

Legal and non-legal measures in business statistics

Preface

This article highlights the legal and non-legal measures in business statistics at the European level. Non-legal measures are defined here as non-binding agreements outside the legal and legislative scope.

The architecture outlined in this article takes into account new legal and non-legal proposals for improving European business statistics which are expected to enter into force during 2017-2018 upon the adoption of FRIBS — the new legal framework on business statistics.

The article is part of the on-line publication [European Business Statistics manual](#).

Table of contents

1. [Introduction](#)
2. [Legal and non-legal instruments for statistics in general](#)
3. [Regulations and non-legal guides in business statistics](#)
4. [The legal and non-legal measures of the production process of business statistics](#)
5. [See also](#)
6. [Further Eurostat information](#)
7. [External links](#)
8. [Contact](#)

1. Introduction

The statistical production process of European Business Statistics in terms of input, throughput and output, is based on an extensive set of legal and extra-legal measures between National Statistical Institutes (NSIs), Other National Authorities (ONAs, which may include National Central Banks) and Eurostat also referred to as the European Statistical System (ESS).

The legal setting of these agreements is rooted in the [legal framework of European Statistics](#) which offers the key provisions that apply for statistical processes within the ESS. The requirements outlined in this framework (also known as the 223/2009 Regulation) are fundamental to all statistical sectors;

social statistics, agricultural statistics, government statistics, business statistics and derived statistics such as National Accounts and statistical policy indicators. In 2015 the 223/2009 Regulation has been amended by Regulation 2015/759.

The Regulation 223/2009 covers various general cross-sectoral topics, for instance on the governance structure within the ESS, the Code of Practice, the European statistical program, the re-use of administrative data for reducing the burden on respondents and an extensive set of rules ensuring and safeguarding statistical confidentiality, and the dissemination of statistical end products and their statistical quality measured by relevance, accuracy, timeliness, punctuality, accessibility and clarity, comparability and coherence.

The [Code of Practice](#) (pdf) embedded in the general legal framework set the standard for developing, producing and disseminating European statistics, and target at a cost-effective, solid and transparent organisation of the statistical process ensuring professional independence, impartiality, objectivity, reliability, statistical confidentiality and cost effectiveness avoiding as much as possible administrative burden on businesses. These principles are essential for the organisation of the ESS and as such for the organisation of business statistics.

The measures which are specific for each of the statistical sectors specify the requirements of the abovementioned general legal framework and are described by separate so-called sectoral legislation. In addition to these legal measures there are also sectorial non-legal (i.e. non-binding) measures.

This article focuses on the renewed package of legal and non-legal measures in the field of European business statistics which are expected to come into force in 2017-2018 when FRIBS, the new legal framework for business statistics, is foreseeably adopted.

The article is part of the broader set of articles of the on-line European Business Statistics manual. Whereas the other articles of the manual primarily are highlighting the various elements of the statistical production process in terms of input, throughput and output, this article explains in basic the set of legal and non-legal measures supporting these elements. As such, this article is complementary to each of the other articles of the EBS manual.

2. Legal and non-legal instruments for statistics in general

The instruments for shaping the various sectoral measures can be sub-divided into various categories:

1. those that are regulated in a statistical Regulation adopted by the co-legislators (i.e. European Parliament and Council) in the ordinary legislative procedure, and only modifiable by the co-legislators by a change of this so-called '**basic act**';
2. those that are regulated in a basic act, and especially its annexes, but amendable (added, modified or detailed) by the European Commission by means of **delegated acts** under conditions which are specified in the basic act;

3. those that are regulated in a basic act in general terms only, and further detailed by **implementing acts** adopted by the Commission and are subject to the control of the Member States (Comitology Procedure);
4. those that are regulated in general terms in a legal act only, and further detailed in **technical standards** endorsed by the associated technical working groups in the ESS;
5. those outside legal acts endorsed by the ESS-Committee or associated Directors' or technical groups, also referred to as **technical standards**;
6. other **non-legal guidelines**.

The three types of legal instruments — basic act, delegated act, implementing act — are defined by the Treaty on the Functioning of the European Union, whose provisions regarding these instruments were substantially amended by the [Lisbon Treaty](#) (pdf) in 2009. This set of legal instruments has been renewed by the EU and its Member States in the view of making the EU more democratic, more efficient and better able to address global problems, with one voice. In legal terms the 'one voice' means more power for the European Parliament by making the co-decision procedure the standard legislative procedure (Article 294 TFEU) and extending the qualified majority voting in the Council as well as a reweighting of the votes within the Council by taking into account the population of the Member States. A comprehensive document detailing the inter-institutional collaboration during the legislative process is provided by the [Interinstitutional agreement between the European Parliament, the Council of the European Union and the European Commission on better law-making](#) (2016).

