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 1172/95 (Text with EEA relevance)

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 1172/95

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 285(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Central Bank[(1)],

Acting in accordance with the procedure laid down in Article 251 of the Treaty[(2)],

Whereas:

(1) The statistical information on Member States′ trade flows with non-member countries is of essential importance for the Community's economic and trade policies and for analysing market developments for individual goods. The transparency of the statistical system should be improved to enable it to react to the changing administrative environment and to satisfy new user requirements. Council Regulation (EC) No 1172/95 of 22 May 1995 on the statistics relating to the trading of goods by the Community and its Member States with non-member countries[(3)] should therefore be replaced by a new Regulation in conformity with the requirements set out in Article 285(2) of the Treaty.

(2) External trade statistics are based on data obtained from customs declarations, as provided for in Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code[(4)] (hereinafter referred to as the Customs Code). Progress in European integration and the resulting changes in customs clearance, including single authorisations for the use of the simplified declaration or the local clearance procedure, as well as centralised clearance, which will emanate from the current process of modernisation of the Customs Code as laid down in Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code)[(5)] (hereinafter referred to as the Modernised Customs Code) warrant a number of changes. In particular, they make it necessary to adjust the way external trade statistics are compiled, to reconsider the

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concept of the importing or exporting Member State, and to define more precisely the data source for compiling Community statistics.

(3) Simplifications of customs formalities and controls under the Modernised Customs Code can lead to customs declarations not being available. In order to keep the compilation of external trade statistics complete, measures should be adopted which ensure that those economic operators who benefit from the simplification provide statistical data.

(4) Decision No 70/2008/EC of the European Parliament and of the Council of 15 January 2008 on a paperless environment for customs and trade[(6)] will set up an electronic customs system for the exchange of data contained in customs declarations. In order to record the physical trade flow of goods between Member States and non-member countries and to ensure that data on imports and exports is available in the Member State concerned, arrangements between customs and statistical authorities are necessary and should be specified. This includes rules on the exchange of data between Member States′ administrations. This data exchange system should benefit as far as possible from the infrastructure established by the customs authorities.

(5) In order to allocate Community exports and imports to a given Member State, it is necessary to compile data on the 'Member State of destination', for imports, and the 'Member State of actual export', for exports. In the medium term, those Member States should become the importing and the exporting Member State for external trade statistics purposes.

(6) For the purposes of this Regulation, goods for external trade purposes should be classified in accordance with the Combined Nomenclature established by Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff[(7)] (hereinafter referred to as the Combined Nomenclature).

(7) To meet the needs of the European Central Bank and of the Commission for information on the share of the euro in international trade in goods, the invoicing currency of exports and imports should be reported at an aggregated level.

(8) For the purposes of trade negotiations and internal market management, the Commission should be provided with detailed information on the preferential treatment of goods imported into the Community.

(9) External trade statistics provide data for the compilation of balance of payments and national accounts. The characteristics which make it possible to adapt them to balance of payments purposes should become part of the mandatory and standard data set.

(10) Member States' statistics on customs warehouses and free zones are not the subject of harmonised provisions. However, the compilation for national purposes of these statistics remains optional.

(11) Member States should provide Eurostat with annual aggregated data on trade broken down by business characteristics, one of the uses of which is to facilitate the analysis of how European companies operate in the context of globalisation. The link between

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business and trade statistics is established by merging data on the importer and the exporter available on the customs declaration with data requested by Regulation (EC) No 177/2008 of the European Parliament and of the Council of 20 February 2008 establishing a common framework for business registers for statistical purposes[(8)].

(12) Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics[(9)] provides a reference framework for the provisions laid down in this Regulation. However, the very detailed level of information on trade in goods requires specific confidentiality rules if these statistics are to be relevant.

(13) The transmission of data subject to statistical confidentiality is governed by the rules set out in Regulation (EC) No 223/2009 and in Council Regulation (Euratom, EEC) No 1588/90 of 11 June 1990 on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities[(10)]. Measures which are taken in accordance with those Regulations ensure the physical and logical protection of confidential data and ensure that no unlawful disclosure and non-statistical use occur when Community statistics are produced and disseminated.

(14) In the production and dissemination of Community statistics under this Regulation, the national and Community statistical authorities should take account of the principles set out in the European Statistics Code of Practice, which was adopted by the Statistical Programme Committee on 24 February 2005 and appended to the Recommendation of the Commission of 25 May 2005 on the independence, integrity and accountability of the national and Community statistical authorities.

