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Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Regulation (EC) No 223/2009 on European statistics**

(Text with EEA relevance)

{SEC(2023) 269 final} - {SWD(2023) 240 final} - {SWD(2023) 241 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### • **Reasons for and objectives of the proposal**

Since 1953 along with the evolution of the European Union, European statistics have played an increasingly important role for underpinning the EU activities, policies and legislative acts, from their design and implementation to their monitoring and evaluation.

The current legal framework governing European statistics is Regulation (EC) No 223/2009 that was adopted by the European Parliament and the Council in 2009. It was revised in 2015 to strengthen the overall governance of the European Statistical System (ESS) and, notably, its professional independence. Since then, this strengthened governance has proved to be effective.

The recent financial, migration and Covid-19 crises followed by the Russian military aggression against Ukraine have, however, amplified demands for and expectations of timelier and more detailed European statistics, needed to inform EU decision-making and ensure the best possible EU response to crises. In the recent past, the EU has undertaken several legislative initiatives to build comprehensive crisis-response mechanisms through proposals such as the Civil Protection mechanism, the European Health Emergency Preparedness and Response Authority (HERA), the Market Correction Mechanism, or the Single Market Emergency Instrument (SMEI).

At the same time, the ESS operates in a context driven by profound digital transformation that have created new information needs alongside the emergence of many digital data sources. These sources are ready to be tapped and can help generate European statistics that can meet these needs in a more efficient, extensive, and timelier manner. This can, in turn, increase economic growth, spur innovation, support democratic accountability and the overall well-being of society.

As a result, users' expectations of European statistics have changed, with increasing demands for more detailed information, produced more quickly, at a higher frequency and offering more in-depth insights in support of evidence-based EU policies. New data protection rules under the General Data Protection Regulation (GDPR), as well as new privacy protection parameters, have also become key parts of this new environment. With current production methods for European statistics limited to traditional data sources (e.g., surveys and administrative records), these increasing demands have become difficult, if not impossible, to meet, even with additional resources having been allocated to statistical authorities.

The general objective of this proposal is therefore to make the legal framework governing European statistics fit for the future and significantly improve the responsiveness of the ESS to data needs. The ESS will be able to produce statistics that are more relevant, available more promptly, and more detailed. This will improve efficiency and reduce the costs and burdens on the Member States and survey respondents. This initiative also seeks to provide a mechanism and tools for the ESS to react swiftly and in a collective and coordinated manner, to urgent data demands in times of crises.

More specifically, the proposal seeks to allow statistical authorities to tap the full potential of digital data sources and technologies by enabling their reuse for European statistics. The proposal will help make the ESS more efficient and effective by promoting data sharing and strengthening its coordination; strictly preserve statistical confidentiality and data privacy; update the tasks of ESS partners; outline possible roles for using opportunities offered by digital transformation for more cost-efficient and less burdensome statistical production, and

specify new functions that statistical authorities could perform in the emerging European and national data ecosystems, while complying fully with the subsidiarity principle.

- **Consistency with existing policy provisions in the policy area**

The proposal is fully consistent with existing provisions in EU legislation on statistics.

- **Consistency with other EU policies**

This proposal is consistent with existing rules on:

- processing of personal data (including the General Data Protection Regulation, (GDPR));
- strengthened mechanisms to increase data availability (the Data Governance Act);
- the general approach for making data available to public sector bodies in situations of exceptional need as foreseen in the Data Act proposal currently under discussion;
- protecting privacy and the confidentiality of communications, as well as any (personal or non-personal) data stored in and accessed from terminal equipment (this is the ePrivacy Directive, which will be replaced by the ePrivacy Regulation that is currently being negotiated between the European Parliament and the Council).

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

The legal basis for this proposal is Article 338(1) of the Treaty on the functioning of the European Union (TFEU). Acting in accordance with the ordinary legislative procedure, the European Parliament and the Council adopt measures for the production of statistics where necessary for the performance of the activities of the Union.

Furthermore, Article 338(2) TFEU sets out the requirements for producing European statistics, stating that they must conform to standards of impartiality, reliability, objectivity, scientific independence, cost-effectiveness and statistical confidentiality without putting an excessive burden on economic operators.

- **Subsidiarity (for non-exclusive competence)**

The subsidiarity principle applies because the proposal does not fall within the exclusive competence of the EU. This means that the EU only acts because this would be more effective than action taken at national, regional or local level.

For the ESS to be able to produce more relevant, timelier and more detailed European statistics, legal provisions at EU level are needed to make new data sources available to the national statistical institutes (NSIs) and the Commission (Eurostat), so they can compile European statistics in a sustainable manner.

Currently, where Member States allow privately held data to be re-used for official statistics, the conditions and safeguards differ across Member States. A harmonised approach at EU level would bring legal clarity and ensure fair treatment for private data holders who are active in multiple Member States.

For the ESS to be responsive to crises, specific references should be introduced in the overall legislative framework governing European statistics that will allow swift reaction at EU level and will also ensure that the statistical response is consistent across Member States. The proposed response mechanism would improve effectiveness through strengthened statistical coordination, while respecting the remit and responsibilities of the national statistical

authorities. Moreover, it could be used in addition to existing EU crisis response instruments with the objective of ensuring timely and relevant statistics for evidence-based decision-making within those instruments.

To reduce the burden on businesses and citizens and increase efficiency and quality, the processes within the ESS need to be optimised. These processes include data collection and data sharing arrangements related to phenomena that occur in more than one Member State such as multinationals' activities.

Without further legislative action at EU level, the problems that have developed will continue and may gradually worsen considering the increased digitalisation of society and changes in users' demand.

The EU may therefore adopt the proposed measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty.

- **Proportionality**

The proposal complies with the proportionality principle as described below.

The initiative aims to make the ESS fit for the future. It has been assessed to be suitable for this purpose, resulting in total benefits to society that are considerably higher than the total costs, as demonstrated by the impact assessment. Procedural safeguards ensure that proportionality is applied at all stages of implementing the revised Regulation (EC) No 223/2009.

The initiative is proportional because it only addresses existing barriers to compiling timelier and more detailed European statistics. It also involves and relies on the work of the national authorities and consolidates the strong involvement of relevant stakeholders within the ESS. The preferred policy option does not exceed what is necessary to achieve the objectives of the Treaties.

