COMMISSION REGULATION (EEC) No 3155/85

of 11 November 1985

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 1677/85 of 11 June 1985 on monetary compensatory amounts in agriculture (1), and in particular Article 12 thereof,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1985 on the common organization of the market in cereals (2), as last amended by Regulation (EEC) No 1018/84 (3), and in particular Article 12 (2), Article 15 (5) and Article 16 (6) thereof, and to the corresponding provisions in other regulations on the common organization of the markets in agricultural products,

Whereas Commission Regulation (EEC) No 1160/82 (4), as last amended by Regulation (EEC) No 469/85 (5), provides for the advance fixing of monetary compensatory amounts; whereas on 11 June 1985, the Council approved a coherent set of agrimonetary rules; whereas the rules applicable in this field should be consolidated, and certain changes made in the light of experience;

Whereas the advance fixing of any amount, and in particular of monetary compensatory amounts, may give rise to speculation; whereas the action taken must therefore be cautious and this facility should be introduced only for monetary compensatory amounts paid or charged on trade with non-member countries and for products for which the levy, or, where appropriate, the refund, can also be fixed in advance; whereas the economic justification for advance fixing, namely the degree of certainty that traders require, means that the advance fixing of the monetary compensatory amounts should be allowed only where the levy or the refund has been fixed in advance for the same operation;

Whereas it follows that a compensatory amount fixed in advance should be valid for the same period of time as the levy or refund to which it is linked;

Whereas the different trends of monetary compensatory amounts in the various Member States may encourage speculation; whereas when an application is made for advance fixing of monetary compensatory amounts the certificate to which this application relates must be valid only in the territory of the Member State indicated by the applicant when he applies for advance fixing:

Whereas, in trade with non-member countries, monetary compensatory amounts have two components, the amount fixed for the Member State and the relevant product in national currency, and the monetary coefficient applying to the levy or refund;

Whereas price changes in national currency may occur while certificates fixing the monetary compensatory amount in advance are valid, either because of an adjustment to the agricultural conversion rate or because of a change in the Community price expressed in ECU; whereas the possibility of allowing for this by adjustment of the amounts fixed in advance must be provided for;

Whereas fixing monetary compensatory amounts in advance may encourage speculation when there are sharp exchange rate fluctuations; whereas the possibility of suspending, if necessary at short notice, the facility to fix monetary compensatory amounts in advance must therefore be provided for;

Whereas certificates fixing levies or refunds in advance which are applied for during periods when the advance fixing of monetary compensatory amounts is suspended should not include advance fixing of the monetary compensatory amount;

Whereas, in certain circumstances, it is economically justifiable to permit the parties concerned to fix the monetary compensatory amount in advance when this facility is again made available;

Whereas in certain cases the issue of import and export licences and certificates is subject to a waiting period; whereas it is not the purpose of the waiting period to take account of monetary changes; whereas, therefore, it is reasonable to exclude from the effects of suspension of advance fixing of monetary compensatory amounts all applications lodged before the suspension;

Whereas the difficulties which justify suspension of advance fixing of the monetary compensatory amount should not normally be such as to entail such suspension in cases where levies or refunds are fixed under a tendering procedure; whereas it should be provided that, unless particular measures are adopted, the possibility of advance-fixing the monetary compensatory amount in

(1) OJ No L 164, 24. 6. 1985, p. 6.
(2) OJ No L 281, 1. 11. 1975, p. 1.
(3) OJ No L 107, 19. 4. 1984, p. 1.
(4) OJ No L 134, 15. 5. 1982, p. 22.
(5) OJ No L 58, 26. 2. 1985, p. 5.

force on the last day for submission of tenders should remain available during a period of suspension; whereas this option should at all times be exercised by the party concerned when the tender is submitted;

