COMMISSION REGULATION (EEC) No 3392/81

of 27 November 1981

on the loss of licences and certificates and amending for the third time 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 for agricultural products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals (1), as last amended by Regulation (EEC) No 1949/81 (2), and in particular Articles 12 (2), 15 (5), 16 (6) and 24 thereof and the corresponding provisions of the other Regulations establishing a common organization of the market in respect of agricultural products,

Whereas, after the loss of a licence or certificate, holders are unable to obtain a replacement enabling them to import or export goods as provided for in the lost licence or certificate; whereas this may occasion serious financial losses for holders;

Whereas, in the case of some types of export licence, it is possible to institute a system for monitoring the quantities exported under each licence; whereas a monitoring system of this kind would, in the event of the loss of the original licence, allow a new licence to be issued under which the export operation concerned could be carried out in the same way as under the lost licence;

Whereas in certain cases where an import or export licence or advance fixing certificate has been totally or partially destroyed it is possible to issue a new licence or certificate;

Whereas new provisions to this effect should be inserted in Commission Regulation (EEC) No 3183/80 (3), as last amended by Regulation (EEC) No 2646/81 (4);

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 3183/80 is hereby amended as follows:

(a) In the Dutch language version, Article 20 (2) is replaced by the following:

'Een uittreksel van een certificaat geeft geen recht op afgifte van een ander uitttreksel.'

(b) Part (b) of the second subparagraph of Article 31 (2) is replaced by the following:

'(b) shall in all other cases be furnished by:

— production of the control copy or copies referred to in Article 10 of Regulation (EEC) No 223/77 or a certified copy or photocopy of such control copy or copies, or

— an attestation given by the agency responsible for paying the refund that the conditions of Article 31 (1) (b) have been fulfilled, or

— equivalent evidence as provided for in paragraph 4.

Where the sole purpose of the control copy is the release of the security, the control copy shall contain in box 106 one of the following entries:

— "to be used to release the security",

— "til brug ved frigivelse af sikkerhedsstillelsen"

— "zu verwenden für die Freistellung der Kaution"

— "πρός χρησιμοποίηση γιά τήν άποδέσμευση τῆς άσφάλειας",

— "à utiliser pour la libération de la caution,"

— "da utilizzare per lo svincolo della cauzione",

— "te gebruiken voor vrijgave van de waarborg".

However, if an extract of a licence or certificate, a replacement licence or certificate or a replacement extract is used, the abovementioned entry shall be completed with the number of the original licence or certificate and the name and address of the issuing agency.

(1) OJ No L 281, 1. 11. 1975, p. 1.
(2) OJ No L 198, 20. 7. 1981, p. 2.
(3) OJ No L 338, 13. 12. 1980, p. 1.
(4) OJ No L 259, 12. 9. 1981, p. 10.

The documents referred to in the first and second indents shall be sent to the issuing agency through official channels.'

(c) In the Danish, German, French, Italian and Dutch language versions the third subparagraph of Article 31 (2) is deleted.

(d) In Article 31 (3), the phrase : 'shall be returned or sent by the office of departure to the party concerned or where appropriate through official channels to the agency which issued the licence or certificate.'

is replaced by :

'shall be sent through official channels to the issuing agency.'

(e) In the English language version the first subparagraph of Article 31 (4) is replaced by the following :

'4. Where the control copy referred to in paragraph 2 (b) cannot be produced within three months following its issue owing to circumstances beyond the control of the party concerned he may make application to the competent agency for other documents to be accepted as equivalent, stating the grounds for such application and furnishing supporting documents.'

(f) Paragraphs 1 and 2 of Article 34 become paragraphs 1 and 2 of Article 35. Paragraphs 1, 2 and 3 of Article 35 become paragraphs 3, 4 and 5 of Article 35.

(g) Article 34 shall read as follows :

'Article 34

1. Where an export refund greater than zero has been fixed in advance and the relevant licence or certificate or an extract therefrom is lost, the agency issuing the licence or certificate shall issue at the request of the holder, or of the transferee in cases where the licence or certificate or extract has been transferred, a replacement licence or certificate or a replacement extract, subject to the provisions of the following subparagraph.

The competent authorities in the Member States may refuse to issue a replacement licence or certificate or a replacement extract if :

— the character of the applicant is not such as to guarantee that the aims of this Article will be respected ; in each Member State this power shall be exercised in accordance with the principles currently applicable in that State governing non-discrimination between applicants and the freedom of trade and industry,

— the applicant has failed to show that he has taken reasonable precautions to prevent the loss of the licence, certificate or extract.

2. A refund determined in the context of a tendering procedure shall be considered a refund fixed in advance.

3. The competent authority shall refuse to issue a replacement licence or certificate or replacement extract where the issue of licences or certificates for the product in question is suspended or where the issue of licences or certificates is effected within the framework of a quantitative quota.

4. A replacement licence or certificate or replacement extract shall contain the information and entries appearing in the document which it replaces. It shall be issued for a quantity of goods which, with the addition of the tolerance margin, is equal to the quantity available shown on the lost document. The applicant shall specify that quantity in writing. Where information held by the issuing agency shows that the quantity indicated by the applicant is too high, it shall be reduced accordingly without prejudice to the second subparagraph of paragraph 1.

