**13517/13**

**COM (2013)579 Final**

**EXPLANATORY MEMORANDUM ON EUROPEAN UNION LEGISLATION**

**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**

Submitted by the Office for National Statistics

September 2013

**SUBJECT MATTER**

1. This proposal seeks to amend Regulation (EC) 471/2009 on statistics on external trade with non-Member States. It seeks to align it with new rules established in the Treaty on the Functioning of the European Union (TFEU) regarding the delegation of powers to the Commission. In principle, such developments should allow the European Statistical System (ESS) to be more responsive to the needs of users. It should also ensure that the advice of the National Statistical Institutes (NSIs) of Member States has an appropriate influence in determining some aspects of regulatory requirements in the field of statistics.
2. The proposal updates the comitology process in the Commission. The process for extra-EU trade statistics will be brought into line with the new simplified structure of the ESS. In practice this means that future changes to legislation will be considered by the European Statistical System Committee (ESSC), which oversees the full range of EU statistics, rather than the Extrastat Committee. The UK is represented on the ESSC by the National Statistician, Jil Matheson.
3. The proposal also aims to confer powers on the Commission to adopt delegated or implementing acts where appropriate, according to the rules established in the TFEU by Member States.
4. A Delegated Act is used to extend the scope of a Basic Act in “non-essential” areas. Delegated Acts are drawn up by the Commission with the help of experts, in this case through the ESSC. The draft Delegated Act is then presented to European Parliament and Council who are given a specified amount of time to raise any objections. For statistics, a Delegated Act can be used to amend the detail of the requirements to ensure that the data collected remains topical and relevant. The proposed Regulation includes a clause restricting the scope of the changes: *“The Commission should ensure that these delegated acts do not impose a significant additional administrative burden on the Member States or on the respondent units.”*
5. An Implementing Act is used to ensure a common approach among Member States to implementing aspects of the regulation’s requirements. An Implementing Act can only be adopted with the agreement of Member States through Qualified Majority Voting in the ESSC.

**SCRUTINY HISTORY**

6. This is the first proposal for amending the Regulation concerned in order to align it with the TFEU.

**MINISTERIAL RESPONSIBILITY**

7*.* The Minister for the Cabinet Office.

**INTEREST OF THE DEVOLVED ADMINISTRATIONS**

8*.* Trade statistics are a reserved matter under the UK’s devolution settlements and no devolved administration interests arise. The devolved administrations have therefore not been specifically consulted in the preparation of this EM.

**LEGAL AND PROCEDURAL ISSUES**

9*.* i. **Legal basis**

Article 338 of the TFEU (Lisbon). The production of intra-EU statistics is within the scope of this Treaty article and is a long-standing feature of the European Statistical Programme.

ii. **European Parliament Procedure**

Ordinary Legislative Procedure

iii. **Voting procedure**

Qualified majority voting in the Council.

1. **Impact on United Kingdom Law**

The proposal is primarily an alignment exercise to make the control of powers for delegated to the Commission consistent with the Lisbon Treaty. The Regulation will have direct effect in the UK.

1. **Application to Gibraltar**

Gibraltar is considered as a third country for the purposes of trade statistics. Therefore imports and exports are treated as external trade to the EU**.**

1. **Fundamental rights analysis**

No fundamental rights analysis required.

**APPLICATION TO THE EUROPEAN ECONOMIC AREA**

10*.* The proposal is relevant to the EEA will become applicable there upon adoption through the European statistics agreement with the EEA.

**SUBSIDIARITY**

11.The primary purpose of the proposal is an alignment exercise. The requirement of harmonised, comparable, and consistent statistics of international trade is well established and necessary for UK Government policy analysis.

12.The Government agrees with the proposal in that alignment is necessary and there is an ongoing requirement for these statistics in the European Statistical Programme.

**POLICY IMPLICATIONS**

13.Extra-EU trade statistics are important for national and EU policy making. This proposal allows for definitions to be updated quickly to reflect changing practices in the sector and user needs. It streamlines decision-making processes and allows for better prioritisation across all statistical activities and strategic oversight by those responsible for the coordination of all official statistics in Member States (the heads of NSIs).

14. However, there is a risk that the Commission will use Delegated Acts to force the UK and other Member States to collect additional data or in ways which we feel to be unnecessary or at disproportionate cost. We will therefore seek amendments to the proposal that ensure that any such risks are minimised. Within this, we will seek to ensure that the Commission’s use of Delegated Acts are subject to regular review and that they have an obligation to justify the condition that any proposed delegated acts ‘impose no significant extra burdens on Member States’ by presenting information on costs, based on information from Member States themselves, for review by ESSC.

**CONSULTATION**

15.Given the low impact, there have been no specific consultations with external bodies on this proposal. HM Revenue and Customs produce UK data for the purposes of the regulation in question and have been fully consulted in the development of this Explanatory Memorandum.

**IMPACT ASSESSMENT**

16.An Impact Assessment is not required.

**FINANCIAL IMPLICATIONS**

17.There should be little or no financial implications from the proposals, notwithstanding successful negotiated amendments which may improve safeguards in this area.

**TIMETABLE**

18.The Lithuanian Presidency has yet to indicate a timetable for negotiations in Council.

**NICK HURD MP**

**MINISTER FOR CIVIL SOCIETY**

**CABINET OFFICE**