Main features of Delegated and Implementing Acts

The **delegated act** (based on Article 290 of the Lisbon Treaty) implies that the basic act delegates the power to the Commission to supplement or amend non-essential elements of the basic act opening the possibility for minor changes without going through the whole ordinary legislative procedure.

Features: High degree of flexibility and of involvement of Member States' experts. The delegated act includes Member States experts' consultation without vote by the relevant expert group but with a possibility of EP and/or Council veto. The powers delegated to the Commission can be limited in the basic act by including safeguard clauses that describe the maximum extent to which the delegated acts may modify the requirements.

The **implementing act** (based on Article 291 of the Lisbon Treaty): Commonly it lies within the power of the Member States to adopt all measures of national law necessary to implement legally binding Unions acts. But where uniform conditions for implementing legally binding acts are needed, those acts shall confer implementing powers on the Commission. The conferring of the implementing powers is controlled by the Member States via the Comitology-Procedure. The Committee vote (carried out by the European Statistical System Committee (ESSC) in the case of statistics) is needed prior to the Commission adoption and usually includes a consultation of expert groups. For statistical acts the vote is usually preceded by an extensive consultation of expert groups, although from a procedural point of view this is strictly speaking not necessary. Furthermore, the implementing act cannot be used to change any part of the basic act including the annexes.

Features: High degree of flexibility and of involvement of Member States' experts. The implementing act includes a Committee vote prior to the adoption of the implementing act.

3. Regulations and non-legal guides in business statistics

Beginning of 2017 the Commission has launched a new legislative proposal to the Council and the European Parliament for adoption: the Framework Regulation Integrating Business Statistics (FRIBS).

The new integrated legislation will replace the current variety of domain specific Regulations:

1. ProdCom: Regulation (EEC) No 3924/91 and Regulation (EC) 912/2004;
2. Short-term statistics: Regulation (EC) No 1165/1998;
3. R&D and Community Innovation Survey: Decision (EC) 1608/2003;
4. ICT enterprise statistics: Annex I (Module1: enterprises and the information society) of Regulation (EC) No 808/2004;
5. Steel statistics: Regulation (EC) No 48/2004;
6. Intra-EU trade in goods statistics — Intrastat: Regulation (EC) No 638/2004;
7. Foreign Affiliates statistics: Regulation (EC) No 716/2007;
8. Structural business statistics: Regulation (EC) No 295/2008;
9. Business Registers: Regulation (EC) No 177/2008;
10. Extra-EU trade in goods statistics — Extrastat: Regulation (EC) 471/2009;

And FRIBS will amend

11. Balance of Payment: Regulation (EC) No 184/2005.

A complete list of links to these and other statistical regulations can be found in the [current legislation in force](#).

FRIBS will also replace a number of provisions on classifications that are included as part of the repealed regulations, notably the Main Industrial Groupings and Special NACE aggregates, the list of ProdCom industrial products and the Geo-nomenclatures of international trade in goods and international transactions. It will, however, not repeal any of the 'standalone' regulations of classifications, such as NACE, NUTS, CPA and the Combined Nomenclature.

Also the regulation on Statistical Units will not be affected by FRIBS; moreover, FRIBS remains to be based on the existing regulation, albeit with a more precise set of operational rules for defining the statistical units.

Besides this legal foundation there are also a number of non-legal standards and guidelines applicable to business statistics that are needed on the operational level. Methodologies and compilation guides are a substantial part of these non-legal standards and guidelines and are described and hyperlinked to by the EBS manual and its Statistics Explained articles. But it includes as well the results of the joint collaborative research and development program of the ESS which started in September 2002 (also referred to as [ESSNet](#)) and which has been complemented recently with projects implementing the [ESS Vision 2020](#) (also referred to as ESSVIP projects).

The outcomes of the ESSVIP projects are predominantly non-legal (i.e. non-mandatory). However, some of its outcomes are or will be used as an input for defining legal provisions. The outcomes of the ESSVIP project on building trade statistics in the European single market for instance will be used in FRIBS provisions regarding Intra-EU trade in goods statistics, safeguarding secure micro data exchange and aim at ensuring a substantial reduction of the response burden, while at the same time maintaining a sound level of quality and responding to changing user needs.