- **Choice of instrument**

Given that the subject matter of the proposal is already covered by a regulation, that this proposal will amend, the most appropriate instrument is a regulation.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Stakeholder consultations**

In preparing this proposal, stakeholders were consulted in various ways. The public consultation collected views from stakeholders on options to ensure that European statistics will be fit for the future. Feedback was received from various stakeholder groups. Their views can be found in detail in the annex to the impact assessment staff working document.

A public consultation was conducted from 19 July to 25 October 2022<sup>1</sup>. In total, 204 valid responses were received. Respondents expressed support for action at EU level to make digital data held by the private sector available to produce European official statistics, since 83% of the respondents considered this being of very high or high importance. 11% of the respondents considered that European official statistics are sufficiently responsive to emerging user demand, including during public emergencies and crises, whereas 72% considered them somewhat responsive, but not enough. As regards purposes for which easier

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<sup>1</sup> See the details on *Have your say*.

and more systematic data sharing between statistics authorities would be helpful within the European Statistical System, 72% of respondents considered it helpful to reduce the response burden and allow for re-use of already collected data. Finally, 85% of the respondents, agreed or strongly agreed that Statistics authorities should provide professional advice to organisations within their ecosystem on issues related to data and data processing, such as quality, data re-use, intellectual property, confidentiality, security and metadata.

Stakeholder views were also collected through the “Study to support an Impact Assessment for the revision of Regulation (EC) No. 223/2009 on European Statistics”, which based itself on material such as stakeholder interviews carried out between October and November 2022, an online survey (run from 5 October to 7 November 2022), and an online stakeholder workshop carried out on 8 November 2022.

In conclusion, users and producers of European statistics expressed support for reviewing Regulation (EC) No 223/2009 along the lines of this proposal, although statistics producers (i.e. the partners of the ESS) noted the budget consequences. The general public were also supportive, given the significant benefits for society, but since the private sector data to be reused for European statistics may to some extent be personal data, they requested strong confidentiality safeguards, although they recognised that the ESS already provides very solid safeguards regarding confidentiality.

Businesses, in their role as data holders, may incur costs and as such they considered it essential to respect their interests. But they were open to the preferred option, provided that a fair solution could be found to the issue of cost compensation. The possible reduction of the burden on businesses and households by the replacement of surveys through the use of new data sources is appreciated by all.

Finally, for years the ESS has repeatedly called for the issue of access to privately held data for statistical purposes to be addressed at European level. This started with the ESS position paper on access to privately held data which are of public interest of November 2017<sup>2</sup> and more recently with the ESS position paper on the future Data Act proposal<sup>3</sup>.

- **Collection and use of expertise**

The proposal was supported by several documents, studies, recommendations, conferences and other expert inputs, including:

- Report by the Expert Group on facilitating the use of new data sources for official statistics: Empowering society by reusing privately-held data for official statistics – a European approach<sup>4</sup>;
- Study to support an Impact Assessment for the revision of Regulation (EC) No. 223/2009 on European Statistics;
- High-level meeting organised by the French Presidency in Lyon on 7-8 April 2022 on ‘Making the European Statistical System fit for the future’;
- Meeting of the Presidents and Directors-general of the NSIs of the ESS in Luxembourg on 18 May 2022 to further discuss two specific topics: sustainable access to privately held data and data sharing in the ESS for producing European statistics.

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<sup>2</sup> European Statistical System position paper on access to privately held data which are of public interest, November 2017.

<sup>3</sup> European Statistical System (ESS) position paper on the future Data Act, June 2021.

<sup>4</sup> Final expert group report on Empowering society by reusing privately held data for official statistics - A European approach, 2022 edition.

- **Impact assessment**

The proposal is accompanied by an impact assessment that was submitted to the European Commission's Regulatory Scrutiny Board on 14 December 2022 and 6 March 2023. On 27 March 2023, the Board issued a positive opinion with reservations. In addition to a dynamic baseline option (PO0) that takes into account the larger European Data Strategy and entails no revision of Regulation (EC) No 223/2009, two other legislative options were assessed: (PO1) that introduces legislative measures of low intensity; and option (PO2) that introduces more thorough legislative measures, imposing obligations on the data holders and on the national statistical authorities of the Member States. For each policy option several specific policy measures were defined.

The comparative assessment of the three policy options showed that the baseline option (PO0) has the least desirable outcome in terms of effectiveness, efficiency, and coherence, and the first policy option (PO1) the most desirable, with the second policy option in between. This is true for each of the specific goals. PO1 is less effective but more efficient and coherent than PO2. Moreover, it is also more feasible and supported by stakeholders. This clearly points to choosing PO1 as the preferred option.

The preferred option covers measures which will

- (i) ensure sustainable and fair use of digital data sources for European statistics by establishing a mechanism whereby private data holders can be required on a mandatory basis to enable the reuse of the data they hold for the purpose of developing and producing such statistics;
- (ii) allow to initiate statistical actions conducted directly at EU level in response to crisis and extraordinary circumstances;
- (iii) mandate data sharing among the partners of the ESS for statistical purposes where relevant and justified;
- (iv) allow the Commission (Eurostat) to share data with the NSIs via a secure infrastructure; and
- (v) enable the NSIs to assume data governance in their respective data ecosystems, thereby enhancing data interoperability and standardisation.

- **Fundamental rights**

The impact assessment has not identified any potential direct impacts on fundamental rights. The only fundamental right that may be indirectly at stake is data protection when promoting data sharing and strengthening coordination within ESS. However, such enhanced data sharing will be organised while strictly preserving statistical confidentiality and data privacy. Any processing of personal data in accordance with this Regulation will comply with all conditions and rules provided by data protection legislation, such as the Regulation (EU) 2016/679<sup>5</sup> and Regulation (EU) 2018/1725<sup>6</sup>.

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<sup>5</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

<sup>6</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

#### 4. BUDGETARY IMPLICATIONS

The proposal has no budgetary implications.

#### 5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The proposed regulation is expected to be adopted by the European Parliament and the Council in 2024, with the Commission's implementing measures to be adopted shortly after that. The regulation will be directly applicable in all EU Member States without any need for an implementation plan.

