COMMISSION REGULATION (EC) No 2945/94

of 2 December 1994

amending Regulation (EEC) No 3665/87 laying down common detailed rules for the application of the system of export refunds on agricultural products, as regards the recovery of amounts unduly paid and sanctions

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organization of the market in milk and milk products [1], as last amended by Regulation (EC) No 2807/94 [2], and in particular Article 17 (4) thereof, and to the corresponding provisions of the other regulations on the common organization of the markets in agricultural products,

Having regard to Council Regulation (EEC) No 876/68 of 28 June 1968 laying down general rules for granting export refunds on milk and milk products and criteria for fixing the amount of such refunds [3], as last amended by Regulation (EC) No 776/94 [4], and in particular the second subparagraph of Article 6 (2) and Article 6 (3) thereof, and to the corresponding provisions of the other regulations laying down general rules for granting export refunds on agricultural products,

Whereas the Community rules provide for the granting of export refunds on the basis of solely objective criteria, in particular concerning the quantity, nature and characteristics of the product exported as well as its geographical destination; whereas in the light of experience, measures to combat irregularities and notably fraud prejudicial to the Community budget should be intensified; whereas, to that end, provision should be made for the recovery of amounts unduly paid and sanctions to encourage exporters to comply with Community rules;

Whereas to ensure the correct functioning of the system of export refunds, sanctions should be applied regardless of the subjective element of fault; whereas it is nevertheless appropriate to waive the application of sanctions in certain cases notably in cases of an obvious error recognized by the competent authority and to provide for a higher sanction in cases of intent;

Whereas, where an exporter has supplied wrong information that wrong information could lead to an undue payment of the refund if the error is not discovered, whilst, where the error is discovered it is entirely proportional to sanction the exporter for an amount in proportion to the amount which he would have received unduly if the error would not have been discovered; whereas in the case where the wrong information was supplied intentionally it is equally porportional to provide for a higher sanction;

Whereas, pursuant to Article 8 (1) of Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy [5], as last amended by Regulation (EEC) No 2048/88 [6], Member States are under an obligation to recover sums paid as a result of irregularities or negligence; whereas, in order to ensure equal treatment for exporters in Member States, explicit provision should be made, as far as export refunds are concerned, for any amount unduly paid to be reimbursed with interest by the beneficiary, and the procedure for payment should be laid down; whereas, in order better to protect the Community's financial interests, provision should be made, in cases where the right to a refund is transferred, for that obligation to be extended to the assignee; whereas the amounts recovered and the interest and sanctions collected must be credited to the European Agricultural Guidance and Guarantee Fund (EAGGF), in accordance with the principles laid down in Article 8 (2) of Regulation (EEC) No 729/70;

Whereas past experience and irregularities and notably fraud recorded in this context show that this measure is necessary and appropriate, that it will act as an adequate deterrent and that it is to be uniformly applied throughout the Member States;

Whereas Commission Regulation (EEC) No 3665/87 [7], as last amended by Regulation (EC) No 1829/94 [8], should therefore be amended;

Whereas the Management Committees concerned have not delivered an opinion within the time limit laid down by their chairmen,

[1] OJ No L 148, 28. 6. 1968, p. 13.
[2] OJ No L 298, 19. 11. 1994, p. 1.
[3] OJ No L 155, 3. 7. 1968, p. 1.
[4] OJ No L 91, 8. 4. 1994, p. 6.
[5] OJ No L 94, 28. 4. 1970, p. 13.
[6] OJ No L 185, 15. 7. 1988, p. 1.
[7] OJ No L 351, 14. 12. 1987, p. 1.
[8] OJ No L 191, 27. 7. 1994, p. 5.

HAS ADOPTED THIS REGULATION :

Article 1

Regulation (EEC) No 3665/87 is amended as follows :

1. Article 11 is replaced by the following :

'*Article 11*

1. Where it has been found that an exporter, with a view to the granting of an export refund, has requested a refund in excess of that applicable, the refund due for the relevant exportation shall be the refund applicable to the actual exportation reduced by an amount equivalent to :

(a) half the difference between the refund requested and the refund applicable to the actual exportation ;

(b) twice the difference between the refund requested and the refund applicable, if the exporter has intentionally supplied false information.

The refund requested is deemed to be the amount calculated from the information supplied pursuant to Article 3 or Article 25 (2). Where the rate of refund varies according to destination, the differentiated part of the refund requested shall be calculated from the information supplied pursuant to Article 47.

