# COMMISSION REGULATION (EEC) No 1994/84

## of 12 July 1984

## amending for the sixth 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 and amending several Regulations laying down special rules for the application of the system of import and export licences

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 1018/84 (2), and in particular Articles 12 (2), 15 (5), 16 (6) and 24 thereof and the corresponding provisions of the other Regulations on the common organizations of markets in agricultural products,

Whereas Article 3 (4) of Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits (3) lays down that where the last day of a period is a public holiday, Sunday or Saturday, the period ends with the expiry of the last hour of the following working day; whereas that provision results in certain cases in the period of use of licences or certificates being extended; whereas such a measure, which is designed to facilitate trade, must not have the effect of changing the economic conditions of the import or export operation; whereas a provision should therefore be added to Article 8 of Commission Regulation (EEC) No 3183/80 (4), as last amended by Regulation (EEC) No 2666/82 (5);

Whereas for the sake of sound management of the system of licences and certificates it should be laid down that a licence or certificate may indicate only a single quantity;

Whereas Article 43 of Regulation (EEC) No 3183/80 lays down special provisions applicable to export licences applied for in connection with an invitation to tender issued in an importing non-member country; whereas the provisions in question should be made more precise in the light of experience gained;

Whereas in some sectors of the common organization of agricultural markets there is provision for the issue of export licences fixing the refund in advance after a period of reflection; whereas the purpose of this period is to enable the market situation to be assessed and, where appropriate, where there are difficulties, to enable advance fixing to be suspended for applications pending, which amounts to rejection of those applications; whereas it should be specified that this possibility of suspension also applies to licences applied for pursuant to Article 43 of Regulation (EEC) No 3183/80 and that once the period of reflection has elapsed the licence application cannot again be subject to suspension;

Whereas the changes to Regulation (EEC) No 3183/80 entail certain amendments to the Regulations laying down detailed rules for the application of the system of licences in the various sectors of the common organization of the markets in agricultural products; whereas the following Regulations should therefore be amended:

— Commission Regulation (EEC) No 2041/75 of 25 July 1975 on special detailed rules for the application of the system of import and export licences and advance fixing certificates for oils and fats (6), as last amended by Regulation (EEC) No 710/81 (7),

— Commission Regulation (EEC) No 2042/75 of 25 July 1975 on special detailed rules for the application of the system of import and export licences for cereals and rice (8), as last amended by Regulation (EEC) No 1816/83 (9),

— Commission Regulation (EEC) No 2377/80 of 4 September 1980 on special detailed rules for the application of the system of import and export licences in the beef and veal sector (10), as last amended by Regulation (EEC) No 1699/84 (11),

— Commission Regulation (EEC) No 2729/81 of 14 September 1981 laying down special rules implementing the system of import and export licences

(1) OJ No L 281, 1. 11. 1975, p. 1.
(2) OJ No L 107, 19. 4. 1984, p. 1.
(3) OJ No L 124, 8. 6. 1971, p. 1.
(4) OJ No L 338, 13. 12. 1980, p. 1.
(5) OJ No L 283, 6. 10. 1982, p. 7.
(6) OJ No L 213, 11. 8. 1975, p. 1.
(7) OJ No L 74, 20. 3. 1981, p. 22.
(8) OJ No L 213, 11. 8. 1975, p. 5.
(9) OJ No L 176, 3. 7. 1983, p. 13.
(10) OJ No L 241, 13. 9. 1980, p. 5.
(11) OJ No L 161, 19. 6. 1984, p. 6.

and the advance fixing of refunds in respect of milk and milk products [1], as last amended by Regulation (EEC) No 3512/83 [2],

— Commission Regulation (EEC) No 3652/81 of 18 December 1981 laying down detailed rules for implementing the system of advance fixing certificates for refunds in the poultrymeat and eggs sector [3], as last amended by Regulation (EEC) No 229/84 [4],