All in all business statistics and their production are ruled by provisions set out by (a) the general legal framework applicable to all official European statistics, (b) FRIBS as sectoral legislation for business statistics and (c) other regulations for instance on classifications, statistical units, as well as (d) technical standards and other non-legal guidelines.

4. The legal and non-legal measures of the production process of business statistics

In business statistics the legal instruments described in section 2 typically apply to the **input** and **output** elements of the statistical production process, whereas the non-legal instruments are more dedicated to **throughput** and dissemination measures.

Input elements which are essential for the harmonisation of business statistics are for example the scope of the observed business population, the Business Register, the EuroGroups Register, the Statistical Units, and the Classifications. These infrastructural input elements jointly constitute the backbone for setting up European business statistics and it is for this reason that they are regulated by law ensuring a harmonised approach across the EU.

The variety of data input sources that potentially *can* be used for producing the data is also enumerated in the legal package, albeit, that the final choice which of these sources *will* be used in practice at the national level is fully left to the Member States, meaning to individual Statistical Authorities, based on the principle of subsidiarity.

The **output elements** included in the legal package are mainly targeting at what data needs to be transmitted from the NSIs and ONAs to Eurostat, and by which level of detail, deadlines and definitions. For defining the data all three legal instruments (basic act, delegated act, and implementing act) are used.

What type of act to use for which part of the data requirements is one of the more difficult issues in the legislative process of FRIBS, and will be decided by the legislators during the adoption procedure. The following allocation is based on the current Commission proposal and may therefore be subject to change in the coming periods.

The *subject area, topic, and periodicity* of the data are to be considered essential elements and therefore fixed by the basic act. They can only be modified by the European Parliament and Council in the ordinary legislative procedure (see category 1 of section 2). The topics are further detailed in an Annex of the basic act (the so-called detailed topics) and can be modified — within certain limits laid down in safeguard clauses — by means of a delegated act. First of all, the modifications introduced by delegated acts should aim at cost and burden neutrality and should in any case not increase significantly the costs for NSIs and the burden on respondents. Secondly, in order to limit the number of modifications, the number of detailed topics that can be added or replaced is limited to a maximum over a period of five consecutive years. This is ensured by so-called safeguard clauses in the basic act.

‘Innovation’, ‘ICT-usage and e-commerce’ and ‘Global value chains’ are typically *topics* with frequently changing subjects and main characteristics. They are referred to as so-called *dynamic business statistics*. For these statistics, delegated acts supplement the basic act for specifying the subjects and characteristics in order to ensure the necessary flexibility. Again, the changes should aim at cost burden neutrality and in any case not increase the cost and burden. The number of characteristics cannot increase significantly between two consecutive rounds of data collection and should never exceed the number of the characteristics of the first year of implementation.

For all topics (both dynamic and the others) the other, more technical, elements of the data requirements are regulated by an implementing act. This concerns the type of statistical units to be used, the measurement unit, the reference period, the statistical population, the breakdown and classifications, transmission deadlines, and first reference period and for the topics other than the topics of dynamic business statistics the variables to be provided.

Besides these legal instruments there are also technical standards and guidelines, so-called non-legal instruments, which are not binding. They typically relate to the **throughput** and **dissemination** process, and describe (a) how the inputs are collected, compiled, edited, and aggregated to outputs and related quality reports at the national level, (b) how the resulting outputs are transmitted from the Member State to Eurostat, which EU-harmonised validation rules apply and finally (c) how the data is calculated into EU-aggregates and how they are disseminated.

The allocation of the elements of the statistical production process into legal and non-legal measures should be treated with some nuance. Some more technical aspects of the input and output elements, such as operational rules, are formulated as technical guidelines outside the legal acts. Also as regards throughput elements, they are not all fully outside the legal scope; some generic less technical provisions on throughput are included in the legal acts, for

instance on quality reporting and data transmission.

Methodological articles/manuals/handbooks that offer descriptive details are themselves belonging to the category of non-legally binding guidelines.

Although not a legal requirement in itself, the manual on European Business Statistics aims at clarifying both legal and non-legal elements of the statistical process of business statistics for the purpose of assisting data compilers and for providing background information for interested end users.