Whereas certain technical problems arise in calculating the monetary compensatory amount for certain goods coming under Council Regulation (EEC) No 3033/80 of 11 November 1980 laying down trade arrangements applicable to certain goods resulting from the processing of agricultural products (1); whereas those amounts are calculated on the basis of the standard quantities of basic agricultural products, used for the purposes of calculating the import charge; whereas where the relevant amounts have been fixed in advance, they should be linked to the refund payable on the basic agricultural products exported in the form of the goods concerned; whereas these problems can be solved by using a flat-rate system under which the refund must be fixed in advance for the whole of one of the basic products;

Whereas Regulation (EEC) No 1160/82 and Commission Regulation (EEC) No 1516/78 of 30 June 1978 on adjustments to monetary compensatory amounts fixed in advance and repealing Regulation (EEC) No 651/78 (2) are replaced by this Regulation;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. Monetary compensatory amounts in trade with non-member countries shall be fixed in advance only in accordance with this Regulation.

2. For the purposes of this Regulation, a monetary compensatory amount comprises the following components:

(a) the amount detained, for the products in question, from the application of Annex I to the Regulations fixing the monetary compensatory amounts;

(b) — the coefficient given in Annex II to the Regulations fixing the monetary compensatory amounts, and
— the agricultural conversion rate to be used to convert amounts set in ECU into national currency,

the two components in (b) being, for certain processed products, where appropriate, differentiated according to the agricultural basic products for which the export refund has been fixed in advance.

3. For the purposes of this Regulation, the supplies referred to in Article 5 and Article 19b of Commission Regulation (EEC) No 2730/79 (3) shall be treated as trade with non-member countries.

4. For the purposes of this Regulation, Belgium and Luxembourg (BLEU) shall be treated as a single Member State.

Article 2

1. A monetary compensatory amount shall be fixed in advance on application by the party concerned.

Monetary compensatory amounts may be fixed in advance only where the import or export levy or the export refund is fixed in advance on the relevant certificate.

Monetary compensatory amounts 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 constituent parts of the relevant product.

2. Levies or refunds fixed under a tendering procedure shall be deemed to have been fixed in advance.

3. Where the monetary compensatory amount is fixed in advance, the certificate shall be valid only in a single Member State to be designated by the applicant when he applies to have the monetary compensatory amount fixed in advance.

Article 3

1. An application for advance fixing of a monetary compensatory amount must be lodged at the same time as the application for the certificate of advance fixing of the levy or refund.

Where Article 5 (2) applies, an application for advance fixing of the monetary compensatory amount shall be accepted only if the party concerned has stated in writing when submitting the tender that he will also apply for advance fixing of the monetary compensatory amount if all or part of his tender is accepted. In this case, the requirement following acceptance of a tender to lodge an application for advance fixing of the levy or refund shall include a requirement to apply at the same time for advance fixing of the monetary compensatory amount.

(1) OJ No L 323, 29. 11. 1980, p. 1.
(2) OJ No L 178, 1. 7. 1978, p. 63.
(3) OJ No L 317, 12. 12. 1979, p. 1.

2. In all cases:

(a) box 12 of both the application for the certificate and the certificate itself shall include one of the following entries:

— 'Forudfastættelse af det monetære udligningsbeløb',

— 'Vorausfestsetzung des Währungsausgleichsbetrags',

— 'Προκαθορισμός του νομισματικού εξισωτικού ποσού',

— 'Advance fixing of the monetary compensatory amount',

— 'fixation à l'avance du montant compensatoire monétaire',

— 'Fissazione anticipata dell'importo compensativo monetario',

— 'Vaststelling vooraf van het monetaire compenserende bedrag',

(b) box 20a of the certificate in the case of imports, and box 18a in the case of exports, shall include one of the following entries:

— 'Monetært udligningseløb 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 Antragssteller angegebener Mitgliedstaat)'.

— 'Νομισματικό εξισωτικό ποσό προκαθορισθέν την ... (ημερομηνία προκαθορισμού ενδεχομένως προσαρμοστέα).
Πιστοποιητικό ισχύον στο ... (κράτος μέλος υποδεικνυόμενο από τον αιτούντα)'.

— '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 ... (Etat membre désigné par le demandeur)'.

