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COMMISSION OF THE EUROPEAN COMMUNITIES

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Draft

COMMISSION REGULATION (EC) No .../2009

of [...]

amending Regulation (EC) No 1982/2004 implementing Regulation (EC) No 638/2004 of the European Parliament and of the Council on Community statistics relating to the trading of goods between Member States, as regards the simplification threshold, trade by business characteristics, specific goods and movements and nature of transaction codes

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to 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 3330/91¹, and in particular Articles 3(4), 9(1), 10(4), 12(1), 12(2), 12(4) and 13(4) thereof,

Whereas:

- (1) Regulation (EC) No 638/2004 was implemented by Commission Regulation (EC) No 1982/2004².
- (2) A simplification threshold below which parties may benefit from providing a limited data set should be defined in order to reduce the reporting burden on providers of statistical information.
- (3) In order to ensure harmonised compilation of statistics on trade by business characteristics, the methodology for production of these statistics should be defined.
- (4) Provisions for specific goods and movements should be adjusted for methodological reasons.
- (5) In order to ensure completeness of data in terms of quantity, the statistical results transmitted to the Commission (Eurostat) should contain estimates of the net mass where data are not collected.
- (6) Revised nature of transaction codes should be established in order to identify goods for processing under contract returning to the initial Member State of dispatch.
- (7) Regulation (EC) No 1982/2004 should therefore be amended accordingly.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Committee for the statistics on the trading of goods between Member States,

¹ OJ L 102, 7.4.2004, p. 1.

² OJ L 343, 19.11.2004, p. 3.

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1982/2004 is amended as follows:

(1) In Article 13, the following paragraph 3a is inserted:

"3a. Member States applying the thresholds in accordance with the simplified rules of Article 10(4) of Regulation (EC) No 638/2004 shall ensure that the value of the trade of the parties benefiting from the simplification shall amount to a maximum of 6% of the value of their total trade."

(2) The following Chapter 4a is inserted:

**"CHAPTER 4a
Trade by business characteristics**

Article 13a

Compilation of statistics on trade by business characteristics

1. National authorities shall compile annual statistics on trade by business characteristics.
2. The statistical units shall be enterprises as defined in the Annex to Council Regulation (EEC) No 696/93³.
3. Statistical units are constructed by linking the identification number allocated to the party responsible for providing information pursuant to Article 9(1)(a) of Regulation (EC) No 638/2004 with the legal unit of the Business Register in accordance with the variable 1.7a referred to in the Annex to Regulation (EC) No 177/2008 of the European Parliament and of the Council⁴.
4. The following characteristics shall be compiled:
 - (a) trade flow;
 - (b) statistical value;
 - (c) partner Member State;
 - (d) commodity code, according to the section or two-digit level as defined in the Annex to Regulation (EC) No 451/2008 of the European Parliament and of the Council⁵;
 - (e) number of enterprises;
 - (f) activity carried out by the enterprise according to the section or two-digit level of the statistical classification of economic activity (NACE) as laid down in Annex I to Regulation (EC) No 1893/2006 of the European Parliament and of the Council⁶;
 - (g) size class, measured in terms of the number of employees according to the definitions of characteristics for structural

³ OJ L 76, 30.3.1993, p. 1.

⁴ OJ L 61, 5.3.2008, p. 63.

⁵ OJ L 145, 4.6.2008, p. 65.

⁶ OJ L 393, 30.12.2006, p. 1.

business statistics as laid down in Annex I to Commission Regulation (EC) No 250/2009⁷.

5. The following datasets shall be compiled:
 - (a) matching rates between trade and business registers;
 - (b) trade by activity and enterprise size class;
 - (c) share of largest enterprises in terms of value of trade by activity;
 - (d) trade by partner Member State and activity;
 - (e) trade by number of partner Member states and activity;
 - (f) trade by commodity and activity.
6. The first reference year for which annual statistics are to be compiled shall be 2009. Member States shall provide data for every calendar year thereafter.
7. Statistics shall be transmitted within 18 months of the end of the reference year.
8. Member States shall ensure that statistics are provided in such a way that dissemination by the Commission (Eurostat) does not make it possible to identify an enterprise or trader. National authorities shall specify what data are affected by confidentiality provisions."