— Commission Regulation (EEC) No 1760/83 of 29 June 1983 on special detailed rules for the application of the system of advance-fixing certificates for certain agricultural products exported in the form of goods not covered by Annex II to the Treaty and derogating from Regulation (EEC) No 2730/79 with regard to payment of refunds on butter [5];

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

HAS ADOPTED THIS REGULATION:

*Article 1*

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

1. The following paragraph 6 is added to Article 8:

'6. Where, by virtue of the provisions of Article 3 (4) of Regulation (EEC) No 1182/71, a licence or certificate which fixes the levy or refund in advance is used on the first working day following the last day of its normal period of validity, the licences or certificate shall be considered to have been used on the last day of its normal period of validity for the purposes of the amounts fixed in advance.'

2. In Article 16 (2), the following subparagraph is inserted after the second subparagraph:

'Where, as a result of a Community measure, the quantity for which the licence or certificate is issued may be less than the quantity in respect of which application for a licence or certificate was initially made, the quantity applied for and the amount of the security relating thereto must be entered only on the application form.'

3. Article 19 is replaced by the following:

*'Article 19*

1. Licences and certificates shall be drawn up in at least two copies. The first copy, called "holder's copy" and marked "No 1", shall be issued without delay to the applicant and the second, called "issuing agency's copy" and marked "No 2", shall be retained by the issuing agency.

2. Where a licence or certificate is issued for a quantity less than that for which application was made, the issuing agency shall indicate:

— in sections 10 and 11 of the licence or certificate the quantity for which the licence or certificate is issued,

— in section 15 in the case of an export licence or advance fixing certificate, or in section 16 in the case of an import licence or advance fixing certificate, the amount of the corresponding security.

The security lodged in respect of the quantity for which a licence or certificate has not been issued shall be released forthwith.'

4. Article 43 is replaced by the following:

*'Article 43*

1. This Article shall apply to certificates fixing the export refund in advance applied for in connection with an invitation to tender issued in an importing non-member country.

The expression "invitation to tender" shall be understood to mean open invitations issued by public agencies in non-member countries, or by international bodies governed by public law, to submit by a given date tenders on which a decision will be taken by those agencies or bodies.

For the purposes of this Article the armed forces referred to in Article 5 (1) (c) of Regulation (EEC) No 2730/79 shall be regarded as an importing non-member country.

2. An exporter who has submitted or who wishes to submit a tender in response to an invitation to tender as referred to in paragraph 1 may, provided the conditions specified in paragraph 3 are fulfilled, apply for one or more certificates, which will be issued subject to his being awarded a contract.

3. The provisions laid down in this Article shall apply only if the following particulars at least are specified in the invitation to tender:

— the importing non-member country and the agency issuing the invitation to tender,

— the closing date for the submission of tenders,

— the specific quantity of products covered by the invitation to tender.

The party concerned shall communicate these particulars to the issuing agency when applying for the certificate.

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[1] OJ No L 272, 26. 9. 1981, p. 19.
[2] OJ No L 351, 14. 12. 1983, p. 11.
[3] OJ No L 364, 19. 12. 1981, p. 19.
[4] OJ No L 23, 27. 1. 1984, p. 20.
[5] OJ No L 172, 30. 6. 1983, p. 20.

An application for a certificate may not be lodged more than 15 days before the closing date for the submission of tenders but must be lodged at the latest by 1 p.m. on the closing date for the submission of tenders.

The quantity for which the certificate or certificates are applied for may not exceed the quantity specified in the invitation to tender. No account shall be taken of tolerances or options provided for in the invitation to tender.

4. The security to be lodged upon submission of the application shall be 20 % of the security to be lodged in order for the certificate to be issued.

5. Within 21 days following the closing date for the submission of tenders, the applicant shall inform the issuing agency by letter, telegram or telex either :

(a) that he has himself been awarded a contract ;

(b) that he has not been awarded a contract ;

(c) that he has not submitted a tender ; or

(d) that he is not in a position to know the outcome of the invitation to tender within the time limit specified for reasons which are not attributable to him.

