COMMISSION REGULATION (EEC) No 243/78

of 1 February 1978

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 557/76 [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 2560/77 [4] and in particular Articles 12 (2), 15 (5) and 16 (6) thereof, and also to the relevant provisions of the other Regulations on the common organization of the markets in agricultural products,

Whereas Regulation (EEC) No 974/71 introduced a system of monetary compensatory amounts applicable to trade between Member States and with non-member countries ; whereas those amounts are calculated on the basis of the difference between the representative rate of a currency and its actual exchange rate ; whereas, in Member States for whose currencies no central rate has been fixed, the actual rate is that regularly recorded on the exchange market ; whereas in the other Member States the central rate is regarded as the actual exchange rate ; whereas the system of monetary compensatory amounts is therefore subject to instability ; whereas, for that reason and in view of the method of calculation, which takes into account the movement of floating currencies in relation to other Community currencies, the monetary compensatory amount does not always correspond to the rate on which commercial contracts are based ; whereas that is particularly true of trade with non-member countries ;

Whereas these conditions cause difficulty for traders, who when concluding a contract need to be able to assess the economic conditions under which that contract will be performed ; whereas only by providing for the advance fixing of monetary compensatory amounts can this difficulty be overcome ;

Whereas, however, the advance fixing of any amount, and in particular of monetary compensatory amounts, may lead to abuses for speculative ends ; whereas it is therefore necessary to proceed cautiously and to introduce this facility only for monetary compensatory amounts applying to trade with non-member countries and to products for which the levy or refund may be fixed in advance ; whereas the economic justification for advance fixing, namely the degree of certainty that traders require, implies that the advance fixing of the monetary compensatory amount should be allowed only where the levy or refund for the same operation has been fixed in advance ;

Whereas it follows that the period of validity of a compensatory amount fixed in advance should be the same as that of the levy or refund to which it is linked ; whereas, however, in order not to put at risk the proper operation of the common organization of the market, the period of validity should in no case exceed six months ; whereas appropriate technical provision must therefore be made for cases in which the validity of the import or export licences or the advance fixing certificates normally exceeds this period ;

Whereas divergent movements of monetary compensatory amounts as between Member States may encourage speculation ; whereas the validity of a licence in respect of which an application for advance fixing of the monetary compensatory amount has been lodged must therefore be limited to the territory of the Member State in which the applicant states that he wished to effect the import or export operation ;

Whereas the monetary compensatory amount in trade with non-member countries is composed of two elements, namely the amount fixed for the Member State and for the product concerned in national currency, and the monetary coefficient applying to the levy or refund ;

---

(1) OJ No L 106, 12. 5. 1971, p. 1.
(2) OJ No L 67, 15. 3. 1976, p. 1.
(3) OJ No L 281, 1. 11. 1975, p. 1.
(4) OJ No L 303, 28. 11. 1977, p. 1.

Whereas certain technical problems arise in the calculation of the monetary compensatory amount for certain goods covered by Council Regulation (EEC) No 1059/69 of 28 May 1969 laying down the arrangements applicable to certain goods resulting from the processing of agricultural products (1), as last amended by Regulation (EEC) No 152/78 (2); whereas those amounts are in fact calculated on the basis of the standard quantities of basic agricultural products used to calculate the import duty; whereas if those amounts are fixed in advance a relationship will have to be established with the refund payable on the basic agricultural products exported in the form of the goods concerned; whereas these problems may be resolved by a system whereby the whole of one of the basic products must be covered by the advance fixing of the refund;

Whereas price changes may occur during the period of validity of certificates fixing the monetary compensatory amount in advance, either in terms of the unit of account or because of a change in representative rates; whereas this should be taken into account by a provision for the adjustment of compensatory amounts fixed in advance;

Whereas market developments may render advance fixing of monetary compensatory amounts inadvisable; whereas it is therefore necessary to make provision for suspension of advance fixing of these amounts, where necessary, at short notice;

Whereas a trader who does not apply for advance fixing of the monetary compensatory amount where this is possible should not be allowed recourse to Commission Regulation (EEC) No 1608/74 of 26 June 1974 on special provisions in respect of monetary compensatory amounts (3), since he has failed to take the precautions which were available to him;

Whereas transitional measures permitting some variation from the normal rules should be introduced to prevent distortion of competition between the holders of certificates at the time when this Regulation enters into force and later applicants;

Whereas Commission Regulation (EEC) No 837/72 of 24 April 1972 laying down special provisions in respect of levies and refunds fixed in advance for cereals (4) provides that, in the event of a monetary crisis leading to a reduction in monetary compensatory amounts, where the refund or levy has been fixed in advance the monetary compensatory amount in force on the day of such advance fixing is valid for the transaction in question; whereas the introduction of advance fixing of monetary compensatory amounts makes that provision unnecessary; whereas it is therefore appropriate that it be repealed;

Whereas the provisions of this Regulation refer to certain provisions of Commission Regulation (EEC) No 192/75 of 17 January 1975 laying down detailed rules for the application of export refunds (5), as last amended by Regulation (EEC) No 1469/77 (6), and also to those of Commission Regulation (EEC) No 193/75 of 17 January 1975 laying down common rules for the application of the system of import and export licences and advance fixing certificates for agricultural products (7), as last amended by Regulation (EEC) No 1470/77 (8);

Whereas the management committees concerned have not delivered an opinion within the time limit set by their respective chairmen,

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 the conversion into national currency of the amounts fixed in units of account;

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.

