

COMMISSION REGULATION (EEC) No 1160/82
of 14 May 1982
providing for the advance fixing of monetary compensatory amounts

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 974/71 of 12 May 1971 on certain measures of conjunctural policy to be taken in agriculture following the temporary widening of the margins of fluctuation for the currencies of certain Member States ⁽¹⁾, as last amended by Regulation (EEC) No 3605/81 ⁽²⁾, and in particular Article 6 thereof,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals ⁽³⁾, as last amended by Regulation (EEC) No 3808/81 ⁽⁴⁾, and in particular Articles 12 (2), 15 (5) and 16 (6) thereof, and to the corresponding provisions of the other Regulations on the common organization of the markets in agricultural products,

Whereas Commission Regulation (EEC) No 243/78 ⁽⁵⁾, as last amended by Regulation (EEC) No 2898/81 ⁽⁶⁾, provides for the advance fixing of monetary compensatory amounts; whereas experience has shown that the provisions of that Regulation should be further amended in several respects; whereas, in the interests of clarity and administrative efficiency, the provisions in question should at the same time be consolidated;

Whereas licences and certificates, which include advance fixing of the levy or refund which are requested during a period of suspension of advance fixing of monetary compensatory amounts, cannot include advance fixing of the monetary compensatory amount;

Whereas there is economic justification, subject to certain conditions, for allowing parties concerned to advance fix the monetary compensatory amounts when such advance fixing is again made possible;

Whereas in certain cases the issue of import and export licences and certificates is subject to a waiting

period; whereas if application for such a licence or certificate includes advance fixing of the monetary compensatory amount and if after the day on which the application is lodged but during the waiting period advance fixing of the monetary compensatory amount is suspended it is necessary under present rules to refuse the application to advance fix the monetary compensatory amount; whereas it is not the purpose of the waiting period to take account of monetary changes; whereas, therefore, it is reasonable to exclude from the effects of suspension of the advance fixing of monetary compensatory amounts such applications lodged before the suspension came into force;

Whereas difficulties which justify suspension of advance fixing of the monetary compensatory amount should not normally be such as to make it necessary to apply the suspension in cases where levies or refunds are determined under a tendering procedure; whereas it should be provided that, unless particular measures are taken, the option to advance fix the monetary compensatory amount in effect on the last day for submission of tenders will continue to be available during a suspension period; whereas this option should at all times be exercised by the party concerned when the tender is submitted and not, as at present, when the application for the licence or certificate is lodged;

Whereas it should be made clear that existing references in Regulation (EEC) No 243/78 to a tendering procedure relate only to situations where, under Community provisions, levies and refunds are fixed by means of tenders;

Whereas Regulation (EEC) No 2730/79 laying down common detailed rules for the application of the system of export refunds on agricultural products ⁽⁷⁾, as last amended by Regulation (EEC) No 202/82 ⁽⁸⁾, has replaced Regulation (EEC) No 192/75 ⁽⁹⁾, Regulation (EEC) No 3183/80 laying down common detailed rules for the application of the system of import and export licences and advance-fixing certificates ⁽¹⁰⁾, as last amended by Regulation (EEC) No 49/82 ⁽¹¹⁾, has replaced Regulation (EEC) No 193/75 ⁽¹²⁾ and Regula-

⁽¹⁾ OJ No L 106, 12. 5. 1971, p. 1.

⁽²⁾ OJ No L 362, 17. 12. 1981, p. 2.

⁽³⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽⁴⁾ OJ No L 382, 31. 12. 1981, p. 37.

⁽⁵⁾ OJ No L 37, 7. 2. 1978, p. 5.

⁽⁶⁾ OJ No L 287, 8. 10. 1981, p. 1.

⁽⁷⁾ OJ No L 317, 12. 12. 1979, p. 1.

⁽⁸⁾ OJ No L 21, 29. 1. 1982, p. 23.

⁽⁹⁾ OJ No L 25, 31. 1. 1975, p. 1.

⁽¹⁰⁾ OJ No L 338, 13. 12. 1980, p. 1.

⁽¹¹⁾ OJ No L 7, 12. 1. 1982, p. 7.

⁽¹²⁾ OJ No L 25, 31. 1. 1975, p. 10.

tion (EEC) No 3033/80 laying down trade arrangements applicable to certain goods resulting from the processing of agricultural products⁽¹⁾ has replaced Regulation (EEC) No 1059/69⁽²⁾; whereas the references to these Regulations which have been replaced should be updated;

Whereas the measures provided for in this Regulation are in accordance with the opinions of the relevant management committees,

HAS ADOPTED THIS REGULATION:

Article 1

1. In trade with non-member countries, monetary compensatory amounts may be fixed in advance. Such advance fixing shall be effected in accordance with this Regulation.