In line with the impact assessment, the implementation of the adopted regulation will be monitored and evaluated regularly. The impact assessment also contains monitoring arrangements including proposals for indicators to be used.

- **Detailed explanation of the specific provisions of the proposal**

Introducing new key definitions or adapting existing ones (proposal to amend Article 3)

It is proposed to introduce a new definition of “multi-source statistics” to reflect the fact that European statistics can be compiled using a combination of different data sources. This will enable statistical authorities to seek the most relevant and cost-effective mix of primary data sources for the development and production of various European official statistics.

To better reflect the realities of the digital age in which the ESS operates, it is also proposed to introduce new definitions such as ‘data’, ‘metadata’, ‘data holders’, ‘data sharing’ and ‘data source’. The existing definition of ‘statistical purposes’ also needs to be adapted so that research activities carried out by statistical authorities, or the establishment of sampling frames explicitly become part of such statistical purposes.

Increasing the capacity of the ESS to react swiftly and in a collective and coordinated manner to urgent data demands in times of crisis (proposal for a new Article 16a)

In general, demands for more detailed and timelier, often close to real time official statistics are increasing but the ability to meet those demands is especially crucial in times of crisis, as lately experienced during the Covid-19 pandemic and the energy crisis triggered by the Russian military aggression against Ukraine. Within the usual planning cycle, the incubation time for a new statistic typically covers several years, but if the demand is urgent and important, a fast-track solution is needed with appropriate safeguards for all partners and for the quality and harmonisation of the resulting statistical information. The ESS needs to be able to react quicker or innovate proactively to respond with European statistics to such exceptional and unplanned political demands that cannot be met under the implementation of the European statistical programme's 7-year programming timeline. The possibility for the Commission to adopt specific actions to implement the European statistical programme in accordance with Article 14(2) of Regulation (EC) No. 223/2009 is therefore not sufficient.

A new provision is thus proposed that provides for possible statistical actions at European level to meet urgent information needs arising in times of crisis and following emergency mechanisms activated in accordance with procedures established by Union law.

In such situations, the Commission (Eurostat) should examine temporary statistical actions to be initiated and conducted at European level, in close collaboration with the ESS Committee. The benefit for political stakeholders and policymakers of such enhanced immediate responsiveness within the ESS would be to receive in sufficiently timely manner statistical outputs and insights that are comparable across the EU Member States.

These statistical actions can comprise the production of statistics based on new temporary data collections, or the provision of additional insights based on existing data. The actions can also include development new methodologies and other coordinated measures aimed at ensuring continuity, consistency and comparability of European statistics delivered in times of crises.

In identifying the need for a statistical action, the Commission (Eurostat) must inform and consult the ESS Committee in a timely and transparent manner. NSIs may decide to join and participate in the statistical actions. The Commission should also be empowered to adopt implementing acts that specify the relevant timespan, frequency and quality requirements for these statistical actions.

Moreover, it could be used in parallel with already existing EU crisis response instruments with the objective of ensuring timely and relevant statistics for evidence-based decision-making within those instruments.

#### Strengthening timely access to administrative data for European statistics (proposal to amend Article 17a)

It is proposed to strengthen the requirement that the national public bodies in charge of administrative data sources relevant for development, production and dissemination of European statistics shall allow the NSIs and other national authorities<sup>7</sup> to access, reuse and integrate administrative data free of charge in time and frequency sufficient to produce and submit statistics to the Commission (Eurostat) within the deadlines and in line with quality requirements defined in statistical legislation.

In addition, a refinement and clarification is introduced that the Commission (Eurostat) shall be allowed, upon request, to access and reuse in a timely manner relevant data and metadata from databases and interoperability systems maintained by Union bodies and agencies, when it is necessary for the development, production and dissemination of European statistics. For this purpose, the Commission (Eurostat) shall cooperate with the relevant Union bodies and agencies to specify the customised data and metadata required, the operational modalities for data reuse and the necessary physical and logical safeguards.

#### Ensuring sustainable access to privately held data that emerge as a by-product of digital services and the Internet of Things for European statistics (proposal for new Articles 17b, 17c, 17d and 17e)

In the new Articles 17b, 17c, 17d and 17e, in Chapter III on ‘Production of European statistics’, it is proposed to introduce an obligation for private data holders to make data available, on request, to the NSIs or the Commission (Eurostat), under certain conditions. The proposed mechanism represents a proportionate, limited and predictable framework at European level that is both effective in making these data available for the production of European statistics and, at the same time, ensures legal certainty and minimises the response burden on businesses. This mechanism is however without prejudice to the reporting obligations upon statistical respondents laid down in sectoral legislation, nor to the obligation for data holders to make data available based on exceptional needs in accordance with the Data Act<sup>8</sup>.

A two-stage level justification procedure is envisaged by the proposal, whereby the need to access a new data source will have to be established first at the level of an annual work

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<sup>7</sup> According to Article 4 of Regulation (EC) No 223/2009, other national authorities, along with NSIs and Eurostat, make up the partnership, the ESS.

<sup>8</sup> Proposal for a Regulation of the European Parliament and of the Council on harmonised rules on fair access to and use of data (Data Act), (COM/2022/68 final).



programme of European Statistics. The justification in the annual work programme would be a pre-condition for the second stage when the NSIs or the Commission (Eurostat) will effectively submit individual requests to private data holders to make some data available for the compilation of certain statistics (within the scope of the first-stage justification). Such requests will need to be commensurate with the statistical needs, clearly indicate the purpose of the request and respect the interests of the private data holder requested to make the data available.

While NSIs will be the primary points of access to privately held data for compiling European statistics, the Commission (Eurostat) may in some cases be better placed to be the first access point to data from businesses. This particularly applies to domains where an ESS data collection approach could be more effective such as when data is held by companies operating at a Union wide scale. Furthermore, the proposal aims to establish an obligation of cooperation and mutual assistance between NSIs in order to avoid excessive requests on private data holders and to ensure a data minimisation approach.

The Commission should be granted the power to specify by means of implementing acts, the arrangements for making the data available, such as the data format, the meta-data requirements, a common template to be used when submitting a request or the actual way for accessing the data with the obligation to make data available clearly covering different possibilities, including the transmission of data, the use of a secure computation framework of a third party or the sending of an algorithm to the private data holder.