(1) OJ No L 141, 12. 6. 1969, p. 1.
(2) OJ No L 23, 28. 1. 1978, p. 1.
(3) OJ No L 170, 27. 6. 1974, p. 38.
(4) OJ No L 98, 24. 4. 1972, p. 10.
(5) OJ No L 25, 31. 1. 1975, p. 1.
(6) OJ No L 162, 1. 7. 1977, p. 9.
(7) OJ No L 25, 31. 1. 1975, p. 10.
(8) OJ No L 162, 1. 7. 1977, p. 11.

3. For the purposes of this Regulation, the supplies referred to in Article 3 of Regulation (EEC) No 192/75 shall be considered as trade with non-member countries.

4. For the purposes of this Regulation the Benelux Member States shall be regarded 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 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 under a tendering procedure shall be considered to be fixed in advance.

3. Where the monetary compensatory amount is fixed in advance the 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 the advance fixing of the monetary compensatory amount.

Article 3

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

In such case :

(a) the application for the certificate and the certificate itself shall contain one of the following entries in section 12 :

'Advance fixing of the monetary compensatory amount',
'fixation à l'avance du montant compensatoire monétaire',
'Forudfastsættelse af det monetære udligningsbeløb',
'Vorausfestsetzung des Währungsausgleichsbetrags',
'Fissazione anticipata dell'importo compensativo monetario',
'Vaststelling vooraf van het monetaire compenserende bedrag' ;

(b) Section 20 of the certificate in the case of imports and section 18 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)' ;

— 'Montant compensatoire monétaire fixé à l'avance le (date de préfixation), à ajuster éventuellement
certificat valable en ... (État membre désigné par le demandeur)' ;

— 'Monetært udligningsbeløb forudfastsat den (dato for forudfastsættelsen) justeres i påkommende tilfælde
Licens gyldig i ... (den medlemsstat, der er angivet af ansøgeren)' ;

— 'Am ... (Vorausfestsetzungsdatum) im voraus festgesetzter Währungsausgleichsbetrag ; muß gegebenenfalls angepaßt werden
Lizenz gilt in ... (vom Antragsteller angegebener Mitgliedstaat)' ;

— '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 certificates to be used in their territory, enter in section 20 of the certificate in the case of imports and in section 18 in the case of exports additional data for the calculation of the monetary compensatory amount.

Article 4

1. The provisions of this Article shall apply where the certificate of advance fixing of 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 was lodged.

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 certificate of advance fixing of the levy or refund is lodged and ending on the first day of the final six months of validity of that certificate.

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

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

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

6. Where the applicant for the certificate of advance fixing of 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 5 (1) and (3), 6 and 7 of Regulation (EEC) No 193/75 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 certificate or to an extract therefrom where such extract has been issued.

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

The certificate or extract shall be kept by the competent authority, which shall issue a replacement certificate or extract. Where application is made for an extract from a certificate fixing the levy or refund in advance, an application for the 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 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 certificate or extract thereof shall be valid for six months from the date of submission of the application for advance fixing of the monetary compensatory amount.

Without prejudice to the special provisions of this paragraph, the replacement 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 document which it replaces.

8. The provisions of Article 3 (2) shall apply to the 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 1059/69 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 the calculation of the monetary compensatory amount.

For 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 the 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 effect 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 certificate.

2. However, where the levy or refund is fixed in advance under a tendering procedure, the monetary compensatory amount applicable shall be that in effect on the last day for the submission of tenders.

Paragraph 1 shall remain applicable, however, where the applicant for a certificate relating to a levy or refund fixed in advance under a tendering procedure 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, during the period of validity of the certificate, 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 import levy or export refund is adjusted during the period of validity of the certificate following a change in prices,

— or when a new representative rate comes into force.

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 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 affect that adjustment. They may to this end provide for additional entries on the 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 the 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 due to application of the provisions relating to the 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. During the period of suspension of the advance fixing of monetary compensatory amounts, applications for the advance fixing of monetary compensatory amounts shall be inadmissible.

4. Where applications for a certificate are accompanied by an application for the advance fixing of the monetary compensatory amount and such applications are being examined when the advance fixing of monetary compensatory amounts is suspended, the application for the advance fixing of the monetary compensatory amount shall be refused.

5. The provisions of paragraphs 3 and 4 shall be without prejudice to applications for certificates of advance fixing of the levy or the refund.

Article 10

1. An application for advance fixing of the monetary compensatory amount may be made in respect of certificates or extracts from certificates of advance fixing of the levy or the refund which were applied for, within the meaning of Article 6 of Regulation (EEC) No 193/75, before the date on which this Regulation enters into force and which are still valid at that date.

Such application must be lodged within two weeks from the entry into force of this Regulation. However, in the case of certificates or extracts of certificates which on the date of entry into force of this Regulation are still valid for a period exceeding six months, application for advance fixing of the monetary compensatory amount may be lodged until the first day of the last six months of validity of the certificate or extract thereof.

2. Applications for the advance fixing of the monetary compensatory amount shall be made in accordance with the provisions of Article 4 (6) and shall entail the issue of a replacement certificate or extract.

3. The replacement certificate or extract referred to in paragraph 2 shall be issued in accordance with Article 4 (7). However, the date of expiry of the replacement certificate or extract may not be later than that of the document which it replaces.

Article 11

1. The following Article is added to Regulation (EEC) No 1608/74:

'*Article 5a*

1. The provisions of this Regulation shall not apply in cases where advance fixing of the monetary compensatory amount is possible.'

2. Regulation (EEC) No 837/72, as amended by Regulation (EEC) No 199/73, is hereby repealed.

Article 12

This Regulation shall enter into force on 3 April 1978.

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

Done at Brussels, 1 February 1978.

For the Commission

Finn GUNDELACH

Vice-President