

**REASONED OPINION 5/2012 OF THE JOINT COMMITTEE ON THE EUROPEAN UNION OF 12 JUNE 2012 ON NON-COMPLIANCE WITH THE PRINCIPLE OF SUBSIDIARITY OF THE PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING REGULATION (EC) NO 223/2009 ON EUROPEAN STATISTICS (TEXT WITH RELEVANCE FOR THE EEA AND SWITZERLAND) [COM (2012) 167 FINAL] [2012/0084 (COD)]**

**BACKGROUND**

**A.** The Protocol on the application of the principles of subsidiarity and proportionality attached to the Treaty of Lisbon of 2007, which has been in force since 1 December 2009, has established a control procedure for national parliaments to check whether draft European legislative acts comply with the principle of subsidiarity. The Protocol was transposed into Spanish law by Act 24/2009 of 22 December 2009 amending Act 8/1994 of 19 May 1994. In particular, the new Articles 3(j), 5 and 6 of Act 8/1994 constitute the legal basis for this Opinion.

**B.** The proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 223/2009 on European statistics has been approved by the European Commission and submitted to national parliaments. The parliaments have eight weeks, until 13 June 2012, to examine the proposal's compliance with the principle of subsidiarity.

**C.** On 21 May 2012 the Bureau and Spokespersons of the Joint Committee on the European Union decided to examine the proposal, appointed José López Garrido (MP) as rapporteur and requested from the Government the report referred to in Article 3(j) of Act 8/1994.

**D.** A report was received from the Government, as well as documents from the Parliaments of Aragon and the Basque Country. The Government's report indicated that certain aspects of the proposal were relevant to the principle of subsidiarity and, if adopted in its current wording, the proposal would be likely to infringe Article 5 of the Treaty on the Functioning of the European Union. In particular, Article 5 of the proposal and part of Article 5a would encroach on the organisational powers of the Member States in a manner that is not justified by the need to enhance the European Statistical System. The report concludes that, since the decision on the internal organisation of the national statistical system falls within the competence of each Member State, the EU does not have the right to legislate on such a matter in the interest of improving the quality of European statistics.

**E.** The report submitted by the Basque Parliament states that the proposal does not comply with the principle of subsidiarity since it is yet to be demonstrated that national statistical systems are unable to guarantee appropriate independence of the statistical bodies concerned, efficient coordination of those bodies, proper use and management of administrative data for statistical purposes or a commitment to confidence in statistics.

**F.** On 12 June 2012 the Joint Committee on the European Union approved the following

**OPINION**

**1.-** Article 5 of the Treaty on European Union states 'The use of Union competences is governed by the principles of subsidiarity and proportionality', and adds 'Under the principle of subsidiarity [...] the Union shall act only if and in so far as the objectives of the proposed

action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.’ The Protocol on the application of the principles of subsidiarity and proportionality annexed to the Treaty of Lisbon of 2007 describes the objective, procedure and effects of the subsidiarity check to be carried out by national parliaments (Articles 5(3) and 12(b) TEU).

**2.-** It is clear that reliable statistics are becoming increasingly necessary for policymakers, businesses and citizens to take appropriate, evidence-based decisions. It is also true that recent developments have demonstrated the need to strengthen the credibility of statistics.

The reliability of statistical data in terms of technical quality-assessment criteria is a prerequisite for ensuring the trust of users, but the credibility of the institutions producing statistics is equally important.

The Commission has recognised these facts and, in its Communication ‘Towards robust quality management for European Statistics’, indicated the need to strengthen the governance of the European Statistical System (ESS) by securing unconditional application of the principle of professional independence of National Statistical Institutes (NSIs), clarifying their coordinating role in the national statistical systems and improving the use of administrative data for statistical purposes.

Furthermore, it was proposed that ‘Commitments on Confidence in Statistics’ be established in order to make national governments aware of their role in, and co-responsibility for, ensuring the credibility of official statistics by respecting the independence of NSIs.

