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►**B** **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

(OJ L 151, 15.6.1990, p. 1)

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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

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 213 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 187 thereof,

Having regard to the draft Regulation submitted by the Commission [1],

Having regard to the opinion of the European Parliament [2],

Whereas, to enable it to carry out the duties entrusted to it by the Treaties, and especially in the light of the internal market as provided for in Article 8a of the Treaty establishing the European Economic Community, hereinafter referred to as the 'EEC Treaty', the Commission must have full and reliable information; whereas, with a view to efficient management, the Statistical Office of the European Communities, hereinafter referred to as the 'SOEC', must be able to obtain all the national statistical information necessary in order to prepare Community statistics and carry out the necessary analyses;

Whereas Article 5 of the EEC Treaty and Article 192 of the Treaty establishing the European Atomic Energy Community, hereinafter referred to as the 'Euratom Treaty', require Member States to facilitate the achievement of the Community's tasks; whereas this obligation extends to providing all the requisite information; whereas the absence of confidential statistical data constitutes for the SOEC a considerable loss of information at Community level and makes it difficult to prepare statistics and carry out analyses on the Community;

Whereas Member States will have no further cause to invoke provisions on statistical confidentiality once it is established that the SOEC offers the same data confidentiality guarantees as the national statistical institutes;

whereas these guarantees are already to some extent enshrined in the Community Treaties, notably in Article 214 of the EEC Treaty and Article 194 (1) of the Euratom Treaty, and in the Staff Regulations of Officials of the European Communities and can be backed up by appropriate measures under this Regulation;

Whereas, in accordance with Article 214 of the EEC Treaty and Article 194 (1) of the Euratom Treaty, officials and other servants of the Community are required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy;

Whereas Article 17 of the Staff Regulations of Officials of the European Communities requires officials to respect the confidentiality of all facts and information coming to their knowledge in the course of, or in connection with, the performance of their duties; whereas they remain bound by this obligation after leaving the service;

Whereas any violation of statistical confidentiality protected by this Regulation must be dealt with effectively, whoever the offender may be;

Whereas any infringement of the rules binding officials and other servants working for the SOEC, whether committed wilfully or through negligence, renders them liable to disciplinary sanctions and, if appropriate, legal penalties for violation of professional secrecy, pursuant to

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[1] OJ No C 86, 7. 4. 1989, p. 12.
[2] OJ No C 291, 20. 11. 1989, p. 27.

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the combined provisions of Articles 12 and 18 of the Protocol on the Privileges and Immunities of the European Communities;

Whereas, in accordance with Article 215 of the EEC Treaty and Article 188 of the Euratom Treaty, the Community shall make good any damage caused by its institutions or by its servants in the performance of their duties;

Whereas this Regulation applies only to the transmission to the SOEC of statistical data which, in the national statistical institutes' field of competence, are covered by statistical confidentiality, and whereas it does not affect special national or Community provisions relating to the transmission of other types of information to the Commission;

Whereas this Regulation is to be adopted without prejudice to Article 223 of the EEC Treaty, under which no Member State is required to supply information the disclosure of which it considers contrary to the essential interests of its security;

Whereas, in accordance with Article 47 of the Treaty establishing the European Coal and Steel Community, the Commission has adopted in particular Decision No 1566/86/ECSC [1] and whereas decisions of that type are not affected by this Regulation, in compliance with Article 232 of the EEC Treaty;

Whereas the establishment, under this Regulation, of a Committee on Statistical Confidentiality accords with Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of the implementing powers conferred on the Commission [2];

Whereas implementation of the provisions contained in this Regulation, and in particular those designed to ensure the protection of confidential statistical data transmitted to the SOEC, will require human, technical and financial resources,

HAS ADOPTED THIS REGULATION:

Article 1

1. The purpose of this Regulation is:

— to authorize national authorities to transmit confidential statistical data to the Statistical Office of the European Communities (hereinafter referred to as the 'SOEC'),

— to provide a guarantee that the Commission will take all necessary measures to ensure the confidentiality of data thus transmitted.

2. This Regulation shall apply to statistical confidentiality only. It shall not affect special, Community or national provisions safeguarding confidentiality other than statistical confidentiality.

Article 2

For the purposes of this Regulation, the terms given below are defined as follows:

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1. confidential statistical data: data defined in Article 13 of Council Regulation (EC) No 322/97 of 17 February 1997 on Community Statistics [3];

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2. national authorities: national statistical institutes and other national bodies responsible for the collection and use of statistics for the Communities;

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[1] OJ No L 141, 28. 5. 1986, p. 1.
[2] OJ No L 197, 18. 7. 1987, p. 33.
[3] OJ No L 52, 22. 2. 1997, p. 1.