2. For the purposes of this Regulation, a monetary compensatory amount comprises the following elements:

- (a) the amount obtained, for the product in question, from the application of Annex I to the Regulations fixing the monetary compensatory amounts;
- (b) — the coefficient specified in Annex II to the Regulations fixing the monetary compensatory amounts, and
— the representative rate to be applied for conversion into national currency of the amounts fixed in ECU;

in the case of certain processed products, the two latter elements may, where necessary, vary according to the basic agricultural products for which the export refund is fixed in advance.

3. For the purposes of this Regulation, the supplies referred to in Articles 5 and 19b of Regulation (EEC) No 2730/79 shall be considered as trade with non-member countries.

4. For the purposes of this Regulation, Belgium and Luxembourg (BLEU) shall be considered as a single Member State.

Article 2

1. The monetary compensatory amount shall be fixed in advance on application.

The monetary compensatory amount may be fixed in advance only in the case of licences or certificates

under which the import or export levy or export refund is fixed in advance.

The monetary compensatory amount may not be fixed in advance in respect of products falling within subheading 04.02 B of the Common Customs Tariff unless the export refund is fixed in advance for all the constituents of the product in question.

2. Levies or refunds fixed by means of tenders shall be considered to be fixed in advance.

3. Where the monetary compensatory amount is fixed in advance, the licence or certificate and, in the case of application of Article 4 (6), extracts therefrom shall be valid only in one Member State to be designated by the applicant on submission of the application for advance fixing of the monetary compensatory amount.

Article 3

1. Where a licence or certificate advance fixing the levy or refund is to be valid for not more than six months, applications for advance fixing of the monetary compensatory amount must be lodged at the same time as the application for such licence or certificate.

Where Article 6 (2) applies, an application to advance fix the monetary compensatory amount shall be accepted only if the party concerned has declared in writing, at the time of submission of the relevant tender, that he will also apply to advance fix the monetary compensatory amount if the tender, in whole or in part, is accepted. In this case the obligation to lodge an application to advance fix the levy or refund, following acceptance of a tender, comprises an obligation to request at the same time advance fixing of the monetary compensatory amount.

In such case:

- (a) the application for the licence or certificate and the licence or certificate itself shall contain one of the following entries in section 12:
 - 'Advance fixing of the monetary compensatory amount',
 - 'Forudfastsættelse af det monetære udligning-sbeløb',
 - 'Vorausfestsetzung des Währungsausgleichs-betrags',
 - 'Προκαθορισμός του νομισματικού έξισωτικού ποσού',
 - 'Fixation à l'avance du montant compensatoire monétaire',
 - 'Fissazione anticipata dell'importo compensativo monetario',
 - 'Vaststelling vooraf van het monetaire compenserende bedrag';

⁽¹⁾ OJ No L 323, 29. 11. 1980, p. 1.

⁽²⁾ OJ No L 141, 12. 6. 1969, p. 1.

(b) Section 20a of the licence or certificate, in the case of imports, and section 18a, in the case of exports, shall contain the following entries in one of the official languages of the Community :

- 'Monetary compensatory amount fixed in advance on ... (date of advance fixing), to be adjusted as appropriate.
Certificate valid in ... (Member State designated by the applicant)';
- 'Monetært udligningsbeløb forudfastsat den ... (dato for forudfastsættelsen) justeres i påkommende tilfælde.
Licens gyldig i ... (den medlemsstat, der er angivet af ansøgeren)';
- 'Am ... (Voraussetzungsdatum) im voraus festgesetzter Währungsausgleichsbetrag; muß gegebenenfalls angepaßt werden.
Lizenz gilt in ... (vom Antragsteller angegebener Mitgliedstaat)';
- 'Νομισματικό έξισωτικό ποσό προκαθορισθέν τήν ... (ήμερομηνία προκαθορισμού ένδεχομένως προσαρμοστέα).
Πιστοποιητικό ισχύον στ ... (Κράτος μέλος υποδεικνυόμενο από τόν αίτούντα)';
- 'Montant compensatoire monétaire fixé à l'avance le ... (date de préfixation), à ajuster éventuellement.
Certificat valable en ... (État membre désigné par le demandeur)';
- 'Importo compensativo monetario fissato in anticipo il ... (data della fissazione anticipata), da modificarsi se del caso.
Titolo valido in ... (Stato membro designato dal richiedente)';
- 'Monetair compenserend bedrag vooraf vastgesteld op ... (datum van de vaststelling vooraf), eventueel aan te passen.
Certificaat geldig in ... (door de aanvrager aangegeven Lid-Staat)';

2. For information purposes the competent bodies in the Member States may, in the case of licences or certificates to be used in their territory, enter in section 20a of the licence or certificate, in the case of imports, and in section 18a, in the case of exports, additional data for the calculation of the monetary compensatory amounts.

