# REGULATION (EEC) No 1608/74 OF THE COMMISSION

## of 26 June 1974

## on special provisions in respect 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 (1) 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, as last amended by Regulation (EEC) No 3450/73 (2), and in particular Article 6 (1) thereof;

Whereas Regulation (EEC) No 974/71 introduced monetary compensatory amounts in trade with Member States and third countries to compensate for the effects of monetary measures which might otherwise have disturbed the proper functioning of the common agricultural policy; whereas, however, in spite of the introduction of this system, it has not been possible to ensure stability of trade in every case; whereas, in effect, every decision aimed at fixing or altering, in respect of a currency, the central rate or the representative rate used in the context of the common agricultural policy or, furthermore, at permitting a currency to float in relation to the currencies of the Member States where the fluctuation of the rates of exchange is kept within a maximum spread of 2·25 % provokes new difficulties in trade;

Whereas when such an event has occurred in a Member State, the Commission has, as a general rule, taken specific measures to deal with the cases of persons committed to performing a contract containing prefixed conditions and for whom the monetary event involved an increased charge on imports or exports;

Whereas, however, such specific measures have not proved to be entirely satisfactory; whereas they have also proved to be difficult to administer as they equally relate to operations on which the monetary event has in fact no damaging effects which can lead to differing applications in the Member States;

Whereas it therefore seems appropriate to introduce a certain flexibility into the monetary rules permitting each individual case to be examined in the light of the loss suffered whilst maintaining measures to assure a coordinated application thereof;

Whereas to ensure the practical application of a discretionary measure of this nature it is appropriate to lay down certain criteria for its exercise dealing in particular with the evidence which an interested party must provide in order to establish, on the one hand, that in the particular circumstances of the case in point, it was not necessary to apply the monetary compensatory amount and, on the other, that he suffered an excessive loss which he was not able to avoid even after taking all normal and necessary care;

Whereas it is, in principle, desirable to entrust the administration of the rules concerned to Member States; whereas they are in fact better placed to judge the circumstances and to verify the facts of the case; whereas, nevertheless, it appears appropriate in the case of contracts, the duration of which exceeds a given period, to make the application of the rules subject to the Commission's agreement.

Whereas, furthermore, it appears desirable to establish rules of procedure facilitating on a Community scale, the coordination of the administration of the rules by Member States and to provide, in respect of antecedent operations only, for the prior notification of the Commission;

Whereas, because of difficulties of application and control in the past, the Commission will follow with particular attention the application of the provisions laid down in order to take, if necessary, further measures and to determine whether this system should be maintained.

Whereas it should be made possible for this discretion to be exercised, at the request of the interested party, from 4 June 1973, the date of entry into force of Regulation (EEC) No 1463/73 (3) of 30 May 1973 laying down detailed rules for the application of monetary compensatory amounts; whereas this Regulation made important alterations to the manner in which the system of monetary compensatory amounts was applied and whereas since then no specific regulations have been adopted, when monetary events, such as those described above, have occurred to cover the case of persons suffering serious loss by reason of such events.

Whereas the appropriate Management Committees have not given opinions within the time limits laid down by their Chairmen,

HAS ADOPTED THIS REGULATION:

*Article 1*

Where monetary compensatory amounts are introduced or increased as a result of the fixing or the amendment of the central rate or of the representative rate of the currency of a Member State used in the context of the common agricultural policy, or where the decision of a Member State to permit its currency

(1) OJ No L 106, 12. 5. 1971, p. 1.
(2) OJ No L 353, 22. 12. 1973, p. 25.
(3) OJ No L 146, 4. 6. 1973, p. 1.

to float in relation to the currencies of the Member States where the fluctuation of the rates of exchange is kept within a maximum spread of 2·25 %, the Member State in question shall be authorized to waive, on a discretionary basis and according to the following conditions, the monetary compensatory amount or so much thereof as corresponds to the increase.

*Article 2*

1. Article 1 shall apply only to imports and exports carried out pursuant to binding contracts concluded before the monetary measure referred to in that Article.

2. The authorization provided for in Article 1 may be made use of only at the request of the interested party and if such party at the time of making the request, furnishes proof that :

(a) in the case in question it is not necessary to levy the newly introduced or increased monetary compensatory amount to compensate for the effects of the monetary measures referred to in that Article on the price of the product ; and that

(b) to levy such amount would constitute an excessive additional burden for him, which he could not avoid even taking all the necessary and normal care.

*Article 3*

Requests for the application of this Regulation must be lodged within 10 days from the occurrence of the measure referred to in Article 1 or from the date of entry into force of this Regulation in respect of imports or exports carried out before such entry into force.

*Article 4*

1. If, in a given case, a Member State intends to make use of the authorization provided for in Article 1 in respect of a contract the duration of which exceeds :

— the period of validity of the certificate where the certificate includes a prior fixing of the levy or the rebate in excess of three months, or

— three months, in other cases,

the Member State shall inform the Commission of its intention, indicating the reasons therefor and the proof furnished.

2. The Member State concerned may make use of the authorization only if the Commission, acting in accordance with the procedure laid down in Article 6 (1) of Regulation (EEC) No 974/71, raises no objection to the proposed measure within a period of six weeks from the day on which it is informed of the Member State's intention.

*Article 5*

In the cases not covered by Article 4 the Member States shall inform the Commission of the criteria which they intend to adopt for the application of the authorization referred to in Article 1 ; in respect of imports and exports carried out before the entry into force of this Regulation they shall notify the Commission of the list of the cases in respect of which they propose to make use of the authorization.

In addition, Member States shall notify the Commission every three months of details of the cases in respect of which they have in fact utilized the authorization.

The Commission shall, on the basis of such information and notification ensure the coordinated application of these rules by Member States and shall adopt, if it proves necessary, supplementary measures in accordance with the procedure laid down in Article 6 (1) of Regulation (EEC) No 974/71.

*Article 6*

This Regulation shall enter into force on the tenth day following its publication in the *Official Journal of the European Communities*. It shall apply to imports or exports carried out as of 4 June 1973.

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

Done at Brussels, 26 June 1974.

*For the Commission*

*The President*

François-Xavier ORTOLI