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3. information on the private lives of natural persons: information on the private and family lives of natural persons as defined by national legislation or practices in the various Member States;

4. use for statistical purposes: use exclusively for the compilation of statistical tables or for statistical economic analyses; may not be used for administrative, legal or tax purposes or for verification against the units surveyed;

5. statistical unit: basic unit covered by statistical data transmitted to the SOEC;

6. direct identification: identification of a statistical unit from its name or address, or from an officially allocated and published identification number;

7. indirect identification: possibility of deducing the identity of a statistical unit other than from the information mentioned in point 6;

8. officials of the SOEC: officials of the Communities, within the meaning of Article 1 of the Staff Regulations of Officials of the European Communities, working at the SOEC;

9. other staff of the SOEC: servants of the Communities, within the meaning of Articles 2 to 5 of the Conditions of Employment of Other Servants of the European Communities, working at the SOEC;

10. dissemination: supply of data in any form whatever: publications, access to databases, microfiches, telephone communications, etc.

Article 3

1. The national authorities shall be authorized to transmit confidential statistical data to the SOEC.

2. National rules on statistical confidentiality may not be invoked to prevent the transmission of confidential statistical data to the SOEC where an act of Community law governing a Community statistic provides for the transmission of such data.

3. Transmission to the SOEC of confidential statistical data on the structure and activity of undertakings, collected before the entry into force of this Regulation, must be carried out in accordance with the rules and practices on statistical confidentiality in force in the Member States.

Transmission to the SOEC of confidential statistical data, within the meaning of paragraph 2, shall be carried out in such a way that statistical units cannot be directly identified. This does not preclude the admissibility of more far-reaching transmission rules in accordance with the legislation of the Member States.

4. National authorities shall not be obliged to transmit information on the private lives of natural persons to the SOEC if the information transmitted could enable those persons to be identified either directly or indirectly.

Article 4

1. The Commission shall take all the necessary regulatory, administrative, technical and organizational measures to ensure the confidentiality of statistical data transmitted by the competent departments of Member States to the SOEC in accordance with Article 3.

2. The protection measures referred to in Article 5 shall apply to:

(a) all confidential statistical data the transmission of which to the SOEC is covered by an act of Community law governing a Community statistic,

(b) all confidential statistical data transmitted voluntarily by Member States to the SOEC.

3. The Commission shall establish the procedures for transmitting confidential statistical data to the SOEC and the principles for protec-

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tion of such data in accordance with the procedure laid down in Article 7.

Article 5

1. The Commission shall instruct the Director-General of the SOEC to ensure the protection of data transmitted to the SOEC by the national departments of the Member States. It shall establish the arrangements for the internal organization of the SOEC in order to ensure such protection, after consulting the Committee referred to in Article 7.

2. Confidential statistical data transmitted to the SOEC shall be accessible only to officials of the SOEC and may be used by them exclusively for statistical purposes.

3. However, the Commission may grant access to confidential statistical data to other staff of the SOEC and other natural persons working on the premises of the SOEC under contract, in special cases and exclusively for statistical purposes. The procedures for such access shall be determined by the Commission in accordance with the procedure laid down in Article 7.

4. Confidential statistical data in the SOEC's possession may be disseminated only when combined with other data in a form which ensures that statistical units cannot be identified either directly or indirectly.

5. Officials and other staff of the SOEC and other natural persons working on the premises of the SOEC under contract may not use or distribute these data for purposes other than those laid down in this Regulation. This prohibition shall continue to apply following transfer, termination of service or retirement.

Article 6

Member States shall, before 1 January 1992, take appropriate measures to curb any violations of the obligation to maintain the secrecy of confidential statistical data transmitted in accordance with Article 3. These measures shall concern at least violations committed in the territory of the Member State concerned, by officials or other staff of the SOEC and by the other natural persons working under contract on the premises of the SOEC.

Member States shall inform the Commission without delay of the measures taken. The Commission shall pass on this information to the other Member States.

Article 7

A Committee on Statistical Confidentiality, hereinafter referred to as 'the Committee', shall be set up, composed of representatives of all the Member States and chaired by a representative of the Commission (the Director-General of the SOEC or a person designated by him).

The representative of the Commission shall submit to the Committee a draft of the measures to be taken, as referred to in Articles 4 (3) and 5 (3). The Committee shall deliver its opinion on the draft, within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the EEC Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the Committee, they shall be communicated by the Commission to the Council forthwith. In that event:

— the Commission shall defer application of the measures upon which it has decided for a period of three months from the date of communication,

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— the Council, acting by a qualified majority, may take a different decision within the time limit referred to in the first indent.

The Committee shall lay down its own rules of procedure.

Article 8

The Committee shall examine questions raised by its chairman, either on his own initiative or at the request of the representative of a Member State, relating to the implementation of this Regulation.

Article 9

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.