Article 4

1. The provisions of this Article shall apply where the licence or certificate advance fixing the levy or refund is valid for more than six months.

2. The advance fixing of the monetary compensatory amount shall be valid for six months from the date on which the application for advance fixing is

lodged, this date being counted in the period for which the advance fixing will be valid.

3. An application for advance fixing of the monetary compensatory amount may be lodged during the period beginning on the day on which the application for the licence or certificate advance fixing the levy or refund is lodged and ending on the first day of the final six months of validity of that licence or certificate.

4. Where a licence or certificate advance fixing the levy or refund also fixes the monetary compensatory amount in advance, the licence or certificate shall expire on the last day of validity of the advance fixing of the monetary compensatory amount.

5. Where the application for advance fixing of the monetary compensatory amount is lodged at the same time as the application for the licence or certificate, the application for the licence or certificate and the licence or certificate itself shall contain one of the entries set out in Article 3 (1).

Section 21 of the import licence or certificate or, as the case may be, section 19 of the export licence or certificate shall indicate the last date of validity of the advance fixing of the monetary compensatory amount.

6. Where the applicant for the licence or certificate advance fixing the levy or refund has not made use of the provisions of paragraph 5, and where he lodges an application for advance fixing of the monetary compensatory amount during the period referred to in paragraph 3, this application must be lodged with the authority with which the application for the certificate was lodged. The provisions of Articles 12, 13 (1), 14 and 15 of Regulation (EEC) No 3183/80 shall apply to the application for advance fixing of the monetary compensatory amount.

The application for advance fixing of the monetary compensatory amount may relate to a licence or certificate or to an extract therefrom where such extract has been issued.

The applicant must, when applying for advance fixing of the monetary compensatory amount, present to the competent body the relevant licence or certificate or extract.

The licence or certificate or extract shall be kept by the competent authority, which shall issue a replacement licence or certificate or extract.

Where application is made for an extract from a licence or certificate fixing the levy or refund in advance, an application for advance fixing of the compensatory amount may be lodged in respect of such extract, and this latter shall be regarded as a replacement extract.

7. The replacement licence or certificate or extract in respect of which the monetary compensatory amount is fixed in advance shall be issued for a quantity of products which, increased by the relevant tolerance, corresponds to the quantity available indicated on the document which it replaces.

The replacement licence or certificate or extract thereof shall be valid for six months from the date on which the application for advance fixing of the monetary compensatory amount is lodged, this date being counted in the period for which the document will be valid.

Without prejudice to the special provisions of this paragraph, the replacement licence or certificate or extract shall contain any entries made on the document which it replaces. It shall also contain the entries listed in Article 3 (1) and a reference to the number of the original document.

8. The provisions of Article 3 (2) shall apply to the licences and certificates referred to in this Article.

Article 5

1. Where a certificate of advance fixing of the refund relates to a basic product exported in the form of goods covered by Regulation (EEC) No 3033/80 and fixes the monetary compensatory amount in advance, such advance fixing shall relate to the monetary compensatory amount applicable to the goods in question.

2. The monetary compensatory amount may not be fixed in advance in respect of the goods unless the total quantity of at least one of the basic products eligible for the export refund is covered by one or more certificates as referred to in paragraph 1.

For the purposes of the preceding subparagraph, only basic products making up 10 % or more by weight of the goods shall be taken into account.

3. Where more than one certificate as referred to in paragraph 1 is presented at the time of completion of customs formalities, account shall be taken only of the first certificate issued as regards the date to be taken into account for calculation of the monetary compensatory amount.

For the purposes of the preceding subparagraph, only certificates relating to the basic product or products the total quantity of which is covered shall be taken into account.

4. Where one or more certificates referred to in paragraph 1 are presented at the time of completion of the customs formalities and where the goods do not qualify for fixing in advance of the monetary compensatory amount because the conditions laid down in

paragraph 2 are not fulfilled, such certificate(s) shall not be accepted on the completion of the customs formalities in respect of the goods in question.

Article 6

1. The monetary compensatory amount in force on the day on which the application for advance fixing of the monetary compensatory amount is lodged shall be applicable to the operations carried out during the period of validity of the licence or certificate.

2. However, where the levy or refund is fixed by means of tenders, the monetary compensatory amount applicable shall be that in force on the last day for submission of tenders. For the purpose of the adjustments referred to in Article 7, the application for advance fixing of the monetary compensatory amount shall be considered to have been lodged on the last day for submission of tenders.