The provisions specify obligations for the NSIs and the Commission (Eurostat) when reusing data made available for the development and production of European statistics. In particular, the NSIs and the Commission (Eurostat) should use this data exclusively for statistical purposes in conformity with principles of statistical confidentiality and cost-effectiveness and shall not share them with third parties unless the data holder has agreed. In addition, the NSIs and the Commission (Eurostat) shall take appropriate measures to protect statistical confidentiality and trade secrets as well as to preserve other legitimate concerns of private data holders including the cost and effort required to make the data available. The Commission (Eurostat) shall publish a description of the main categories of costs related to the data processing for which compensation may be granted to the data holder as well as the methodology for calculating these costs.

#### Fostering data sharing within the ESS (proposal for a new Article 17f)

It is proposed to introduce into the current Chapter III on ‘Production of European statistics’ new provisions on data sharing between NSIs and between NSIs and the Commission (Eurostat), exclusively for the purpose of developing and producing European statistics, and for improving their quality, where relevant and necessary. For instance, in cases such as the observation of cross-border phenomena which cannot be measured as a sum of national estimates.

Data sharing is regarded as a way to increase access to data sources within the ESS for both statistical development and production and to support data analysis purposes. NSIs and the Commission (Eurostat) participating in the data sharing within the ESS shall provide all necessary safeguards regarding the physical and logical protection of data confidentiality. Data sharing should be facilitated by the use of a secure infrastructure, that ensures the technical integrity and confidentiality of data processing.

When the data concerned is confidential data within the meaning of Article 3 of this Regulation or personal data according to Regulations (EU) 2016/679 and (EU) 2018/1725, the

sharing of such data shall be allowed and may take place on a voluntary basis, based on privacy enhancing technologies.

#### Development of European statistics (proposal for a new Chapter IIIa on ‘Development of European statistics’ with a new Article 17g)

The proposal introduces a new Chapter IIIa on ‘Development of European statistics’ addressing the issue of statistics under development, sometimes referred to as “experimental statistics”. The objective is to create a framework under which European statistics can be developed in specific areas as part of a collective effort by the ESS, thereby integrating new technologies and new insights progressively. The Commission (Eurostat) may initiate, in close collaboration with the ESS Committee, the development of new statistical outputs and insights in a coordinated manner across the ESS.

#### Dissemination of European statistics (proposal for a new paragraph 4 in Article 18)

It is proposed to benefit from the fact that Member States will sometimes publish European statistics at national level ahead of the transmission deadlines set out in the relevant sectoral legislation. Once these data is published, the Commission (Eurostat) should be able to disseminate that same data immediately afterwards and thereby contribute to increased timeliness at European level, as long as they respect relevant definitions and classification.

#### Reuse of publicly available data (proposal for a modified Article 25)

To ensure a more efficient use of publicly available data, it is proposed to amend the wording of Article 25.

#### New functions of NSIs in the national data governance frameworks (proposal for a new Article 26a)

It is also proposed that, in compliance with the principle of subsidiarity, NSIs may assume at national level functions in the national data governance frameworks including those foreseen in the Data Governance Act, with the objective to promote data integration and interoperability, metadata description, quality assurance and standards-setting and identify new data sources to be used for statistics under development. These functions must be implemented in accordance with the statistical principles laid down in this Regulation.

#### Evaluation and review clause (proposal for a new Article 27a)

In line with the agreement on Better Law-making between the European Parliament, the Council and the Commission it is proposed to insert a review clause.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Regulation (EC) No 223/2009 on European statistics**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 338(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Regulation (EC) No 223/2009 of the European Parliament and of the Council<sup>9</sup> establishes the legal framework at Union level for the development, production and dissemination of European statistics.
- (2) Regulation (EC) No 223/2009 was amended in 2015 to further strengthen the governance in the European Statistical System (ESS) in particular its professional independence, and since then the strengthened governance has proven to be effective.
- (3) Digital transformation has ushered in radically different realities and created a new environment with new needs for European statistics. Moreover, the recent Covid-19 crisis and the energy crisis triggered by the Russian military aggression against Ukraine have amplified the demands and expectations for timelier, more frequent and more detailed European statistics needed to inform EU decision-making and ensure the best possible Union response to crises.
- (4) To address growing expectations for timelier, more frequent and more detailed European statistics as well as for a faster and more coordinated ESS response to urgent statistical demands in times of crisis, it is necessary to amend Regulation (EC) No 223/2009. The purpose of this Regulation is to ensure that European statistics stay relevant by taking into account those changing and more demanding user needs, notably by tapping the full potential of digital data sources and technologies, by enabling their re-use for European statistics, by making the ESS more agile and able to respond effectively and swiftly to crises, and by promoting data sharing and strengthening coordination among ESS partners.

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<sup>9</sup> Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programme of the European Communities (OJ L 87, 31.3.2009, p. 164).