(3) In Article 16, paragraph 2 is replaced by the following:

"2. The reference period for arrivals or dispatches of staggered consignments may be adjusted so that data are reported only once, in the month when the last consignment is received or dispatched."

(4) Article 17 is replaced by the following:

"Article 17
Vessels and aircraft

1. For the purposes of this Article:
 - (a) 'vessel' means vessels considered as seagoing in accordance with CN Chapter 89, tugs, warships and floating structures;
 - (b) 'aircraft' means aeroplanes falling within CN codes 8802 30 and 8802 40;
 - (c) 'economic ownership' means the right of a taxable person to claim the benefits associated with the use of a vessel or aircraft in the course of an economic activity by virtue of accepting the associated risks.
2. Statistics relating to the trading of goods between Member States on vessels and aircraft shall cover only the following dispatches and arrivals:
 - (a) the transfer of economic ownership of a vessel or aircraft from a taxable person established in another Member State to a taxable person established in the reporting Member State. This transaction shall be treated as an arrival;

⁷ OJ L 86, 31.3.2009, p. 1.

- (b) the transfer of economic ownership of a vessel or aircraft from a taxable person established in the reporting Member State to a taxable person established in another Member State. This transaction shall be treated as a dispatch. Where the vessel or aircraft is new the dispatch is recorded in the Member State of construction;
 - (c) the arrivals and dispatches of vessels or aircraft before or following processing under contract as defined in Annex III, footnote (9).
- 3. Member States shall apply the following specific provisions on statistics relating to the trading of goods between Member States on vessels and aircraft:
 - (a) the quantity shall be expressed in number of items and any other supplementary units laid down in the CN, for vessels, and in net mass and supplementary units, for aircraft;
 - (b) the statistical value shall be the total amount that would be invoiced – transport and insurance costs excluded – in the event of sale or purchase of the whole vessel or aircraft;
 - (c) the partner Member State shall be:
 - (i) the Member State where the taxable person transferring the economic ownership of the vessel or aircraft is established, on arrival, or the taxable person to whom the economic ownership of the vessel or aircraft is transferred, on dispatch, for the movements referred to in paragraphs 2(a) and (b);
 - (ii) the Member State of construction, on arrival in the case of new vessels or aircraft;
 - (iii) the Member State where the taxable person who exercises economic ownership of the vessel or aircraft is established, on arrival, or the Member State undertaking the processing under contract, on dispatch, for movements referred to in paragraph 2(c);
 - (d) the reference period for arrivals and dispatches referred to in paragraphs 2(a) and (b) shall be the month when the transfer of economic ownership takes place.
- 4. At the request of the national authorities, the authorities responsible for managing the ships and aircraft registers shall provide all the information available to identify a change of economic ownership of a vessel or aircraft between taxable persons established in Member States of arrival and dispatch."
- (5) In Article 19(1), point (b) is replaced by the following:

"(b) a vessel or aircraft shall be deemed to belong to the Member State where the taxable person who exercises economic ownership of the vessel or aircraft as defined in Article 17(1)(c) is established."
- (6) Article 20 is replaced by the following:

"Article 20

Goods delivered to and from offshore installations

1. For the purposes of this Article:
 - (a) 'offshore installation' means equipment and devices installed and stationary in the sea outside the statistical territory of any Member State;
 - (b) 'goods delivered to offshore installations' means the delivery of products for the crew and for the operation of engines, machines and other equipment of offshore installation;
 - (c) 'goods obtained from or produced by offshore installations' means products extracted from the seabed or subsoil, or manufactured by the offshore installation.
2. Statistics relating to the trading of goods between Member States shall record:
 - (a) an arrival, where goods are delivered from:
 - (i) another Member State to an offshore installation established in an area where the reporting Member State has exclusive rights to exploit that seabed or subsoil,
 - (ii) an offshore installation established in an area where another Member State has exclusive rights to exploit that seabed or subsoil to the reporting Member State,
 - (iii) an offshore installation established in an area where another Member State has exclusive rights to exploit that seabed or subsoil to an offshore installation in an area where the receiving Member State has exclusive rights to exploit that seabed or subsoil;
 - (b) a dispatch, where goods are delivered to:
 - (i) another Member State from an offshore installation established in an area where the reporting Member State has exclusive rights to exploit that seabed or subsoil,
 - (ii) an offshore installation established in an area where another Member State has exclusive rights to exploit that seabed or subsoil from the reporting Member State,
 - (iii) an offshore installation established in an area where another Member State has exclusive rights to exploit that seabed or subsoil from an offshore installation established in an area where the dispatching Member State has exclusive rights to exploit that seabed or subsoil.
3. Member States shall use the following commodity codes for goods delivered to offshore installations:
 - 9931 24 00: goods from CN chapters 1 to 24,

— 9931 27 00: goods from CN chapter 27,

— 9931 99 00: goods classified elsewhere.

For those deliveries, except for goods belonging to CN chapter 27, the transmission of data on quantity is optional and the simplified partner Member State code 'QV' may be used."

- (7) Article 21 is replaced by the following:

"Article 21
Sea products

1. For the purposes of this Article:
 - (a) 'sea products' means fishery products, minerals, salvage and all other products which have not yet been landed by seagoing vessels;
 - (b) a vessel shall be deemed to belong to the Member State where the taxable person who exercises the economic ownership of the vessel defined in Article 17(1)(c) is established.
2. Statistics relating to the trading of goods between Member States on sea products shall cover the following arrivals and dispatches:
 - (a) the landing of sea products in the reporting Member State's ports, or their acquisition by vessels belonging to the reporting Member State from vessels belonging to another Member State. These transactions shall be treated as arrivals;
 - (b) the landing of sea products in another Member State's ports from a vessel belonging to the reporting Member State, or their acquisition by vessels belonging to another Member State from vessels belonging to the reporting Member State. These transactions shall be treated as dispatches.
3. On arrival, the partner Member State shall be a Member State where the taxable person who exercises the economic ownership of the vessel, which is carrying out the capturing, is established and, on dispatch, another Member State where the sea products are landed or where the taxable person who exercises the economic ownership of the vessel, acquiring the sea products, is established.
4. Provided that there is no conflict with other Community legislation, national authorities shall have access to all available data sources that they may need to apply this Article, in addition to those of the Intrastat system or customs declaration."

- (8) Article 22 is replaced by the following:

"Article 22
Spacecraft

1. For the purposes of this Article:
 - (a) 'spacecraft' means vehicles which are able to travel outside the earth's atmosphere;

- (b) 'economic ownership' means the right of a taxable person to claim the benefits associated with the use of a spacecraft in the course of an economic activity by virtue of accepting the associated risks.
2. The launching of a spacecraft for which economic ownership has been transferred between two taxable persons established in different Member States shall be recorded:
 - (a) as a dispatch in the Member State of construction of the finished spacecraft;
 - (b) as an arrival in the Member State where the new owner is established.
3. The following specific provisions shall apply to the statistics referred to in paragraph 2:
 - (a) the data on the statistical value shall be defined as the value of the spacecraft, excluding transport and insurance costs;
 - (b) the data on the partner Member State shall be the Member State of construction of the finished spacecraft, on arrival, and the Member State where the new owner is established, on dispatch.
4. Provided that there is no conflict with other Community legislation, national authorities shall have access to all available data sources that they may need to apply this Article, in addition to those of the Intrastat system or customs declarations."
- (9) Article 25 is replaced by the following:

"Article 25

1. Aggregated results referred to in Article 12(1)(a) of Regulation (EC) No 638/2004 are defined, for each flow, as the total value of trade with other Member States. In addition, Member States belonging to the euro area shall provide a breakdown by products of their trade outside the euro area according to sections of the Standard International Trade Classification in force.
2. Member States shall take all the necessary measures to ensure that the trade data collected from companies above the established thresholds according to Article 13 are exhaustive and comply with the quality criteria specified in Article 13 of Regulation (EC) No 638/2004.
3. Adjustments made in application of Article 12 of Regulation (EC) No 638/2004 shall be transmitted to Eurostat with at least a breakdown by partner Member State and commodity code at chapter level of the CN.
4. Where statistical value not collected, Member States shall estimate the statistical value of the goods.
5. Member States shall estimate the net mass whenever it is not collected from the parties responsible for providing information pursuant to Article 9(1). The Commission (Eurostat) shall provide Member States with the coefficients needed to estimate the net mass.
6. Member States that have adjusted the reference period in accordance with Article 3(1) shall ensure that monthly results are transmitted to the Commission (Eurostat), using estimates if necessary, where the reference period for fiscal purposes does not correspond to a calendar month.

7. Member States shall transmit data declared confidential to the Commission (Eurostat) so that they may be published at least at chapter level of the CN provided confidentiality is thereby ensured.
 8. Where monthly results already transmitted to the Commission (Eurostat) are subject to revision, Member States shall transmit the revised results no later than the month following availability of the revised data."
- (10) Annex III to Regulation (EC) No 1982/2004 is replaced by the text of the Annex to this Regulation.

Article 2

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.

This Regulation shall apply from 1 January 2010.

Done at Brussels,

For the Commission
Joaquín ALMUNIA
Member of the Commission

ANNEX

"ANNEX III

List of nature of transactions codes

A	B
1. Transactions involving actual or intended transfer of ownership from residents to non-residents against financial or other compensation (except the transactions listed under 2, 7 and 8)	1. Outright purchase/sale 2. Supply for sale on approval or after trial, for consignment or with the intermediation of a commission agent 3. Barter trade (compensation in kind) 4. Financial leasing (hire-purchase) ⁸ 9. Other
2. Return and replacement of goods free of charge after registration of the original transaction	1. Return of goods 2. Replacement for returned goods 3. Replacement (e.g. under warranty) for goods not being returned 9. Other
3. Transactions involving transfer of ownership without financial or in kind compensation (e.g. aid shipments)	
4. Operations with a view to processing ⁹ under contract (no transfer of ownership to the processor)	1. Goods expected to return to the initial Member State of dispatch 2. Goods not expected to return to the initial Member State of dispatch
5. Operations following processing under contract (no transfer of ownership to the processor)	1. Goods returning to the initial Member State of dispatch 2. Goods not returning to the initial Member State of dispatch
6. Particular transactions recorded for national purposes	
7. Operations under joint defence projects or other joint intergovernmental production programs	
8. Transactions involving the supply of building materials and technical equipment under a general construction or civil engineering contract for which no separate invoicing of the goods is required and an invoice for the total contract is issued	
9. Other transactions which cannot be classified under other codes	1. Hire, loan, and operational leasing longer than 24 months 9. Other

⁸ Financial leasing covers operations where the lease instalments are calculated in such a way as to cover all or virtually all of the value of the goods. The risks and rewards of ownership are transferred to the lessee. At the end of the contract the lessee becomes the legal owner of the goods.

⁹ Processing covers operations (transformation, construction, assembling, enhancement, renovation...) with the objective of producing a new or really improved item. This does not necessarily involve a change in the product classification. Processing activities on a processor's own account are not covered by this item and should be registered under item 1 of column A.