— '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)'.

3. On certificates to be used in their territories the competent authorities in the Member States may also, for information purposes, enter in box 20a of the import or advance fixing certificate, or, where appropriate, in box 18a of the export or advance fixing certificate, additional data for the calculation of the monetary compensatory amounts.

Article 4

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 3033/80 and fixes the monetary compensatory amount in advance, this advance fixing shall relate to the monetary compensatory amount applicable to these goods.

However, in such cases, the agricultural conversion rate and the monetary coefficient which are also fixed in advance shall be those valid for each basic product incorporated in the relevant goods.

2. The monetary compensatory amount may be fixed in advance in respect of such goods only if the total quantity of at least one of the basic products eligible for the export refund is covered by one or more of the certificates referred to in paragraph 1.

Only basic products accounting for at least 10 % of the weight of the goods shall be taken into account for the purposes of the first subparagraph.

3. Where more than one of the certificates referred to in paragraph 1 are presented when the goods are cleared through customs, only the first certificate issued shall count for the purposes of determining the date to be used for calculating the monetary compensatory amount.

Only certificates relating to the basic product or products whose total quantity is covered shall be taken into account for the purposes of the first subparagraph.

4. Where one or more of the certificates referred to in paragraph 1 are presented for the export of goods and because the conditions referred to in paragraph 2 are not met these goods do not qualify for the monetary compensatory amount fixed in advance then the certificate or certificates shall not be accepted by the competent authorities.

Article 5

1. The monetary compensatory amount in force on the day on which the application for advance fixing of the monetary compensatory amount is lodged shall be applicable to operations carried out during the period of validity of the certificate.

2. However, where a tendering procedure fixes the levy or refund in advance, the monetary compensatory amount applicable shall be that in force on the last day

for submission of tenders. For the purpose of the adjustments referred to in Article 6, the application for advance fixing of the monetary compensatory amount shall be deemed to have been lodged on the last day for submission of tenders.

Article 6

1. Monetary compensatory amounts fixed in advance shall be adjusted if a new agricultural conversion rate which was publicly announced before an application for advance fixing was lodged comes into effect.

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 1677/85.

2. The adjustments referred to in paragraph 1 shall be made on the basis of the agricultural conversion rate

— applicable at the time of completion of customs formalities on import or export,

and,

— which was publicly announced before application for advance fixing of the monetary compensatory amount was lodged.

3. The amounts of the adjustments provided for in paragraphs 1 and 2 shall be fixed in accordance with the procedure for fixing monetary compensatory amounts.

4. As regards goods coming under Regulation (EEC) No 3033/80, monetary compensatory amounts fixed in advance shall be adjusted in accordance with the rules for adjusting the monetary compensatory amount applicable to the basic product covered by the advance fixing certificate which is taken into account for the purposes of determining the date of advance fixing.

5. Where, in accordance with Article 3 (3), a rate in national currency is entered on the certificate and must be adjusted, the competent departments of the Member States shall take such administrative action as they deem necessary to ensure such adjustment. This may include provision for additional entries on the certificates.

Article 7

1. Monetary compensatory amounts fixed in advance shall be adjusted for products falling within the cereals, sugar or milk and milk products sectors where, following a change in prices expressed in ECU, adjustments to levies, or, where appropriate, refunds fixed in advance are applicable in respect of those products.

2. For the purposes of this Regulation, the monthly increases in cereals prices shall not be treated as adjustments to levies or refunds fixed in advance.

3. No adjustment shall be made for goods coming under Regulation (EEC) No 3033/80.

4. The detailed rules applicable to adjustments, and the adjustments themselves, shall be decided in accordance with the procedure laid down in Article 12 of Regulation (EEC) No 1677/85.

Article 8

1. Any adjustment to be made in accordance with Article 7 shall be made on the basis of the new common price and agricultural conversion rate valid at the time when the new common price takes effect.

2. The adjustment under Article 6 shall be altered where there is an adjustment under Article 7.

Article 9

1. Adjustments under Article 6 and 7 shall normally be made by applying one or more coefficients to the amount referred to in Article 1(2)(a).