- (5) To reflect today's realities and the digital age in which the ESS operates, new or updated definitions should be introduced into Regulation (EC) No 223/2009 to clarify the concepts of 'data', 'metadata', 'data holders', 'reuse of data', 'data sharing', 'data source', 'multi-source statistics', 'use for statistical purposes', and 'crisis'.
- (6) The recent Covid pandemic demonstrated that timely, reliable and comparable European statistics are vital to the effectiveness of public authorities' response to emergency situations. Therefore, the ESS should be given the possibility to swiftly initiate coordinated actions if urgent data and statistics needs arise outside the regular planning framework, especially in times of crisis. In such situation, a data holder should make, upon request, data available to a national statistical institute (NSI) or the Commission (Eurostat) that demonstrates an exceptional need to use the data requested, in accordance with the rules laid down in the Data Act<sup>10</sup>.
- (7) Accessing and re-using new data sources, which emerge as by-products of digital services and the Internet of Things (IoT), is becoming vital for producing timely, suitably frequent and sufficiently detailed European statistics in a more efficient and less costly way. Therefore, access to new data sources in general and particularly to privately held data for the development and production of European official statistics on a sustainable basis and according to fair, clear and predictable rules should be ensured.
- (8) Access to new data sources, including particularly to privately held data, has been a longstanding request by the ESS as demonstrated by the ESS Position Paper on access to privately held data which are of public interest from November 2017, and the ESS Position Paper on the future Data Act proposal from June 2021.
- (9) The reuse of privately held data and other new data sources should be subject to strict legal, technical and procedural safeguards and guarantees, including applying a high level of security, confidentiality and respect for privacy, as already enshrined in Regulation (EC) No 223/2009. The possibility to request access to privately held data should be limited to the national statistical institutes (NSIs), acting on their own or on behalf of another national authority of the ESS, and the Commission (Eurostat) only and should, as a pre-requisite, be established in an annual work programme and restricted to cases where, on the one hand, the data requested is necessary for the development and production of European statistics and, on the other hand, the data cannot be readily obtained otherwise or the data reuse would result in a considerable reduction in the response burden on data holders and other businesses.
- (10) Data requests by the NSIs or the Commission (Eurostat) should be transparent and proportionate in terms of their scope and level of detail. In that connection, it is necessary to specify and explain the purpose of the request, the intended use of the data requested, the frequency with which and deadlines by which the data should be made available as well as the operational arrangements for making them available.
- (11) With the data requests, the NSI or the Commission (Eurostat) should invite the data holder to a dialogue to specify the concrete parameters of data requests, arrangements, measures to offset potential costs incurred to make data available as well as any organisational and technical measures to protect data confidentiality and trade secrets, with a view to concluding an agreement on those aspects. If no agreement is concluded within three months, the NSI or the Commission should have the possibility to adopt a

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<sup>10</sup> Proposal for a Regulation of the European Parliament and of the Council on harmonised rules on fair access to and use of data (Data Act), (COM/2022/68 final).

decision requiring the private data holder to make data available. If the data holder intentionally or negligently fails to transmit the requested data within the set period or transmits incorrect, incomplete or misleading data, the NSI or the Commission should have the possibility to adopt penalties that should be effective, proportionate and dissuasive, taking into account the nature, gravity, recurrence and duration of the violation, in view of the public interest pursued. The penalties adopted by the NSIs should be equivalent to penalties regarding infringements of similar national rules. All decisions taken by the Commission under this Regulation are subject to review by the Court of Justice of the European Union in accordance with the Treaty on the Functioning of the European Union. The Court of Justice of the European Union should have unlimited jurisdiction in respect of fines adopted by the Commission in accordance with Article 261 of the Treaty on the Functioning of the European Union.

- (12) The further integration of statistics and geospatial information should also be encouraged to enable a more efficient use of resources and improved integration of data by different public organisations and to produce new statistical outputs, such as spatial analysis, and visualisation and dissemination of data. These will support decision-making and the monitoring of policy goals at both Union and national level.
- (13) It is necessary to ensure that national public bodies in charge of administrative data sources relevant for development, production and dissemination of European statistics allow national statistical authorities to access, reuse and integrate this data free of charge in time and with sufficient frequency for the purposes of producing and transmitting statistics to the Commission (Eurostat) within the deadlines and in accordance with quality requirements defined in Union statistical legislation.
- (14) Where the activities to be carried out under this Regulation involve the processing of personal data, such processing should comply with the relevant EU legislation on personal data protection, namely Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>11</sup> and Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>12</sup>. In accordance with the data minimisation principle set out in these regulations, data provided under this Regulation should normally be aggregated to such a degree that individuals cannot be identified.
- (15) Processing of personal data for the purposes of official statistics by national statistical authorities, which is considered to be in the public interest, should be covered by derogations and subject to appropriate safeguards, in accordance with Regulation (EU) 2016/679. For instance, further processing of personal data for statistical purposes should not be considered to be incompatible with the initial purposes for which they were collected. In that context, the particular safeguards which should be applied when data sharing according to this Regulation requires personal data to be processed, include the principles of purpose limitation, data minimisation, storage limitation and integrity and confidentiality as set out in Regulation (EU) 2016/679. In that regard, the use of privacy enhancing technologies that are specifically designed to implement these principles should be the way to share data.

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<sup>11</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

<sup>12</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

- (16) To be on the forefront of integrating new technologies and new insights progressively, and thereby to ensure that European statistics continuously stay relevant, rules should be established under which, as part of a collective effort by the ESS, statistics can be developed in specific areas with the aim of integrating them in the regular production of European Statistics. Although not necessarily fulfilling all quality criteria laid down in Article 12(1) of Regulation (EC) No 223/2009, those statistics should be treated as European statistics.
- (17) While striving to continuously innovate and develop new statistical outputs, national statistical authorities should take the utmost account of users' needs as expressed notably by national statistical user councils. At Union level, the European Statistical Advisory Committee (ESAC), established by Decision No 234/2008/EC of the European Parliament and of the Council<sup>13</sup> as the main Union body representing users, respondents and producers of European statistics, should be informed by the Commission on how it has taken into account the ESAC's opinions, particularly with regard to developing new European statistics.
- (18) Statistical authorities should also promote, at both national and European level, a strong, structured and sustained interdisciplinary cooperation with academic and research institutions, especially when developing new statistics, testing new methods and technologies and promoting innovation and experimentation.
- (19) Given the trust granted to NSIs and their high technical expertise in data management, data quality and data protection, Member States should be encouraged, in accordance with the principle of subsidiarity, to assign to the NSIs certain functions in the national data governance frameworks including those foreseen in the Data Governance Act, with the objective of promoting data integration and inter-operability, metadata description, quality assurance and standard setting. In that regard, the involvement of NSIs in the initial design, subsequent development and discontinuation of administrative records should be recalled and reinforced when appropriate, with a view to ensuring, among other things, consistency and data quality and to minimising the reporting burden.
- (20) Data that is lawfully available to the public should not be considered confidential when used for statistical purposes.
- (21) In the interest of increased timeliness at Union level, the Commission (Eurostat) should be allowed to disseminate Member States' European statistics as soon as they have been published nationally, even if this was done ahead of the deadlines for providing the statistics that are set out in the relevant sectoral Union legislation.
- (22) Since the objective of this Regulation, namely the amendment of the legal framework for developing, producing and disseminating European statistics, cannot be sufficiently achieved by the Member States but can rather, for reasons of consistency and comparability, be better achieved at Union level, the Union may adopt measures to achieve that objective, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. 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.