(15) Specific provisions should be formulated to remain in force until such time as changes in customs legislation result in additional data on the customs declaration and until Community legislation requires the electronic exchange of customs data.

(16) Since the objective of this Regulation, namely establishing the common framework for the systematic production of Community external trade statistics, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(17) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[(11)].

(18) In particular, the Commission should be empowered to adapt the list of customs procedures or customs-approved treatment or use which determine an export or import for external trade statistics; to adopt different or specific rules for goods or movements which, for methodological reasons, call for specific provisions; to adapt the list of goods and movements excluded from external trade statistics; to specify the data sources other than the customs declaration for records on imports and exports of specific goods or movements; to specify the statistical data, including the codes to be used; to

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establish requirements for data related to specific goods or movements; to establish requirements on the compilation of statistics; to specify the characteristics of samples; to establish the reporting period and the level of aggregation for partner countries, goods and currencies; and also to adapt the deadline for transmitting statistics, content, coverage and revision conditions for statistics already transmitted; and to establish the deadline for transmitting statistics on trade by business characteristics and statistics on trade broken down by invoicing currency. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, *inter alia* by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation establishes a common framework for the systematic production of Community statistics relating to trade in goods with non-member countries (hereinafter referred to as external trade statistics).

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

(a) ‘goods’ means all movable property, including electricity;

(b) ‘statistical territory of the Community’ means the ‘customs territory of the Community’ as defined in the Customs Code with the addition of the Island of Heligoland in the territory of the Federal Republic of Germany;

(c) ‘national statistical authorities’ means the national statistical institutes and other bodies responsible in each Member State for producing external trade statistics;

(d) ‘customs authorities’ means the ‘customs authorities’ as defined in the Customs Code;

(e) ‘customs declaration’ means the ‘customs declaration’ as defined in the Customs Code;

(f) ‘decision by customs’ means any official act by customs authorities relating to accepted customs declarations and having legal effect on one or more persons.

Article 3

Scope

[[F1]1 External trade statistics shall record imports and exports of goods.

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An export shall be recorded by Member States in the event that goods leave the statistical territory of the Community

a in accordance with one of the following customs procedures laid down in Regulation (EU) No 952/2013 of the European Parliament and of the Council[(12)] ('the Union Customs Code'):
   — export;
   — outward processing;
b in application of Article 258 of the Union Customs Code;
c in application of Article 269(3) of the Union Customs Code;
d in application of Article 270 of the Union Customs Code to discharge an inward processing procedure.

An import shall be recorded by Member States in the event that goods enter the statistical territory of the Community in accordance with one of the following customs procedures laid down in of the Union Customs Code:

a release for free circulation including end-use;
b inward processing.**]**

[[F2]2 In order to take account of changes in the Customs Code and provisions deriving from international conventions, the Commission is empowered to adopt delegated acts in accordance with Article 10a adapting the list of customs procedures or customs-approved treatment or use referred to in the second subparagraph of paragraph 1 of this Article.**]**

3 For methodological reasons, certain goods or movements call for specific provisions. This concerns industrial plants, vessels and aircraft, sea products, goods delivered to vessels and aircraft, staggered consignments, military goods, goods to or from offshore installations, spacecraft, electricity and gas and waste products (hereinafter referred to as specific goods or movements).

[[F2]The Commission is empowered to adopt delegated acts in accordance with Article 10a relating to specific goods or movements and to different or specific provisions applicable to them.**]**

4 For methodological reasons, certain goods or movements shall be excluded from external trade statistics. This concerns monetary gold and means of payment which are legal tender; goods the intended use of which is diplomatic or similar nature; movements of goods between the importing and exporting Member State and their national armed forces stationed abroad as well as certain goods acquired and disposed of by foreign armed forces; particular goods which are not the subject of a commercial transaction; movements of satellite launchers before their launching; goods for and after repair; goods for or following temporary use; goods used as carriers of customised information and downloaded information; and goods declared orally to customs authorities which either are of a commercial nature, provided that their value does not exceed the statistical threshold of EUR 1 000 in value or 1 000 kg in net mass, or are of a non-commercial nature.

[[F2]The Commission is empowered to adopt delegated acts in accordance with Article 10a relating to the exclusion of goods or movements from external trade statistics.**]**

[[F3]5 When exercising the powers delegated in paragraphs 2, 3 and 4, the Commission shall ensure that the delegated acts do not impose a significant additional burden on the Member States or on the respondents.**]**