

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(90) 193 final

Brussels, 4 May 1990

Proposal for a COUNCIL REGULATION (EEC)

amending Regulations (EEC)

N° 3972/86 on food-aid policy and food-aid management, N° 2507/88 on the implementation of storage programmes and early warning systems and N° 2508/88 on the implementation of co-financing operations for the purchase of food products or seeds by international bodies or non-governmental organisations

(presented by the Commission)

Explanatory Memorandum

1. Council Regulation (E.E.C.) 3972/86

- 1.1. Council Regulation (E.E.C.) 3972/86 on food aid policy and food aid management was adopted on 22nd December 1986, on the basis of article 235 of the Treaty establishing the E.E.C.

This regulation had an expiry date fixed at 31 December 1987, discussions being still in course about the general question of the whole comitology system within the Community.

The type of committee established by the Regulation resulted in fact in a hybrid of the Management committee (Procedure II) and the 'Regulatory' type of committee (Procedure III) subsequently defined by Council Decision (87/373/E.E.C.) of 13th July, 1987.

- 1.2. Therefore on 16.10.87 the Commission presented to the Council a draft to amend Regulation (E.E.C.) no. 3972/86. This proposal intended to adapt the Food Aid Committee to the types of Committees established by the Decision of the Council of the 13th July mentioned above.

In its proposal, the Commission proposed a dual-purpose committee which would act as an advisory committee on matters concerning allocation of food aid (1) and as a management committee when called on to deliver an opinion on provisions concerning food aid management procedures.

Thus, in respect of the apportionment of quantities among the recipients and the adjustment of allocation during the implementation of the programme an advisory committee, Procedure I of Decision 87/373/EEC, was proposed.

Regarding the list of products, the total quantities and the rules for mobilising products, the Commission proposed that the Food Aid Committee should work according to Procedure II, variant (a) as provided for in Decision 87/373/EEC.

- 1.3. The Parliament introduced an amendment to the Commission's proposal which was accepted by the latter and presented to the Council (DOC LET/87/14316 of 26.XI/87). This amendment aimed to make the Food Aid Committee act as an advisory committee also for the establishment of the annual global quantities. Nevertheless, the Member States did not reach agreement on this proposal and the Council decided on 14th December 1987 to extend the validity of Regulation no. 3972/86 for a six month period. (Regulation (EEC) No 3785/87 of 18.12.1987).

(1) Except in case of emergency, where the Regulation provides for decisions taken by the Commission alone.

The Commission requested the inclusion in the Council minutes of a declaration underlining that the Commission draft proposal to amend Regulation (E.E.C.) no. 3972/86 was still under Council consideration.

- 1.4. The validity of Regulation no. 3972/86 was initially extended for a one year period until 30th June 1989, (Regulation (EEC) no. 1870/88 of 30th June 1988) and subsequently until 30th June 1990 then (Reg. (EEC) no. 1750/89 of 19th June).
- 1.5. During the proceedings for this last extension the Commission asked for the inclusion within the Council minutes of a statement stressing that the extension of the framework Regulation, insofar as it envisaged that the Commission would be assisted by the existing committee for all the powers referred to in article 5, would result in a deterioration of the decision making process. The Commission also stated that the procedure adopted by the Council did not comply with the rules of the Treaty, particularly article 205.

2. Council Regulations (E.E.C.) 2507 and 2508/88

- 2.1. Council Regulations (E.E.C.) 2507/88 on the implementation of storage programmes and early warning systems and 2508/88 on the implementation of co-financing operations for the purchase of food products or seeds by international bodies or non-governmental organisations were passed on 4th August 1988, both on the basis of article 235 of the Treaty establishing the E.E.C and both applicable till 30th June 1989.

The Commission had proposed (COM (88) 448 final and COM (88) 453 final) to establish the same type of committee as that envisaged to deal with similar measures in its proposal to amend the food aid framework Regulation i.e. a 'Consultative Committee'.

The type of committee created by the Regulation as enacted corresponds to 'Procedure IIIa' ('Regulatory Committee') of Council Decision (87/373/C.C.E.) of 13th July 1987 except for the decisions in cases of emergency or of contributions involving amounts not exceeding 400.000 ECU which shall be taken by the Commission alone.

- 2.2. The validity of both Regulations 2507/88 and 2508/88 was extended for a one year period, until 30th June 1990 (Regulations (E.E.C.) 1751/89 and 1752/89 of 19.6.1989), while the Court judgement was awaited (see point 3).

3. Court proceedings

- 3.1. The Commission decided to initiate before the Court of Justice proceedings for annulment of the "comitology" provisions of Regulations 1870/88, 2507/88 and 2508/88.
- 3.2. The Commission did not pursue the proceedings presented given the judgement of the Court in a similar case, (1) the Court considering that the use of the "advisory committee" procedure was not necessarily required for measures having financial implications, and in particular that the "management committee" procedure was also permissible in this case.