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<sup>13</sup> Decision No 234/2008/EC of the European Parliament and of the Council of 11 March 2008 establishing the European Statistical Advisory Committee and repealing Council Decision 91/116/EEC (OJ L 73, 15.3.2008, p. 13).

- (23) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission in respect of the temporary statistical actions to be undertaken, including the relevant timespan, frequency and quality requirements, of the general technical arrangements for making privately held data available to the NSIs and the Commission (Eurostat) and of the technical aspects of data sharing between the statistical authorities. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>14</sup>.
- (24) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>15</sup> and delivered an opinion on [xxx].
- (25) The European Statistical System (ESS) Committee was consulted,
- HAVE ADOPTED THIS REGULATION:

Article 1  
*Amendments to Regulation (EC) No 223/2009*

Regulation (EC) No 223/2009 is amended as follows:

- (1) Article 3 is amended as follows:
- (a) the following points 4a, 4b, 4c, 4d and 4e are inserted:
- ‘4a. ‘data’ means any digital or non-digital representation of acts, facts and information;
- 4b. ‘metadata’ means any data that defines and describes other data and processes, or is used in this way;
- 4c. ‘data holder’ means a legal or natural person who has the right, in accordance with applicable Union or national legislation implementing Union law, or the ability, to make available certain data;
- 4d. ‘reuse of data’ means the use by national statistical authorities and the Commission (Eurostat) of data held and made available by data holders for the development, production and dissemination of European statistics;
- 4e. ‘data sharing’ means the provision of data or the permission of data reuse by a statistical authority to another statistical authority for the purpose of joint or individual use of such data for statistical purposes;’;
- (b) the following points 5a, 5b and 5c are inserted:
- ‘5a. ‘data source’ means a source providing data that is relevant, in itself or in combination with data from other sources, for the development and production of statistics, including surveys, censuses, administrative records or data made available by data holders on request;

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<sup>14</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission’s exercise of implementing powers (OJ L55, 28.2.2011, p. 13).

<sup>15</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

5b. ‘data access’ means processing by a national statistical institute or the Commission (Eurostat) of data that has been provided by a private data holder, in accordance with specific technical, legal or organisational requirements, without necessarily requiring the transmission or downloading of such data;

5c. ‘multi-source statistics’ mean statistics developed or produced on the basis of a variety of data sources, including by means of modelling techniques;’;

(c) point 8 is replaced by the following:

‘8. ‘use for statistical purposes’ means the exclusive use for the development and production of statistical results and analyses, including for related research and scientific activities or the establishment of sampling frames;’;

(d) the following point 8a is inserted:

‘8a ‘crisis’ means a situation of wide-ranging impact or political significance generating an immediate and unforeseen demand for European statistics;’;

(2) the following Article 16a is inserted:

*‘Article 16a  
Statistical response to crisis*

1. The Commission (Eurostat) shall examine temporary statistical actions and undertake them as appropriate, subject to the procedures set out in this Article, where both of the following conditions are met:

(a) it is necessary to respond to urgent information needs which arise from a crisis and following, existing or future, emergency mechanisms activated in accordance with Union legal acts, such as:

(i) the temporary protection under Council Directive 2001/55/EC<sup>16</sup>;

(ii) the Union civil protection mechanism under Decision 1313/2013/EU of the European Parliament and of the Council<sup>17</sup>;

(iii) the emergency support under Council Regulation (EU) 2016/369<sup>18</sup>

(iv) the emergency framework under Council Regulation (EU) 2022/2372<sup>19</sup>;

(v) the market correction mechanism under Council Regulation (EU) 2022/2578<sup>20</sup>;

(vi) the emergency mode under Regulation of the European Parliament and of the Council (EU) xx/xx (*to be adopted*<sup>21</sup>);

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<sup>16</sup> Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ L 212, 7.8.2001, p. 12).

<sup>17</sup> Decision No 1313/2013/EU of the European Parliament and of the Council of 17 December 2013 on a Union Civil Protection Mechanism (OJ L 347, 20.12.2013, p. 924).

<sup>18</sup> Council Regulation (EU) 2016/369 of 15 March 2016 on the provision of emergency support within the Union (OJ L 70, 16.3.2016, p. 1).

<sup>19</sup> Council Regulation (EU) 2022/2372 of 24 October 2022 on a framework of measures for ensuring the supply of crisis-relevant medical countermeasures in the event of a public health emergency at Union level (OJ L 314, 6.12.2022, p. 64).

<sup>20</sup> Council Regulation (EU) 2022/2578 of 22 December 2022 establishing a market correction mechanism to protect Union citizens and the economy against excessively high prices (OJ L 335, 29.12.2022, p. 45).



- (b) those urgent information needs cannot be met under the European statistical programme.
2. The temporary statistical actions referred to in paragraph 1 shall be carried out by the Commission (Eurostat) at Union level and may include:
    - (a) producing European statistics based on new data collections;
    - (b) providing new statistical indicators and insights based on existing data;
    - (c) developing harmonised statistical methodologies and related methodological guidelines, to ensure that statistics across Member States are comparable and consistent;
    - (d) other coordinated action at Union level that aims to provide a timely and relevant statistical response to the specific situation.
  3. When assessing the need for temporary statistical actions, the Commission (Eurostat) shall promptly inform and consult the ESS Committee and take into account its professional guidance.
  4. The NSIs may decide, separately and on a voluntary basis, to participate in these temporary statistical actions, but shall, together with the Commission (Eurostat), ensure the relevance and sufficient coverage of those actions at Union level. When participating in temporary statistical actions, the NSIs shall comply with the common timespan, frequency and quality requirements for the national data to be provided to the Commission (Eurostat).
  5. The Commission may, by way of implementing acts, define the temporary statistical actions and set out the procedure for undertaking them, including the relevant timespan, frequency and quality requirements to be applied by those NSIs participating in the temporary statistical action. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(2).
  6. Measures adopted under paragraph 5 shall remain in force for a period not exceeding 24 months.’;
    - (3) in Article 17a, the title is replaced by the following:
 

‘Access, reuse and integration of administrative records for the development and production of European statistics’;
    - (4) in Article 17a, paragraph 1 is replaced by the following:
 

‘1. National public bodies in charge of administrative data sources relevant for development, production and dissemination of European statistics shall allow the NSIs and other national authorities (hereafter ‘ONA’) referred to in Article 4, to access, reuse and integrate, free of charge, this data and the relevant metadata, in a timely manner and with sufficient frequency for the purpose of producing and transmitting statistics to the Commission (Eurostat) within the deadlines and in accordance with quality requirements laid down in Union statistical legislation.’;
    - (5) in Article 17a, the following paragraph 2a is inserted:

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<sup>21</sup> Proposal for a Regulation of the European Parliament and of the Council establishing a Single Market emergency instrument and repealing Council Regulation (EC) No 2679/98 (COM(2022)459 final).