The sanction referred to under (a) shall not apply :

— in the case of *force majeure,*

— in exceptional cases characterized by circumstances beyond the control of the exporter, which occur after the acceptance by the competent authorities of the export declaration or the payment declaration, and provided that he, immediately after he took note of these circumstances but within the time limit referred to in Article 47 (2), notifies the competent authorities, unless the competent authorities have already established that the refund requested was incorrect,

— in cases of obvious error as to the refund requested, recognized by the competent authority,

— in cases where the request for the refund is in accordance with Commission Regulation (EC) No 1222/94 (*), and in particular Article 3 (2) thereof, and has been calculated on the basis of the average quantities used over a specified period,

— in case of adjustment of the weight in so far as the deviation in the weight is due to a difference in the weighing method applied.

Where the reduction referred to under (a) or (b) results in a negative amount, the exporter shall pay that negative amount.

Where the competent authorities have established that the refund requested was incorrect and the exportation has not been effected and consequently no reduction of refund is possible, the exporter shall pay the amount equivalent to the sanction referred to under (a) or (b). Where the rate of refund varies according to destination, except in the case of a compulsory destination, the lowest positive rate or, if higher, the rate resulting from the indication as to the destination pursuant to Article 22 (2) or Article 25 (4) shall be taken into account for the calculation of the refund requested and the refund applicable.

The payment referred to in the fourth and fifth subparagraphs shall be made within 30 days from the day of receipt of the demand for payment. Where this deadline is not met, the exporter shall pay interest for the period commencing 30 days after the date of receipt of the payment demand and ending on the day preceding the date of payment of the amount demanded at the interest rate referred to in paragraph 3.

The sanctions shall not apply simply where the refund requested is higher than the refund applicable pursuant to the application of Article 48.

The santions shall be without prejudice to additional sanctions laid down at national level.

2. The refund may be withheld if the amount thereof, per export declaration, does not exceed ECU 50.

3. Without prejudice to the obligation to pay any negative amount as referred to in the fourth subparagraph of paragraph 1, where a refund is unduly paid, the beneficiary shall reimburse the amounts unduly received — which includes any sanction applicable pursuant to the first subparagraph of paragraph 1, — plus the interest calculated on the basis of the time elapsing between payment and reimbursement. However,

— where reimbursement is covered by a security not yet released, seizure of that security in accordance with Article 23 (1) or Article 33 (1) shall constitute recovery of the amounts due,

— where the security has been released, the beneficiary shall pay the amount of the security which would have been forfeit plus interest calculated from the date of release to the day preceding the date of payment.

The payment shall be made within 30 days from the day of receipt of the demand for payment.

The interest rate shall be calculated in accordance with the provisions of national law but may not be less than the rate applicable for the recovery of national amounts.

No interest shall be levied, or at the most an amount to be determined by the Member State corresponding to the undue profit, if the indue payment was an error of the competent authority,

Where the refund has been paid to an assignee, he and the exporter shall be jointly and severally responsible for the reimbursement of the amounts unduly paid, securities unduly released and interest which are relating to that specific export transaction. The responsibility of the assignee, however, is limited to the amount paid to him plus interest on that amount.

4. The amounts recovered, the amounts resulting from the fourth and fifth subparagraphs of paragraph 1, and interest collected shall be paid to the paying agencies which shall deduct the amounts concerned from European Agricultural Guidance and Guarantee Fund (EAFFG) expenditure, without prejudice to Article 7 of Council Regulation (EEC) No 595/91 (**).

Where the time limit for payment is not met, Member States may decide that, instead of reimbursement, amounts unduly paid, securities unduly released and interest until the date of set off, shall be deducted from subsequent payments to the exporter concerned. This shall also apply to amounts to be paid resulting from the fourth and fifth subparagraphs of paragraph 1.

5. Member States may refrain from demanding reimbursement of amounts unduly paid, securities unduly released, interest and amounts resulting from the fourth and fifth subparagraphs of paragraph 1, where the total of these amounts per export declaration does not exceed ECU 50, provided that, under national law, such cases are covered by similar rules of non-recovery.

6. For the application of this Article, where an export declaration contains several distinct refund nomenclature or combined nomenclature codes, the entries relating to each of these codes shall be considered as a separate declaration.

(*) OJ No L 136, 31. 5. 1994, p. 5.
(**) OJ No L 67, 14. 3. 1991, p. 11.'

2. In Article 48, the following paragraph 6 is added:

'6. Where Article 11 applies:

— the calculation of the reductions referred to in this Article shall be based on the amount of the refund due resulting from the application of Article 11,

— the refund lost pursuant to this Article shall not exceed the refund due resulting from the application of Article 11.'

Article 2

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

It shall apply to exports for which the formalities referred to in Articles 3 or 25 of Regulation (EEC) No 3665/87 are completed from 1 April 1995.

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

Done at Brussels, 2 December 1994.

For the Commission
René STEICHEN
Member of the Commission