6. Applications for certificates shall not be accepted where, during the period of issue to which applications for certificates for certain products are subject, a special measure has been taken which prevents the issue of certificates.

No special measure taken subsequent to the expiry of the said period may prevent the issue of a certificate where the applicant has fulfilled the conditions referred to in the following subparagraph.

Where the applicant has :

— provided, by means of the appropriate documents, the information referred to in the first subparagraph of paragraph 3, and

— lodged the total amount of the security required for the issue of the certificate, and

— furnished proof of his having been awarded a contract,

one or more certificates shall be issued in respect of the invitation to tender in question.

The certificate or certificates shall be issued only for the country referred to in the first indent of the first subparagraph of paragraph 3. The invitation to tender shall be mentioned thereon.

The total quantity for which the certificate or certificates are issued shall be the quantity for which the applicant was awarded the contract ; such quantity may not exceed the quantity applied for.

Moreover, where several certificates are applied for, the quantity for which the certificate or certificates are issued may not exceed the quantity initially applied for in respect of each certificate.

For the purposes of determining the period of validity of the certificate, Article 21 (1) shall apply.

The part of the security corresponding to the quantity for which the applicant was not awarded a contract shall be released forthwith and no certificate may be issued for the said quantity in connection with the application referred to in paragraph 3.

7. In cases as referred to in paragraph 5 (b), (c) and (d) no certificate shall be issued in connection with the application referred to in paragraph 3 and the security referred to in paragraph 4 shall be released forthwith.

8. Where the applicant for a certificate fails to observe the provisions of paragraph 5, no certificate shall be issued and the security referred to in paragraph 4 shall be forfeit.

However, where the applicant furnishes proof to the issuing agency that the closing date for the submission of tenders has been deferred :

— by no more than 10 days, the application shall remain valid and the period of 21 days for notifying the particulars specified in paragraph 5 shall run with effect from the new closing date for the submission of tenders,

— by more than 10 days, the application shall no longer be valid and the security shall be released.

9. (a) If the successful tenderer demonstrates to the satisfaction of the competent authority that the agency which issued the invitation to tender has cancelled the contract for reasons which are not attributable to him and which are not considered to constitute *force majeure,* the competent authority shall release the security in cases where the rate of the refund fixed in advance is higher than or equal to the rate of the refund valid on the last day of the certificate's validity.

(b) If the successful tenderer demonstrates to the satisfaction of the competent authority that the agency which issued the invitation to tender has obliged him to accept changes to the contract for reasons which are not attributable to him and which are not considered to constitute *force majeure,* the competent authority may :

— where the rate of the refund fixed in advance is higher than or equal to the rate of the refund valid on the last day of the certificate's validity, release the security in respect of the balance of the quantity not yet exported,

— where the rate of the refund fixed in advance is lower than or equal to the rate of the refund valid on the last day of the certificate's validity, extend the validity of the certificate by the period required.

However, where special rules governing certain products provide that the period of validity of a certificate issued under this Article may exceed the normal period of validity of such a certificate and the successful tenderer finds himself in the situation referred to in the first indent of the first subparagraph, the issuing agency may extend the period of validity of the certificate provided it does not exceed the maximum period of validity permitted under those rules.

(c) If the successful tenderer furnishes proof that the invitation to tender or the contract concluded following the award provided for a downward tolerance or option of more than 5 % and that the agency which issued the invitation to tender is invoking the relevant clause, the obligation to export shall be deemed to have been fulfilled where the quantity exported is not more than 10 % less that the quantity for which the certificate was issued, on condition that the rate of the refund fixed in advance is higher than or equal to the rate of the refund valid on the last day of validity of the certificate. In such case the rate of 95 % referred to in Article 33 (3) shall be replaced by 90 %.

