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*(Acts whose publication is obligatory)*

## COMMISSION REGULATION (EEG) No 3152/85

of 11 November 1985

**laying down detailed rules for the application of Regulation (EEC) No 1676/85 on the value of the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy<sup>(1)</sup>, and in particular Article 12 thereof,

Having regard to Council Regulation (EEC) No 1677/85 of 11 June 1985 on monetary compensatory amounts in agriculture<sup>(2)</sup>, and in particular Article 12 thereof,

Whereas Regulation (EEC) No 1676/85 provides for the cancellation of certain documents or certificates should those concerned suffer a disadvantage following adjustments to amounts fixed in advance; made following an alteration of the agricultural conversion rates in accordance with Article 6 or Article 8 of Regulation (EEC) No 1676/85;

Whereas those concerned may be considered as having accepted the disadvantage in cases where they undertook commitments at a time when the alteration of the agricultural conversion rate was known, concerning an operation to be effected after that alteration; whereas cancellation is not justified in such cases; whereas a rule must be provided to show from what date the alteration may be considered to have been known;

Whereas in other cases the disadvantage allows cancellation of the document certifying the advance fixing of an amount; whereas to assess the existence of a disadvantage, the situation before and after the adjustment must be compared; whereas, for this purpose, some of the factors concerning the relevant operation must be taken into consideration;

Whereas, however, only those consequences of exchange rate alterations referred to in Article 6 or Article 8 of Regulation (EEC) No 1676/85 may be taken into account; whereas under normal circumstances alterations to the central rate or normal changes in the market rate of a Member State's currency have an impact on the monetary compensatory amounts which should not be taken into account; whereas, similarly, an alteration in the contract price is an irrelevant factor, since it is entirely a matter for the individual concerned;

Whereas, on the other hand, other measures adopted under the Community agricultural regulations may influence the situation of those concerned; whereas this is the case, in particular, for a decision concerning prices fixed in ECU at Community level; whereas a change in the level of prices fixed in ECU affects either import or export charges and refunds, through the adjustments to be made in ECU under the market organization rules for the various products, or monetary compensatory amounts which have not been fixed in advance; whereas account should be taken of this when the disadvantage is being determined, so that in this way it can in certain cases be partly or wholly offset;

Whereas no adjustment related to a change in the agricultural conversion rate can be made for import or export charges or refunds fixed in advance at the same time as the monetary compensatory amounts; whereas the fixing in advance of these sums also entails the 'freezing' of the agricultural conversion rate and of the monetary coefficient applying to these charges and refunds which were valid when the sum was fixed in advance; whereas, consequently, there can be no disadvantage for the import or export charges and refunds fixed in advance, since these undergo no change following a change in the agricultural conversion rate;

Whereas the adjustments to be made under Article 8 of Regulation (EEC) No 1676/85 may normally be made subject to the same rules; whereas, however, there is no reason to implement the exception concerning the

<sup>(1)</sup> OJ No L 164, 24. 6. 1985, p. 1.

<sup>(2)</sup> OJ No L 164, 24. 6. 1985, p. 6.

advance fixing of monetary compensatory amounts, as the adjustments in ECU made under Article 8 of Regulation (EEC) No 1676/85 also affect the import charges and refunds fixed in advance together with the monetary compensatory amounts;

Whereas, as regards the wine sector, certain exceptions in respect of the entry into force of the agricultural conversion rates must be made so as to ensure that intervention measures are carried out for all participants on the same terms;

Whereas this Regulation supersedes Commission Regulation (EEC) No 1054/78 of 19 May 1978 laying down detailed rules for the application of Regulation (EEC) No 878/77 on the exchange rates to be applied in agriculture and replacing Regulation (EEC) No 937/77 <sup>(1)</sup>;

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. Neither advance fixing nor the certificates or other documents which are evidence of that advance fixing may be cancelled under Article 6(3) of Regulation (EEC) No 1676/85 if:

- (a) for certificates or other documents certifying advance fixing: these documents are applied for within the meaning of Article 14 (1) of Commission Regulation (EEC) No 3183/80 <sup>(2)</sup>,
- (b) for the amounts established following a tender award: a tender mentioning these amounts has been validly lodged,
- (c) for a contract concluded with an intervention agency: the contract was concluded,

on or after the date of public announcement of a decision on the alteration of the relevant agricultural conversion rate.

In the case of (b), the last day of the period allowed for lodging tenders shall, for the purposes of this Article, be deemed to be the day of the lodging of the application for the relevant certificate.

2. The publication of a press release by the body responsible for the alteration of the relevant agricultural conversion rate shall be deemed to be a public announcement. The date of publication of the press release in question shall be published by the Commission in the *Official Journal of the European Communities*.

A date different from that announced in the press release may be fixed in accordance with the procedure laid down in Article 12 of Regulation (EEC) No 1676/85.

#### Article 2

1. This Article shall apply where adjustments are made in accordance with Article 6 and Article 8 (2) of Regulation (EEC) No 1676/85.

2. No adjustment under Article 6 of Regulation (EEC) No 1676/85 shall be made where the monetary compensatory amount has been fixed in advance.

3. For the amounts applicable in trade, the disadvantage conferring entitlement to cancellation of the certificate or other document certifying advance fixing shall be determined by comparing all the following amounts, where appropriate, valid before and after the entry into force of the new conversion rate:

- (a) import charges, except customs duties, fixed in advance, and, where appropriate, adjusted following a modification of prices in ECU,
- (b) export refunds and levies fixed in advance, and, where appropriate, adjusted following a modification of prices in ECU,
- (c) subsidies fixed in advance for deliveries to the French overseas department of Réunion of rice coming under heading No 10.06 of the Common Customs Tariff,
- (d) accession compensatory amounts,
- (e) monetary compensatory amounts.

4. The comparison shall be made in the currency of the Member State in which the certificate or other document was issued.

For the purposes of the comparison, no account shall be taken of any change in:

- (a) the purchase or sale price of the relevant product given in the contracts of the parties concerned, because of a change in a conversion rate,
- (b) the monetary compensatory amount, following a change only in the central rates or only in the recorded spot rates of national currencies.

5. For other amounts, including those given in a contract concluded with an intervention agency, the disadvantage conferring entitlement to cancellation shall be determined by comparing, in the currency of the Member State in which the competent intervention agency is situated, the amount given in the relevant document or in the contract before and after alteration of the agricultural conversion rate.

#### Article 3

At the request of the Member States the Commission shall supply the information necessary for calculating the disadvantage.

<sup>(1)</sup> OJ No L 134, of 22. 5. 1978, p. 40.

<sup>(2)</sup> OJ No L 338, of 13. 12. 1980, p. 1.

*Article 4*

Where the agricultural conversion rate is altered during the course of a wine growing year, the new rate shall not apply to the following operations, where the decisions to carry out these operations have been taken before the entry into force of the new rate:

- (a) the re-storage aid referred to in Article 10 of Council Regulation (EEC) No 337/79 <sup>(1)</sup>;

- (b) the measures referred to in Articles 11, 12a, 14, 14a, 15, 39, 40 and 41 of Regulation (EEC) No 337/79.

*Article 5*

Regulation (EEC) No 1054/78 is hereby repealed.

*Article 6*

This Regulation shall enter into force on 1 January 1986.

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

Done at Brussels, 11 November 1985.

*For the Commission*

Frans ANDRIESEN

*Vice-President*

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<sup>(1)</sup> OJ No L 54, 5. 3. 1979, p. 1.