- ‘2a. For the purpose of this Regulation, the Commission (Eurostat) shall be allowed, upon request, to access, reuse and integrate in a timely manner relevant data and metadata from databases and interoperability systems maintained by Union bodies and agencies, and without prejudice to the Union acts establishing these databases and interoperability systems. For this purpose, the Commission (Eurostat) shall cooperate with the relevant Union bodies and agencies to specify the customised data and metadata required, the operational modalities for data reuse and the necessary physical and logical safeguards.’;
- (6) in Article 17a, paragraph 5 is replaced by the following:
- ‘5. The NSIs and owners of administrative records shall establish the necessary cooperation mechanisms. Those mechanisms shall also provide the possibility for the NSIs to perform data quality checks and build statistical frames based on relevant administrative records.’;
- (7) the following Articles 17b, 17c, 17d, 17e and 17f are inserted:

*‘Article 17b*

*Obligation of private data holders to make data available for developing and producing European statistics*

1. Without prejudice to reporting obligations laid down in sectoral statistical legislation of the Union nor to the obligation for data holders to make data available based on exceptional need in accordance with the Data Act, an NSI or the Commission (Eurostat) may request a private data holder to make data and the relevant metadata available for the development and production of European statistics if the annual work programme has established the following conditions:
  - (a) the data requested is necessary for the development and production of European statistics; and
  - (b) the data cannot be readily obtained by alternative means such as surveys or reuse of administrative records, or their reuse will result in a considerable reduction in the response burden on data holders and other businesses.
2. As coordinator of the national statistical system, an NSI may submit a request for data to a private data holder on behalf of an ONA, when the data requested is necessary for European statistics developed and produced by that ONA.
3. The NSIs and the Commission (Eurostat) shall cooperate and mutually assist each other in order to avoid excessive requests on private data holders and to determine who is to submit requests for data. In particular, the request for data shall be submitted to a private data holder by the Commission (Eurostat), in agreement with the NSIs, when such an approach is more efficient, for instance in the case of data holders operating on a Union wide scale.
4. The Commission (Eurostat) may, in agreement with the NSIs, set up a secure infrastructure to facilitate the further sharing with the NSIs of data that has been accessed in accordance with paragraph 2.

5. This Article shall not apply to small and micro enterprises as defined in Article 2 of the Annex to Commission Recommendation 2003/361/EC<sup>22</sup>.

*Article 17c*

*Requests for data and arrangements for making data available for development and production of European statistics*

1. When requesting data in accordance with Article 17b, the NSIs or the Commission (Eurostat) shall:
  - (a) specify what data is required;
  - (b) demonstrate the statistical need for which the data is requested in accordance with Article 17b(1);
  - (c) specify the frequency with which and the deadlines by which the data is to be made available;
  - (d) specify the operational arrangements for making the data available;
  - (e) invite the data holder to the dialogue under paragraph 3.
2. Requests for data referred to in paragraph 1 shall:
  - (a) follow the principle of data minimisation and be proportionate to the statistical need in terms of the level of detail, volume and frequency of the data;
  - (b) concern, insofar as possible, non-personal data.
3. Following a request for data referred to in paragraph 1, a dialogue shall take place between the NSI or the Commission (Eurostat) and the concerned data holder to discuss aspects such as the level of aggregation of the data, the deadline and arrangements for the provision of the data, the security and confidentiality protection measures as well as possible cost compensation aspects, with the aim of concluding an agreement on those aspects.
4. If no agreement is concluded within three months following the notification of the request for data referred to in paragraph 1, the NSI or the Commission may, by decision, require the private data holder to make the data available. The decision shall be specific as required under paragraph 1 letters (a) to (d) and shall take into account issues on which views may have converged during the dialogue with the data holder. The decision may also include compensation for the private data holder that shall not exceed the marginal costs related to the preparation required for making the data available. The period for making the data available may not be shorter than 15 days. Before adopting the decision, the NSI or the Commission shall give the data holder the opportunity of being heard on the measures that the NSI or the Commission intend to take. The decision shall indicate the fines provided for under paragraph 6 and the means of redress against it.
5. Without prejudice to reporting obligations laid down in sectoral statistical legislation of the Union, a data holder shall make the relevant data available to the NSI or the Commission (Eurostat) within the period specified in the decision pursuant to paragraph 4 of this Article.

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<sup>22</sup> Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

6. The Member States and the Commission shall take appropriate measures to ensure the effective enforcement of the decisions adopted in accordance with paragraph 4. Those measures may include the adoption of fines where the private data holder intentionally or negligently fails to supply the data requested by decision within the set period or supplies incorrect, incomplete or misleading data. In fixing the amount of the fines, the Member State and the Commission shall have regard to the nature, gravity, duration and recurrence of the infringement.
7. In order to comply with paragraph 6, the Commission may adopt decisions imposing fines of maximum EUR 25 000. In case of recurrence within three years the fine may reach EUR 50 000. The Commission may issue guidelines on the calculation of the fine.
8. The Commission may adopt a decision imposing a fine within one year following the deadline for the submission of data laid down in its decision under paragraph 4 where the data holder fails to submit any data or within one year of the submission of incorrect, incomplete or misleading data.  
  
The power of the Commission to enforce decisions imposing a fine shall be subject to a limitation period of five years. Time shall begin to run on the day on which the decision becomes final.
9. Before adopting a decision pursuant to paragraph 6 of this Article, the Member States and the Commission shall give the data holder the opportunity of being heard on preliminary findings and measures that the Member State or the Commission may intend to take in view of the preliminary findings.
10. The Commission shall establish, by way of implementing acts, the general technical arrangements for making data available under this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(2).