One of the following endorsements, underlined in red, shall be entered in section 18a of the replacement licence or certificate or replacement extract :

"Replacement licence (certificate or extract) of a lost licence (certificate or extract). Number of original licence (certificate) ....",

"Erstatningslicens/-attest (eller erstatningspartiallicens) for bortkommen licens/attest (eller partiallicens). Oprindelig licens/attest (eller partiallicens) nr. ....",

"Ersatzlizenz (oder Ersatzteillizenz) einer verlorenen Lizenz (oder Teillizenz)-Nummer der ursprünglichen Lizenz ....",

„Πιστοποιητικό (ἢ ἀπόσπασμα) ἀντικαταστάσεως τοῦ ἀπολεσθέντος πιστοποιητικοῦ (ἢ ἀποσπάσματος πιστοποιητικοῦ) ἀριθ. ..."

"Certificat (ou extrait) de remplacement d'un certificat (ou extrait) perdu — numéro du certificat initial :....",

"Titolo (o estratto) sostitutivo di un titolo (o estratto) smarrito — numero del titolo originale :....",

"Certificaat (of uittreksel) ter vervanging van een verloren gegaan certificaat (of uittreksel) — nummer van het oorspronkelijke certificaat : ....".

Where the replacement licence or certificate or replacement extract is lost, no further replacement licence or certificate or extract shall be issued.

5. The issue of a replacement licence, certificate or extract shall be subject to the provision of a security. The amount of this security is calculated by multiplying :

— the rate of refund advance fixed, or as appropriate the highest rate of refund for the destinations covered, plus 20 %, by

— the quantity for which the replacement licence or certificate or replacement extract is to be issued increased by the tolerance margin.

The amount by which the security is increased shall not be less than 3 ECU per 100 kilograms net weight. The security shall be lodged with the agency which issued the original licence or certificate.

6. Where the quantity of products exported under a licence or certificate and the replacement licence or certificate, or under an extract and the replacement extract, is greater than that which could have been exported under the original licence, certificate or extract, the security referred to in paragraph 5 corresponding to the excess quantity shall be forfeited, the refund being treated, thereby, as recovered.

7. In addition, in cases where paragraph 6 applies and where an export levy applied on the day of completion of the customs formalities referred to in Article 22 (1) (b) in respect of the excess quantity, the export levy applicable on that day must be collected. The excess quantity:

— shall be determined in accordance with paragraph 6,

— shall be that for which customs formalities were last completed under cover of the original licence or certificate, an extract of the original licence or certificate, a replacement licence or certificate, or a replacement extract. In cases where the quantity of the last export is less than the excess quantity, the export or exports immediately preceding shall be taken into account until the stage is reached where the excess quantity has been covered.

Article 3 (1) of Regulation (EEC) No 645/75 shall not apply in the cases described in this paragraph.

8. In so far as the security referred to in paragraph 5 has not become forfeit by virtue of paragraph 6, it shall be released 15 months after expiry of the validity period of the licence or certificate.

9. Where the lost licence, certificate or extract is found, it may not be used and must be returned to the agency which issued the replacement licence, certificate or extract. If in such a case the quantity available shown on the original licence, certificate or extract is equal to or higher than the quantity for which the replacement licence, certificate or extract has been issued, the security referred to in paragraph 5 shall be released immediately.

However, if the available quantity is higher, an extract shall, at the request of the party concerned, be issued for a quantity which, increased by the tolerance margin, equals that which can still be used.

10. Where the holder or transferee of an import or export licence with or without advance fixing or of an advance fixing certificate is able to prove to the satisfaction of the competent authority both that the licence or certificate or an extract therefrom has not been used wholly or in part and that it can no longer be used in particular because of its total or partial destruction, a replacement licence, certificate or extract shall be issued by the agency which issued the original licence or certificate for a quantity of goods which increased by the tolerance margin equals that remaining available. In such cases, the provisions of the preceding paragraphs shall not apply with the exception of the first sentence of paragraph 4.

11. The competent authorities of the Member States shall communicate the necessary information for the application of this Article.

Where the authorities provide this information by means of a control copy as referred to in Article 10 of Regulation (EEC) No 223/77 and issued for the purpose of obtaining proof of departure from the geographical territory of the Community, the number of the original licence or certificate shall be inserted in box 105 of the control copy. Where an extract of a licence or certificate, a replacement licence or certificate, or a replacement extract is used the number of the original licence or certificate shall be inserted in box 106 of the control copy.

12. Member States shall at quarterly intervals inform the Commission of:

(a) the number of replacement licences, certificates or extracts issued during the previous quarter:

— in application of paragraph 1,

— in application of paragraph 10, and

(b) the nature and quantity of the goods concerned together with, as appropriate, the rates of refund or levy advance fixed.

The Commission shall advise Member States of the information received.'

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities.*

The second indent of (b) of the second subparagraph of Article 31 (2) and Article 34 (10) of Regulation (EEC) No 3183/80 shall apply with effect from the day on which this Regulation enters into force. Article 34 (1) to (9) and (11) of the said Regulation shall apply only to licences and certificates applied for on or after 1 January 1982.

The remaining amendments to Regulation (EEC) No 3183/80 shall apply with effect from 1 January 1982.

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

Done at Brussels, 27 November 1981.

For the Commission

Poul DALSAGER

Member of the Commission