The table below provides an overview how the various elements of the statistical production process — as distinguished by the various articles of the EBS manual — are embedded in the legal acts and non-legal guidelines. The 'See details' hyperlinks under the column non-legal standards and guidelines will open up the Statistics Explained article providing a comprehensive overview of the associated part of the statistical production process. By definition these Statistics Explained articles are extra-legal.

Mapping of the statistical production process in terms of legal and non-legal instruments	Legal framework EU statistics (EC 223/2009) consolidated version	FRIBS Basic Act modifiable by Co-decision (EP & Council)	FRIBS Basic Act modifiable by Delegated Act	FRIBS Delegated Acts [a]	FRIBS Implementing Acts [a]	Other Regulations	Non-legal standards, guidelines and clarifications
Scope and main concepts in Business Statistics	Art 1 - 17	Art. 1, Art. 2, Art. 3					See details
Business registers		Art. 3, Art. 8, Art. 9, Art. 10, Annex III (part A and B)	Annex III (part C)		<u>Descriptive details</u>		See details
EuroGroups Register		Art. 3, Art. 8, Art. 9, Art. 10, Annex III (part A and B)	Annex III (part C)		<u>Format, security and confidentiality</u>		See details
Profiling							See details
Statistical units for Business Statistics		Art. 2				Reg. EEC 696/93	See details
Classifications for Business Statistics		Art. 7			<u>MIGS and special aggregates</u>	NACE (consolidated)	See details
					<u>ProdCom-list</u>	NUTS (consolidated)	
					<u>GEO-nomenclatures</u>	CPA	
						CN (consolidated)	
Data sources for Business Statistics		Art. 4, Art. 5, Art. 11 Art. 12, Art 13					See details
of which related to re-use of admin data	Art. 17a	Art. 5		<u>Administrative records from tax and customs authorities</u>	<u>Modalities of data exchanges related to administrative records</u>		
of which related to micro data exchange in Intrastat	Art. 21	Art. 11, Art. 12, Art. 13		<u>Reduction of coverage rate</u>	<u>Technical specifications of exchange; Modalities of collection respectively compilation of the statistical information exchanged; Specification of metadata relevant for the use of the exchanged data in the compilation; Specification of statistical data elements contained in the exchanged micro-data; Modalities of simplification (incl. maximum value benefitting from simplification</u>		

Processing methods in Business Statistics		Art. 4, Art. 5, Art. 11					See details
Data validation	Art. 12	Art. 16 and Art. 17					See details
Reference metadata reporting	Art. 12	Art. 16 and Art. 17			<u>Quality and metadata reporting</u>		See details
Data exchange (EDAMIS & SDMX)		Art. 17			<u>Data transmission specs</u>		See details EDAMIS See details SDMX
Statistical Disclosure Control	Art 20 -26	Art. 18 (ITGS), Art. 14 , Art. 15					See details
of which related to micro data exchange in Intrastat	Art. 21	Art. 14 , Art. 15			<u>Protection of exchanged confidential data</u>		
Production of European aggregates	Art. 16						See details
Data requirements	Art. 13 , Art. 14	Art. 6 , Art. 7 , Annex I (insofar subject areas, topics), Annex II (periodicity)	Annex I (insofar detailed topics)		<u>Definitions of variables</u>		See details
<i>of which specifically related to</i>							
<i>- ICT&e-commerce; Innovation; Global Value Chain (GVC)</i>				<u>ICT Innovation GVC</u>	<u>ICT Innovation GVC</u>		
<i>- other business statistics</i>					<u>Variables and other data specs</u>		
					<u>Simplifications</u>		
					<u>Additional specs ITGS</u>		
					<u>Additional specs short-term statistics</u>		
Dissemination of Business Statistics	Art. 18 , Art. 20(3)	Art. 18 (ITGS)					See details
Microdata service for researchers	Art. 19 , Art. 23	Art. 15 (ITGS)				Reg. EU 557/2013	See details
Detailed domain specific methodologies							See details

Footnote [a]: the hyperlinks to FRIBS' Delegated and Implementing Acts will become available in the near future

5. See also

Overview of methodologies of European business statistics: [EBS manual](#)

6. Further Eurostat information

Legislation:

- [legal framework of European Statistics](#)
- [Regulation 223/2009](#) (consolidated)
- FRIBS' [Basic Act](#) and [Annexes](#)
- Overview of the [current legislation in force](#).

7. External links

Legislation:

- [Lisbon Treaty](#)

8. Contacts

For questions or comments on this chapter, please contact ESTAT-EBS-MANUAL@ec.europa.eu.