The diagnosis included in the Communication and the improvements proposed were supported by the Ecofin Council. The fundamental importance of the principle of professional independence of NSIs was also explicitly recognised by the European Parliament and the Council in the legislative ‘six-pack’ on enhanced economic governance, which entered into force in December 2011. That specifies that the professional independence of national statistical authorities requires, *inter alia*, transparent recruitment and dismissal procedures based solely on professional criteria. Moreover, on 13 March 2012 the European Parliament adopted a resolution calling on the Commission to rapidly implement measures to improve quality management and governance in European statistics.

The Task Force on the revision of Regulation (EC) No 223/2009, comprising representatives of 14 countries, discussed four main issues from the Communication ‘Towards robust quality management for European Statistics’ with respect to strengthening the governance of the European Statistical System: the independence of NSIs, their coordinating role in national statistical systems, the use and management of administrative data for statistical purposes, and the Commitments on Confidence in Statistics.

The proposal to amend the Regulation is based on the above and on the conclusions and recommendations of the Task Force.

**3.-** The proposal calls for a revision of the current basic legal framework for European statistics, adapting it to meet the policy needs and challenges created by recent developments in the global economy. The main goal is to further strengthen governance in the ESS in order to safeguard its high degree of credibility and respond appropriately to data needs resulting

from enhanced economic policy coordination in the European Union.

According to the proposal, the professionalism and independence of Heads of NSIs is of key importance and, to that end, it is indispensable that they have the freedom to decide on processes and statistical methods, standards and procedures, as well as on the content and timing of all European statistics. The amendment also prohibits Heads from seeking or receiving instructions from governments or other national institutions. In addition, it grants them considerable autonomy in deciding on the internal management of statistical offices and allows them to publicly comment on the budget allocated to NSIs in the context of the tasks to be performed. Furthermore, the proposal establishes a basic principle of transparency in the appointment, transfer and dismissal of Heads of NSIs, based solely on professional criteria.

As a natural complement to the guarantee of independence, the proposal incorporates the principle that Heads of NSIs should be accountable, both in terms of statistical output and budget execution. Accordingly, they should present an annual report on statistical activities and the financial situation to the respective authority.

The coordinating role of NSIs in the national statistical systems is specified in the proposed amendment to **Article 5(1) of Regulation (EC) No 223/2009** with the addition of explicit powers in respect of institutions, bodies and functions to be coordinated.

Another amendment clarifying the role of the NSIs is the new Article 17a on the access to, use and integration of administrative records, which replaces the current Article 24. Its primary aim is to establish a legal framework for more extensive use of administrative data sources for the production of European statistics without increasing the burden on respondents, NSIs or other national authorities. According to the proposal, NSIs should be involved, to the extent necessary, in decisions on the design, development and discontinuation of administrative records which could be used in the production of statistical data.

NSIs should also coordinate relevant standardisation activities and receive metadata on administrative data extracted for statistical purposes. Free and timely access to administrative records should be granted to NSIs, other national authorities and Eurostat, but only within the respective public administrative system and to the extent necessary for the development, production and dissemination of European statistics.

The amendment to Article 6 of Regulation (EC) No 223/2009 incorporates the need to adequately secure the independence of Eurostat at Union level in the same way as is proposed for NSIs at national level. That is crucial for the credibility of the entire ESS and was strongly emphasised by a vast majority of the Member States in the prior stakeholder consultation.

Moreover, in order to simplify and consolidate budget planning for statistical activities, the programming period for the European statistical programme has been brought into line with the multiannual financial framework.

**4.-** From a budgetary point of view, the proposal is expected to have no resource impact within the ESS. On the contrary, it is meant to simplify and improve coordination and collaboration within the system, leading to more efficient production of European statistics and reducing the burden on respondents.