(d) In comparing the rate of the refund fixed in advance with that of the refund valid on the last day of validity of the certificate, account shall be taken, where applicable, of monetary compensatory amounts, accession compensatory amounts and other amounts provided for under Community rules.

10. Member States shall communicate to the Commission forthwith the particulars referred to in the first subparagraph of paragraph 3.

11. In special cases, exceptions to the foregoing rules may be laid down under the procedure set out in Article 26 of Regulation (EEC) No 2727/75, or, as appropriate, in the corresponding Articles of the other Regulations on the common organization of markets.'

*Article 2*

The last subparagraph of Article 9 (3) of Regulation (EEC) No 2041/75 is hereby replaced by the following :

'Section 20a of the licence shall contain one of the following endorsements :

"Exemption from levies for ... (quantity for which the licence or certificate was issued) kg."

"Fritagelse for importafgift for ... (den mængde, som licensen er udstedt for) kg."

"Befreiung von der Abschöpfung für ... (Menge, für die die Lizenz erteilt wurde) kg."

"Ατέλεια εισφοράς για ... (ποσότητα για την οποία εκδόθηκε το πιστοποιητικό) χγρ."

"Franchise de prélèvement pour ... (quantité pour laquelle le certificat a été délivré) kg."

"Esenzione da prelievo per ... , (quantità per la quale è stato rilasciato il titolo) kg."

"Vrijstelling van heffing voor ... (hoeveelheid waarvoor het certificaat is afgegeven) kg."'

*Article 3*

Regulation (EEC) No 2042/75 is hereby amended as follows :

1. Article 3 (1) is replaced by the following :

'1. When the application for an export licence is submitted in connection with an invitation to tender issued pursuant to Article 7 of Regulation (EEC) No 1836/82, the licence shall be issued only for those quantities in respect of which the applicant has obtained a contract.

The export licence shall be valid for no more than the quantity indicated in section 10. The figure '0' shall be entered in section 20.'

2. Article 10 (2) is deleted.

3. Article 13 is replaced by the following :

*'Article 13*

Where, by virtue of the provisions of Article 37 of Regulation (EEC) No 3183/80, the period of validity of a licence is extended and the rate of the import levy or export refund has been fixed in advance :

— the premium or corrective amount to be applied shall be that applicable on the day when the original licence application was lodged, in respect of import or export during the last month of the normal period of validity of the licence,

— the rate of the import levy or export refund shall be adjusted according to the threshold price in force during the actual month of import or export.'

*Article 4*

Regulation (EEC) No 2377/80 is hereby amended as follows :

1. Article 5a is replaced by the following :

*'Article 5a*

By way of derogation from Article 43 (5) of Regulation (EEC) No 3183/80, "21 days" is replaced by "90 days".'

2. Article 9 (1) (f) is replaced by the following:

'(f) section 20a of the licence shall contain one of the following endorsements:

"Levy reduced by ...%",

"Nedsættelse af importafgiften med ... %",

"Verminderung der Abschöpfung um ... %",

"Εισφορά μειωμένη κατά ... %",

"Prélèvement réduit de ... %",

"Prelievo ridotto del ... %",

"Heffing verminderd met ... %".

The percentage reduction in the levy to be shown in the endorsement shall be that valid for the quarter in which the application for a licence is lodged:

— either for young male bovine animals of a weight per head of from 220 to 300 kilograms coming from Yugoslavia, or

— for other young male bovine animals being imported under the special import arrangements.'

3. Article 10 (1) (e) is replaced by the following:

'(e) section 20a of the licence shall contain one of the following endorsements:

"Levy suspended",

"Importafgiften suspenderet",

"Aussetzung der Abschöpfung",

"Η εισφορά έχει ανασταλεί",

"Prélèvement suspendu",

"Prelievo sospeso",

"Heffing geschorst".'