Paragraph 1 shall remain applicable, however, where the applicant for a licence or certificate relating to a levy or refund fixed by means of tenders places himself in the situation referred to in Article 4 (6).

Article 7

1. The monetary compensatory amounts fixed in advance shall be adjusted if a new representative rate, decided on before the application for advance fixing was lodged, comes into effect.

2. A decision to adjust the monetary compensatory amounts fixed in advance may be taken where the levy or refund is adjusted following a change in prices.

3. Detailed provisions governing the adjustments and the amounts thereof shall be determined in accordance with the procedure laid down in Article 6 of Regulation (EEC) No 974/71.

4. Where a rate in national currency entered on the licence or certificate under the provisions of Article 3 (2) has to be adjusted, the competent authorities of the Member States shall take the administrative measures they consider necessary to effect that adjustment. They may, to this end, provide for additional entries on the licences or certificates.

Article 8

1. Where, in a given Member State, monetary compensatory amounts are not fixed in respect of one or more products but are applied in other Member States, the monetary compensatory amount for that Member State shall be considered to be nil and the coefficient to be 1.

2. In a Member State referred to in paragraph 1, advance fixing of monetary compensatory amounts may be applied for in the same way as in the other Member States.

Article 9

1. Where examination of the monetary or market situation reveals difficulties resulting from application of the provisions relating to advance fixing of monetary compensatory amounts, or where such difficulties are likely to arise, application of the said provisions in respect of the product or products concerned may be suspended.

2. In extremely urgent cases, after examination of the situation on the basis of all the information available, the Commission may decide to suspend advance fixing of monetary compensatory amounts for not more than three working days.

3. Suspension of advance fixing of monetary compensatory amounts shall not apply where a levy or refund has been fixed by means of tenders unless the Regulation which enforces the suspension states that the provisions of this paragraph are not to apply.

4. During the period of suspension of advance fixing of monetary compensatory amounts, application for advance fixing of monetary compensatory amounts shall be inadmissible.

5. Where applications for a licence or certificate are accompanied by an application for advance fixing of the monetary compensatory amount and when, at any time after the application but during the period provided for examination of applications, advance fixing of monetary compensatory amounts is suspended, the application for advance fixing of the monetary compensatory amount shall not be affected by the suspension.

6. The provisions of paragraph 4 shall be without prejudice to applications for licences or certificates advance fixing the levy or the refund.

Article 10

1. Where, in respect of licences or certificates referred to in Article 3 (1), advance fixing of the monetary compensatory amount is precluded by Article 9 (4), application for advance fixing of the monetary compensatory amount for a Member State to which the suspension applied may be lodged during a period of seven days following the end of the period of suspension.

The application to advance fix the monetary compensatory amount shall apply to the total quantity remaining available indicated on the licence or certificate

and on any extract or extracts therefrom. It shall be lodged with the authority with which the application for the original licence or certificate was lodged. The applicant shall, when applying for advance fixing of the monetary compensatory amount, present to the competent authority the original licence or certificate and any extract or extracts therefrom. The original licence or certificate and any extract or extracts therefrom shall be kept by that authority which shall issue as appropriate a replacement licence or certificate and replacement extracts.

The following provisions of Article 4 shall apply :

- the second sentence of the first subparagraph 6,
- the first and third subparagraphs of paragraph 7, and
- paragraph 8.

The monetary compensatory amount in effect on the day on which the application for advance fixing of the monetary compensatory amount is lodged shall be applicable to operations carried out during the remaining period of validity of the licence or certificate.

2. Where, in respect of licences or certificates referred to in Article 4, advance fixing of the monetary compensatory amount is suspended for one or more Member States during a period which includes the last day of the period referred to in Article 4 (3), that period shall, for applications to advance fix the monetary compensatory amount for a Member State to which the suspension applied, be extended to the seventh day following the end of the period of suspension. However, where this provision is applied, the monetary compensatory amount cannot be fixed in advance for a longer period than the remaining period of validity of the licence or certificate or extract therefrom to which the application relates.

Article 11

1. Regulation (EEC) No 243/78 is hereby repealed.
2. In all Community instruments in which reference is made to Regulation (EEC) No 243/78 or to Articles of that Regulation, such references shall be construed as references to this Regulation or to the corresponding Articles thereof.

Article 12

This Regulation shall enter into force on 14 June 1982.

The provisions of this Regulation shall apply to applications for licences and certificates lodged on and after 14 June 1982. However, the provisions of the second subparagraph of Article 3 (1) shall only apply to tenders submitted on and after that date.

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

Done at Brussels, 14 May 1982.

For the Commission
Poul DALSGER
Member of the Commission