#### *Article 17d*

##### *Review of decisions imposing fines by the Court of justice of the European Union*

In accordance with Article 261 TFEU, the Court of Justice of the European Union has unlimited jurisdiction to review decisions by which the Commission has imposed fines. It may cancel, reduce or increase the fine imposed.

#### *Article 17e*

##### *Obligations of NSIs and the Commission (Eurostat) in reusing data made available for development and production of European statistics*

1. The NSIs and the Commission (Eurostat) shall use data made available in accordance with Article 17b for the development and production of European statistics:
  - (a) exclusively for statistical purposes;
  - (b) in conformity with principles of statistical confidentiality and cost-effectiveness; and
  - (c) with the obligation not to share them with third parties unless the data holder has agreed.
2. The NSIs and the Commission (Eurostat) shall:

- (a) take appropriate measures to protect statistical confidentiality and trade secrets and to preserve other legitimate concerns of private data holders including the cost and effort required to make the data available;
  - (b) implement, insofar as the processing of personal data is necessary, technical and organisational measures which safeguard the rights and freedoms of data subjects.
3. Paragraphs 1 and 2 of this Article shall apply to an ONA that has received data following a request submitted on its behalf by a NSI in accordance with Article 17b(2).
  4. The Commission (Eurostat) shall publish a description of the main categories of costs related to the data processing for which compensation may be granted to the data holder and the methodology for calculating these costs.

*Article 17f*  
*Data sharing in the ESS*

1. Data shall be shared between NSIs and between NSIs and the Commission (Eurostat) exclusively for statistical purposes and for improving the quality of European statistics.
2. Data sharing shall take place upon request by an NSI or the Commission (Eurostat) where this is relevant and necessary. Data sharing shall also take place when the request is put forward by an NSI on behalf of an ONA and the data is used exclusively for statistical purposes and for improving the quality of European statistics developed and produced by that ONA.
3. The NSIs, and when relevant the ONAs, participating in the data sharing within the ESS shall provide all necessary safeguards with regard to the physical and logical protection of data confidentiality. The Commission (Eurostat) shall set up a secure infrastructure to facilitate data sharing. The NSIs, and when relevant the ONAs, may use that secure data sharing infrastructure for the purpose specified in paragraph 1.
4. When the data concerned is confidential data within the meaning of Article 3 of this Regulation or is personal data as defined in Regulations (EU) 2016/679 and (EU) 2018/1725, the sharing of such data shall be allowed and may take place on a voluntary basis provided it fulfils all of the following conditions:
  - (a) it is based on a request justifying the necessity to share the data in each individual case, in particular with regard to the quality issues that are to be specifically addressed;
  - (b) it is based on privacy-enhancing technologies that are specifically designed to comply with Regulations (EU) 2016/679 and (EU) 2018/1725, with particular regard to purpose limitation, data minimisation, storage limitation, integrity and confidentiality;
  - (c) it does not affect Chapter V of this Regulation.
5. The data requested under this Article shall not pertain to issues of national security and military matters.
6. The Commission shall, by means of implementing acts, set out the technical aspects of data sharing between the statistical authorities referred to in this Article. Those

implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(2).

7. This Article is without prejudice to Article 21 of this Regulation.’;

(8) the following Chapter IIIa is inserted:

### **‘CHAPTER IIIa**

## **DEVELOPMENT OF EUROPEAN STATISTICS**

### *Article 17g*

#### *Statistics under development*

1. The NSIs, the ONAs and the Commission (Eurostat) shall endeavour to continuously innovate and develop new statistical outputs and insights based on all available data sources and to use state of the art technologies, with the aim of integrating them in the regular production of European statistics.
2. European statistics shall be developed in full compliance with the statistical principles, as set out in Article 2(1). Statistics under development may not necessarily fulfil all the quality criteria set out in Article 12(1).
3. The Commission (Eurostat) shall disseminate European statistics under development with the agreement of the NSIs and shall explicitly indicate that these statistics are under development.
4. The Commission (Eurostat) may initiate, in close cooperation with the ESS Committee, the development of new statistical outputs and insights in a coordinated manner across the ESS. Those statistical outputs and insights shall be included in the annual work programme and implemented through individual statistical actions referred to in Article 14(1).’;

(9) in Article 18, the following paragraph 4 is inserted:

‘4. The Commission (Eurostat) may use European statistics published at national level by the Member States ahead of the deadlines set out in the relevant sectoral legislation and disseminate these statistics before the time envisaged in that sectoral legislation, providing it complies with the definitions and classification.’;

(10) Article 25 is replaced by the following:

### *‘Article 25*

#### *Publicly available data*

Data that is lawfully available to the public shall not be considered confidential when used for statistical purposes.’;

(11) the following Article 26a is inserted:

### *‘Article 26a*

#### *Contribution to new national data governance frameworks*

1. In compliance with the principle of subsidiarity, the NSIs may assume at national level functions as laid down in the national data governance frameworks with the goal of

promoting data integration and inter-operability, metadata description, quality assurance and standard setting, as well as other tasks and functions laid down in Regulation (EU) 2022/868 of the European Parliament and of the Council,<sup>23</sup> and identify new data sources to be used for the development and production of statistics.

2. The performance of such functions by the NSIs shall be compatible with the statistical principles, as set out in Article 2(1).’;
- (12) the following Article 27a is inserted:

*‘Article 27a  
Evaluation and review*

By [*five years after the entry into force of this amending Regulation*], the Commission shall carry out an evaluation of this Regulation and submit a report on its main findings to the European Parliament and to the Council. That evaluation shall assess, in particular:

- (a) the statistical response to crisis under Article 16a;
- (b) the obligation of data holders to allow their data to be reused for European statistics in accordance with Articles 17b, 17c, 17d and 17e;
- (c) the data sharing in the ESS under Article 17f;
- (d) the development of European statistics under Chapter IIIa.’.

Article 2  
*Entry into force*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels,

*For the European Parliament*

*For the Council*

*The President*

*The President*

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<sup>23</sup> Regulation (EU) 2022/868 of the European Parliament and of the Council of 30 May 2022 on European data governance and amending Regulation (EU) 2018/1724 (Data Governance Act) (OJ L 152, 3.6.2022, p. 1).