4. Article 11 (1) (e) is replaced by the following:

'(e) section 20a of the licence shall contain one of the following endorsements:

"Levy reduced by ... %",

"Nedsættelse af importafgiften med ... %",

"Verminderung der Abschöpfung um ... %",

"Εισφορά μειωμένη κατά ... %",

"Prélèvement réduit de ... %",

"Prelievo ridotto del ... %",

"Heffing verminderd met ... %".

The percentage reduction in the levy which is to appear in the endorsement shall be that valid for the quarter in which the licence application is lodged.'

5. The second subparagraph of Article 12 (2) is replaced by the following:

'For the purposes of the above subparagraph, section 20a of the licence shall contain one of the following endorsements:

"Levy suspended for ... (quantity for which the licence or certificate was issued) kg."

"Importafgift suspenderet for ... (den mængde, som licensen er udstedt for) kg."

"Aussetzung der Abschöpfung für ... (Menge, für die die Lizenz erteilt wurde) kg."

"Η εισφορά έχει ανασταλεί για ... (ποσότητα για την οποία εκδόθηκε το πιστοποιητικό) χγρ."

"Prélèvement suspendu pour ... (quantité pour laquelle le certificat a été délivré) kg."

"Prelievo sospeso per ... (quantità per la quale è stato rilasciato il titolo) kg."

"Heffing geschorst voor ... (hoeveelheid waarvoor het certificaat is afgegeven) kg."'

6. The following sentence is added to Article 14 (3):

'Section 20 of the licence shall contain the figure "0".'

*Article 5*

Regulation (EEC) No 2729/81 is hereby amended as follows:

1. Article 15 is replaced by the following:

*'Article 15*

1. In the case of exports in connection with an invitation to tender issued by one of the agencies referred to in Article 14, the export licence with advance fixing of the refund shall be valid until the date when the obligations arising from the invitation to tender concerned must be complied with.

However, the period of validity of the licence shall not exceed the period laid down in Annex III.

2. By way of derogation from Article 43 (5) of Regulation (EEC) No 3183/80, "21 days" is replaced by "90 days".'

2. Article 16 (4) is replaced by the following:

'4. The provisions of the first subparagraph of Article 33 (3) and Article 43 (5), (8) and (9) of Regulation (EEC) No 3183/80 shall not apply to the licences referred to in this Article.'

*Article 6*

Regulation (EEC) No 3652/81 is hereby amended as follows:

1. The second subparagraph of Article 2 (2) is deleted.

2. Article 2 (3) is replaced by the following:

'3. By way of derogation from Article 43 (5) of Regulation (EEC) No 3183/80, "21 days" is replaced by "90 days".

3. In Article 4, 'other than certificates referred to in Article 43 of Regulation (EEC) No 3183/80' is deleted.

*Article 7*

Regulation (EEC) No 1760/83 is hereby amended as follows :

1. Article 5 is replaced by the following :

*'Article 5*

In the case of exports of goods covered by the common organization of the market in milk and milk products on the basis of an invitation to tender as referred to in Article 43 of Regulation (EEC) No 3183/80, by way of derogation from paragraph 5 of that Article the applicant for the certificate must comply with a maximum period of 90 days.'

2. Article 6 (5) is replaced by the following :

'5. Where application for a certificate is made for export in pursuance of an invitation to tender as referred to in paragraph 1, the provisions of Article 43 (5), (8) and (9) of Regulation (EEC) No 3183/80 shall not apply.'

*Article 8*

This Regulation shall enter into force on 1 October 1984.

The provisions of Articles 1 (4), 3 (2), 4 (1), 5, 6 and 7 shall apply to applications for licences or certificates submitted as from that date.

However, where, pursuant to Article 43 (2) of Regulation (EEC) No 3183/80, a security is to be forfeited for a licence or certificate applied for prior to the entry into force of this Regulation, the amount of the security forfeited shall be 20 % of that lodged.

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

Done at Brussels, 12 July 1984.

*For the Commission*

Poul DALSAGER

*Member of the Commission*