

REASONED OPINION

**of the European Affairs Committee of the Federal Council
12 June 2012**

**pursuant to Article 23g (1) of the Austrian Constitution in conjunction with Article 6 of Protocol
No.2 on the application of the principles of subsidiarity and proportionality**

COM (2012) 167 final

**Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC)
No. 223/2009 on European statistics**

A. Reasoned Opinion

The project under consideration is incompatible with the principle of subsidiarity.

B. Grounds for Reasoned Opinion

According to Article 5a, paragraph 1, of the proposed regulation, the heads of the NSIs (national statistical institutes) have the sole responsibility, within their national statistical system, for deciding on processes, statistical methods, standards and procedures and the content and timing of statistical releases and publications for all European statistics.

According to Article 17 a, paragraph 1, of the proposed regulation, the NSIs are to have the right to access and use, promptly and free of charge, all administrative records to the extent necessary for the development, production and dissemination of European statistics. According to this general provision on access, it is up to the NSIs to decide if and which data are required for European statistics. Thus, the NSIs are authorised to access all personal data of individuals, such as health records of persons in hospitals, if they consider these to be necessary for the purposes of statistics.

In the opinion of the Federal Council, such a comprehensive provision neglects the right to respect of private and family life enshrined in Article 8 of the European Convention on Human Rights (ECHR). According to Article 6, paragraph 3, of the Treaty on European Union (TEU), the fundamental rights, as guaranteed by the ECHR, are to be respected as general principles of Community law. Hence, this provision of the proposed regulation is in conflict with EU Treaty law.

According to Article 17a, paragraph 2, last sentence, of the proposed regulation, the NSIs and the European statistical office (Eurostat), as an entity within the European Commission, have the right to coordinate standardisation activities concerning administrative records relevant for statistical data production. In practical terms, this means that Statistics Austria, as a federal institution, would be in charge of coordinating the actions of legislative bodies in Austria as well as supreme administrative bodies (including federal ministers) in the adoption of standards relating to rules on the basis of which statistically relevant administrative data are produced.

Article 4 of the Treaty on European Union states in paragraph 1 that in accordance with Article 5, competences not conferred upon the Union in the Treaties remain with the Member States.

According to Article 5, TEU, the limits of Union competences are governed by the principle of conferral (paragraph 1). The exercise of the competences of the Union is subject to the principles of subsidiarity and proportionality. 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. Competences not conferred upon the Union remain with the Member States (paragraph 2). Under 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.

In the opinion of the Federal Council, it cannot be concluded from any of the provisions of primary EU law that the European Union has the competence to standardise the internal organisation of the Member States. The NSI is to be involved in the establishment of classifications as effectively and as early as possible.

On the contrary, the declaration (Declaration No. 43) relating to the “Protocol on the application of the principles of subsidiarity and proportionality” (OJ 1997 C 340/140) annexed to the Treaty of Amsterdam confirms that the administrative implementation of Community law is the responsibility of the Member States, without prejudice to the supervisory, monitoring and implementing powers of the Council and the Commission. Moreover, the Final Act of the Treaty of Amsterdam contains a declaration on subsidiarity by Germany, Austria and Belgium “taken note of by the Conference”, according to which it is taken for granted by the German, Austrian and Belgian governments that action by the European Community in accordance with the principle of subsidiarity not only concerns the Member States, but also their entities to the extent that they have their own law-making powers conferred on them under national constitutional law, thus taking the federal structure of these states duly into account (see EU Treaties, published by Prof. Dr. Carl Otto Lenz, Prof. Dr. Klaus-Dieter Borchardt, 5th edition, Linde Verlag, on Article 5, paragraph 5, TEU).

According to Article 5 of Protocol No. 2 to the Treaty on European Union, any draft European legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality. This statement should contain some assessment of the proposal’s financial impact. Moreover, the reasons for concluding that a Union objective can be better achieved at Union level than through legislative acts at national level are to be indicated.

No such reasons are given in the proposed regulation. In particular, the proposal fails to state conclusively why interference with the organisational powers of the Member States is necessary in order to secure the – undeniably essential – professional independence of the NSIs in the production of Community statistics in the Member States. In this context, it should be borne in mind that Eurostat itself does not enjoy the degree of independence from the European Commission at European level demanded of the NSIs at national level. Moreover, Eurostat and – consequently – the Commission have comprehensive powers to monitor and inspect the NSIs in the production of Community statistics. Deficiencies in the exercise of Eurostat’s monitoring function in the past certainly do not justify such powers of interference with the national organisation of the Member States.

In reality, if the regulation were adopted as proposed, the NSIs would be legally positioned as outposts of Eurostat in the Member States outside the organisational structure of the latter.

In the opinion of the Federal Council, the current provisions of Regulation (EC) No. 223/2009 on European statistics are sufficient to secure the professional independence of the NSIs in the Member States.