality, it is necessary and appropriate to lay down rules on the communication of information by the customs administration, the exchange of confidential data between MS and the definition of statistical value in the domain of intra-EU trade statistics. This Regulation does not go beyond what is necessary to achieve that objective, in accordance with Article 5(4) of the Treaty on the European Union.
- (16) To ensure legal certainty, procedures for the adoption of measures which have been initiated but not completed before the entry into force of this Regulation should not be affected by this Regulation.
- (17) Regulation (EC) No 638/2004 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

#### *Article 1*

Regulation (EC) No 638/2004 is amended as follows:

(1) In Article 3, paragraph 4 is replaced by the following:

‘4. The Commission shall be empowered to adopt, in accordance with Article 13a, delegated acts relating to different or specific rules applying to specific goods or movements.’

(2) Article 5 is amended as follows:

(a) In paragraph 1, the word ‘Community’ is deleted.

(b) Paragraph 2 is replaced by the following:

‘2. The statistical information on dispatches and arrivals of goods which are the subject of a single administrative document for customs or fiscal purposes shall be provided directly by customs to the national authorities, at least once a month.’

(c) The following paragraph 2a is inserted:

‘2a. The responsible customs administration in each Member State shall, on its own initiative or at the request of the national authority, furnish the national authority with any available information that could improve the quality of statistics.’

(3) In Article 6, paragraph 2 is replaced by the following:

‘2. The Commission shall be empowered to adopt, in accordance with Article 13a, delegated acts to adapt the reference period to take into account the linkage with value added tax (VAT) and customs obligations.’

(4) In Article 9(1), the second subparagraph is replaced by the following:

‘Definitions of the statistical data referred to in points (e) to (h) are given in the Annex. The Commission shall adopt, by means of implementing acts, the arrangements to collect this information, particularly the codes to be employed.

These implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14(2).’

(5) The following Article 9a is inserted:

*‘Article 9a*

*Exchange of confidential data*

The exchange of confidential data, as defined by Article 3(7) of Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics (\*), shall for statistical purposes only, be allowed between the respective national authorities of each Member State, where the exchange serves the efficient development, production and dissemination of European statistics relating to the trading of goods between Member States or improves their quality.

National authorities that have obtained confidential data shall treat this information confidentially and shall use it exclusively for statistical purposes.’

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(\*) OJ L 87, 31.3.2009, p. 164.’

(6) Article 10 is amended as follows:

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

‘The Commission shall be empowered to adopt, in accordance with Article 13a, delegated acts to adapt these Intrastat coverage rates to technical and economic developments whenever it is possible to reduce them, while maintaining statistics which meet the quality indicators and standards in force.’

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

‘The Commission shall be empowered to adopt, in accordance with Article 13a, delegated acts to specify the conditions for defining those thresholds.’

(c) Paragraph 5 is replaced by the following:

‘5. Member States may, under certain conditions that meet quality requirements, simplify the information to be provided for small individual transactions. The Commission shall be empowered to adopt, in accordance with Article 13a, delegated acts to define these conditions.’

(7) Article 12 is amended as follows:

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

‘(a) 40 calendar days after the end of the reference month for the aggregated data to be defined by the Commission. The Commission shall be empowered to adopt, in accordance with Article 13a, delegated acts to define these aggregated data.’

(b) Paragraph 2 is replaced by the following:

‘2. Member States shall provide the Commission (Eurostat) with monthly results which cover their total trade in goods by using estimates, where necessary. The Commission shall be empowered to adopt, in accordance with Article 13a, delegated acts to define the criteria with which the results of the estimates shall comply.’

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



‘The Commission shall adopt, by means of implementing acts, technical provisions for compiling these statistics.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14(2).’

(8) In Article 13, paragraph 4 is replaced by the following:

‘4. The Commission shall adopt, by means of implementing acts, any measures necessary to ensure the quality of the statistics transmitted according to the quality criteria.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14(2).’

(9) The following Article 13a is inserted:

*‘Article 13a  
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(4), 6(2), 10(3) (4) and (5), 12(1)(a) 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(4), 6(2), 10(3) (4) and (5), 12(1)(a) 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 the amending Regulation)].

4. The delegation of power referred to in Articles 3(4), 6(2), 10(3) (4) and (5), 12(1)(a) 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 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.

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(4), 6(2), 10(3) (4) and (5), 12(1)(a) 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.’

(10) Article 14 is replaced by the following:

*‘Article 14  
Committee*

1. The Commission shall be assisted by the European Statistical System Committee established by Regulation (EC) No 223/2009. 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.

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(\*) OJ L 55, 28.2.2011, p. 13.'

(11) In the Annex, point 3(b) is replaced by the following:

‘(b) the statistical value, which is the value calculated at the national borders of the Member States. It shall be based on the taxable amount or, where applicable, the value replacing it. It includes only incidental expenses (freight, insurance) incurred, in the case of dispatches, in the part of the journey located on the territory of the Member State of dispatch and, in the case of arrivals, in the part of the journey located outside the territory of the Member State of arrival. It is said to be a fob value (free on board) for dispatches, and a cif value (cost, insurance, freight) for arrivals.’

#### *Article 2*

This Regulation shall not affect the procedures for the adoption of measures provided for in Regulation (EC) No 638/2004 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*