4. Action to be taken

Regulations 3972/86, 2507/88 and 2508/88 expire on June 30th, 1990. Action is to be taken, before the expiry date, in respect of the type of committee to be established permanently for the decision making procedure.

With a view to rationalising the decision making procedures in the field of food aid and complementary action closely related to it, the Commission proposes that, where it is assisted by the Food Aid Committee, this committee will be acting under the same procedure for all the decisions to be taken under Regulations (EEC) Nos 3972/86, 2507/88 and 2508/88.

The Commission proposes a management committee procedure (Procedure IIIa) for the three Regulations as it appears to be the most efficient and appropriate decision making process.

The Commission requests the Council to adopt the annexed draft Regulation.

(1) Court ruling of October 24th, 1989. Case No 16/88

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of co-financing operations for the purchase of food products
or seeds by international bodies or non-governmental organisations

THE COUNCIL OF THE EUROPEAN COMMUNITIES

Having regard to the Treaty establishing the European Economic Community,
and in particular Article 235 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas Council Regulation (EEC) No 3972/86⁽¹⁾, No 2507/88⁽²⁾ and No 2508/88⁽³⁾ establish that, for the purpose of implementation of some of their provisions, the Commission shall be assisted by a committee;

Whereas Council Decision 87/373/EEC⁽⁴⁾ laid down the procedures for the exercise of implementing powers conferred on the Commission;

Whereas the procedure for the Food Aid Committee laid down in Regulation (EEC) No 3972/86 does not conform to the rules set out in Decision 87/373/EEC and should consequently be adapted with a view to complying with the said rules;

Whereas the Food Aid Committee should also assist the Commission in the framework of Regulations (EEC) Nos 2507/88 and 2508/88 in accordance with the same procedure; whereas these Regulations should, therefore, be modified accordingly.

Whereas Regulations (EEC) Nos 3972/86, 2507/88 and 2508/88 are applicable only until 30 June 1990 and should be given permanent effect;

Whereas the Treaty has not provided, in the field of food aid policy, the necessary powers other than those of Article 235.

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- (1) OJ No L 370, 30.12.1986, P. 1 and corrigendum in OJ L 42, 12.2.1987, P. 54 as last amended by Regulation (EEC) No 1750/89 of 19.6.1989 OJ No L 172 of 21.6.1989.
- (2) OJ No L 220, 11.8.88, P.1, as last amended by Regulation (EEC) No 1751/89 of 19.6.1989 OJ No L 172 of 21.6.1989.
- (3) OJ No L 220, 11.8.1988, P.4 as last amended by Regulation (EEC) No 1752/89 of 19.6.1989 OJ No L 172 of 21.6.1989.
- (4) OJ No L 197, 18.7.1987, P.33.

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 3972/86 is hereby amended as follows:

1. Article 7, par. 1, is replaced by the following:

"Article 7, par. 1,

The Commission shall be assisted by a Food Aid Committee, hereinafter referred to as "the Committee", composed of the representatives of the Member States and chaired by the representative of the Commission."

2. Article 8 of Regulation (EEC) No 3972/86 is replaced by the following:

"Article 8

Where recourse is had to the procedure defined in this Article, the representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith. In that event, the Commission may defer application of the measures which it has decided for a period of not more than one month from the date of such communication.

The Council, acting by a qualified majority, may take a different decision within the time limit referred to in the previous paragraph."

Article 2

1. Regulations (EEC) Nos 2507/88 and 2508/88 are hereby amended as follows:

In Article 8 para 1 of Regulation 2507/88 and 3 para 1. of Regulation 2508/88, the words "shall be taken by the Commission" are replaced by "are adopted according to the procedure defined in paragraph 2".

Article 8, pars 2 & 3, of Regulation 2507/88 and article 3, pars 2 & 3, of Regulation 2508/88 are replaced by the following par. 2:

"The Commission shall be assisted by the Food Aid Committee established by article 7, par. 1, of Regulation (EEC) No 3972/86 according to the procedure laid down by article 8 of the said Regulation".

2. Pars 4 of articles 8 and 3 of, respectively, Regulations (EEC) Nos 2507/88 and 2508/88 become pars. 3.

Article 3

The second paragraph of articles 14, 13 and 9 of Regulations (EEC) No 3972/86, 2507/88 and 2508/88, respectively, are deleted.

Article 4

This regulation shall enter into force on the third day following its publication in the Official Journal of the European Communities.

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

Done at Brussels,

DOCUMENTS

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