2. When such an adjustment is made the components set out in Article 1(2)(b) shall be replaced by the coefficient given in Annex II to the Regulations fixing the MCA and the agricultural conversion rate valid on the day of completion of customs formalities for import or export.

Article 10

1. When monetary compensatory amounts are not fixed for one or more products in a Member State at a time when they are applied for this product or these products in another Member State, the monetary compensatory amount in the former Member State shall be deemed to be nil, and the monetary coefficient 1.

2. When monetary compensatory amounts are not fixed as regards one or more goods covered by Regulation (EEC) No 3033/80, the monetary compensatory amount shall be deemed to be nil, and the monetary coefficient 1.

3. In the cases referred to in paragraphs 1 and 2, operators may apply to fix the monetary compensatory amount in advance in accordance with this Regulation.

Article 11

1. Where a review of the monetary or market situation reveals difficulties arising from the application of the rules concerning advance fixing of monetary

compensatory amounts or where such difficulties are liable to arise, a decision may be taken to suspend these rules for the relevant product or products.

2. In extremely urgent cases, the Commission may, after a review of the situation on the basis of all the available information, decide to suspend the advance fixing of monetary compensatory amounts for a maximum of three working days.

3. Advance fixing of the monetary compensatory amounts shall not be suspended where a levy or a refund is fixed under a tendering procedure, unless the Regulation providing for such suspension stipulates that this paragraph shall not apply.

4. During the period when advance fixing of the monetary compensatory amounts is suspended applications for the advance fixing of monetary compensatory amounts in advance shall be inadmissible.

5. An application for the issue of a certificate, accompanied by an application for the advance fixing of the monetary compensatory amount, which was already received when advance fixing of monetary compensatory amounts was suspended, shall not be affected by the suspension decision.

6. Applications for certificates including advance fixing of the levy or the refund shall not be affected by paragraph 4.

Article 12

1. Where a monetary compensatory amount cannot be fixed in advance because of the rule laid down in Article 11 (4), an application for advance fixing of the monetary compensatory amount in a Member State subject to the suspension may be lodged during a period of seven days following the end of the suspension period.

The application for advance fixing of the monetary compensatory amount shall apply to the entire quantity remaining available as indicated on the certificate and all extracts from the certificate that may be issued. It shall be lodged with the same body with which the original application for a certificate was lodged. In lodging his application for advance fixing of the monetary compensatory amount, the operator shall submit to the competent authority the original certificate and all extracts from it. The original certificate and all the extracts from the certificate shall be retained by that authority, which shall issue a replacement certificate and one or more replacement extracts, as appropriate.

Article 12, Article 13 (1), Article 14 and Article 15 of Commission Regulation (EEC) No 3183/80 [1] shall apply to applications for the advance fixing of monetary compensatory amounts.

2. The substitute certificate or the substitute extract with advance fixing of the monetary compensatory amount shall be issued for a quantity of products which, plus the tolerance, corresponds to the quantity remaining available shown in the document which it replaces.

The replacement certificate or extract shall include any information and entries given on the document replaced. It shall also include the entries given in Article 3 (2) and a reference to the number of the original document. Article 3 (3) shall apply to replacement certificates or replacement extracts.

3. The monetary compensatory amount applicable on the day on which the application for advance fixing of the monetary compensatory amount was lodged shall apply to operations carried out during the remaining period of validity of the certificate.

Article 13

1. Regulations (EEC) No 1516/78 and No 1160/82 are hereby repealed.

2. Any reference, in Community instruments, to Regulation (EEC) No 1160/82 or to Articles of that Regulation shall be deemed to be a reference to this Regulation or to the corresponding Articles of this Regulation.

Article 14

This Regulation shall enter into force on 1 January 1986.

It shall apply to certificates applied for from 1 January 1986 onwards.

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 ANDRIESSEN

Vice-President

---

[1] OJ No L 338, 13. 12. 1980, p. 1.