The human resources required for this project within the Commission will be provided by staff from the Directorate-General already managing the legal act concerned or redeployed within the Directorate-General.

**5.-** In line with the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union acts only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

It is no coincidence that the principle of subsidiarity is preceded in Article 5 TEU by the principle of conferral. Under the principle of conferral, the Union acts only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein, and any competences not conferred upon the Union in the Treaties remain with the Member States.

Thus, the new Article 5(2) of the Regulation **confers on NSIs responsibility for coordinating all other national authorities responsible for the development, production and dissemination of European statistics.**

Although the objectives pursued by the amendment to Regulation (EC) No 223/2009 are laudable in many respects, some aspects of the current wording would encroach on the organisational powers of the Member States in a manner that is not justified by the need to enhance the ESS.

Moreover, the proposed wording of Article 5a of the Regulation confers on **Heads of NSIs:**

- **sole responsibility** for deciding on processes and statistical methods, standards and procedures, as well as on the content and timing of all European statistics;
- **the power to decide on all matters regarding the internal management of the NSI;**
- **the duty to coordinate the statistical activities of all national authorities** that contribute to the development, production and dissemination of European statistics.

Spain is a decentralised State in which territorial organisation is set out in the Constitution and powers are shared out in accordance with both the Constitution and other provisions with the status of organic laws, such as the various Statutes of Autonomy. All of the those, with different words, assign to the respective autonomous communities responsibility for managing the autonomous statistical system. Mention should be made of the Statutes of Autonomy of Andalusia (Article 76(3)), Aragon (Article 71), Asturias (Article 10(29)), the Canary Islands (Article 30(23)), Cantabria (Article 24(28)), Castile-La Mancha (Article 31(24)), Castile-Leon (Article 70(29)), Catalonia (Article 135), the Balearic Islands (Article 30(32)), Extremadura (Article 9(1)(9)), Galicia (Article 27(6)), Madrid (Article 26(1)(31)), Murcia (Article 10(1)(25)), Navarre (Article 44(21)), the Basque Country (Article 10(37)), Rioja (Article 8(1)(33)) and Valencia (Article 49(1)(32)).

It is legally unacceptable for the amendment to the Regulation to impinge on the capacity of Member States to decide how to organise their national statistical system in terms of the

powers, responsibilities and decision-making capability of the various bodies involved.

Furthermore, it has yet to be demonstrated that the national systems, with their own ways of organising themselves, are unable to guarantee the independence of the relevant statistical authorities in their territory, the efficient coordination of those authorities and the proper use of administrative data for statistical purposes, thereby creating a reliable statistical system. The proposed amendment to the Regulation therefore fails to comply with the principle of subsidiarity.

In terms of the principle of proportionality, many of the aims pursued by the proposed amendment to the Regulation, which are contained in the Commission Communication to the European Parliament and the Council ‘Towards robust quality management for European Statistics’, are perfectly achievable through the measures spelt out in section 4.1.3 of the Communication, namely the formal commitment by Member States, in line with the Code of Good Practice ‘Commitment on Confidence in Statistics’, to adopt all necessary measures to maintain confidence in their statistics and monitor implementation of the Code. Moreover, the Communication clearly indicates the procedure to be followed: ‘the Commission will draft an agreed core of basic principles of **“Commitments on Confidence in Statistics” in cooperation with Member States with a view to incorporating it in Regulation (EC) No 223/2009.**’

## CONCLUSION

**For the above reasons, the Joint Committee on the European Union considers that, although the aims pursued by the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 223/2009 on European statistics are laudable in many respects, some aspects of the current wording would encroach on the organisational powers of the Member States in a manner that is not justified by the need to enhance the ESS. The proposal therefore fails to comply with the principles of subsidiarity and proportionality set out in the Treaty on European Union.**

**This Opinion is to be forwarded to the European Parliament, the Council and the European Commission in the context of the political dialogue between national parliaments and the EU institutions.**