

COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 30.09.1994

94/0212 (CNS)

Proposal for a

COUNCIL REGULATION (EC)

amending Regulation (EEC) No 3759/92
on the common organization of the market
in fishery products and aquaculture

(presented by the Commission)

Explanatory Memorandum

This proposal for a Council Regulation amending Regulation (EEC) No 3759/92 of 17 December 1992 on the common organization of the market in fishery products and aquaculture contains three main sets of provisions:

1. The anticipated enlargement of the Union on 1 January 1995 will require some adjustments to be made:
 - As the Community agreed during the negotiations with Norway to maintain the Norwegian scheme for recognizing producers' organizations, it is necessary to make provision in the basic "markets" Regulation for the possibility of recognizing a producers' organization exclusively for a specific area of activity.
 - The lists of products eligible for market support mechanisms given in the Annexes to the basic Regulation must be supplemented.
2. Under Article 18(9) of Regulation (EEC) No 3759/92, the Council, having studied the relevant Commission report, is obliged to decide on any proposal to review the compensation scheme for tuna before 31 December 1994.
3. The serious crisis in the fishing industry, while mostly structural in nature, calls for adjustments to and innovations in the common organization of the market so that, while the Community holds to its international commitments, producers' incomes can be maintained and the conditions created to bring about an increase in their incomes, which have been considerably affected by the crisis. To this end it is proposed to:
 - replace the existing system of monitoring in advance

the extension of producers' organizations' rules to non-members with an appraisal after the event so as to shorten the time required for implementation, the producers' organizations being thus able to react more quickly to market trends;

- introduce, in the case of measures taken on the basis of Articles 22, 23 or 24, the requirement on non-members trading within the area of activity of a producers' organization to observe the withdrawal price for the products in question. This measure will ensure that the steps taken by the producers' organizations when the market is disturbed are not rendered ineffectual or useless. Furthermore, the measure will improve the compatibility of the reference prices/minimum import prices mechanism with Article XI of the GATT by introducing a more rational system to restrict supply on the Community market should minimum prices be applied.

Provision needs to be made in consequence for compensation from the Member States to non-members of producers' organizations who are obliged to observe the withdrawal price;

- grant special recognition and temporary assistance to those

producers' organizations which draw up and implement a plan to improve product quality and marketing approved by the competent national authorities. The system is modelled closely on that used for start-up aid and its aim is to encourage the organizations in question to develop a policy of adding value to their production, which should increase the average price of fresh products;

- provide for special financial compensation for withdrawals in cases of exceptional intervention for a limited period as a result of market disturbances. The mechanism will improve the liquidity of producers' organizations which are called upon to make significant compensatory payments to their members in times of crisis and are often obliged to increase membership dues in order to do so.

Apart from the three sets of measures above, the proposal also includes a provision to ban the use by the producers' organizations of the margin of tolerance of up to 10% below the Community withdrawal or selling price in cases where minimum prices are applied to imports. This provision was previously included in a Commission Regulation laying down detailed rules for the application of the system of reference prices, which is currently being recast. It seems more appropriate to include it in the basic Regulation.

**Proposal for a Council Regulation (EC)
amending Regulation (EEC) No 3759/92
on the common organization of the market
in fishery products and aquaculture**

The Council of the European Union,

Having regard to the Treaty establishing the European Community,
and in particular Articles 42 and 43 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Parliament²,

Having regard to the opinion of the Economic and Social
Committee³,

Whereas the accession of certain new members to the Union will
require changes in the rules on the recognition of producers'
organizations and amendments to the list of species eligible
under the intervention mechanisms of the common organization of
the market,

Whereas the producers' organizations are the pivot on which the
common organization of the market turns; whereas, given current
adverse market conditions, their role must be strengthened so
that they can implement more quickly the measures to regulate
supply and stabilize prices; whereas for this purpose the
validity of any decisions taken by the Member States obliging
non-members of these organizations to comply with their rules
must be checked after the event;

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Whereas, should the market be seriously disturbed, the activities of the producers' organizations must be supported so that the effectiveness of the measures adopted by them can be ensured to the greatest possible extent; whereas, to this end, non-members who trade within the area of activity of a representative producers' organization must be obliged to comply with the rules adopted by the said organization as regards restricting supply, in so far as provisions are adopted pursuant to Articles 22, 23 and 24 of Regulation (EEC) No 3759/924, and in respect of the products concerned; whereas in this case the Member States must grant these non-members an indemnity under certain conditions;

Whereas, for various reasons, the average prices of the most important products have suffered an appreciable and lasting fall on the Community market; whereas this trend has a significant effect on producers' income; whereas, while continuing to observe the Community's international obligations, measures should accordingly be adopted that can better match supply to the needs of the market so that a fair income for producers can be ensured as far as possible; whereas encouraging the producers' organizations to improve the quality of their products contributes to the achievement of these aims; whereas specific recognition giving right to financial aid under certain circumstances must be provided for so as to assist the initiatives of the producers' organizations in this regard;

Whereas, in applying the Community withdrawal or selling prices for the products listed in Annex I, the producers' organizations may make use of a 10% margin of tolerance above and below the said prices; whereas, when the said products are being imported, account must be taken when comparing the free-at-frontier price and the reference price of any use by the producers' organization of the 10% tolerance margin below the Community prices; whereas the use of this lower tolerance margin must not be permitted

where imports of the products in question are required to observe the reference price or are subject to a countervailing charge;

Whereas in a turbulent market the producers' organizations are frequently required to deal with significant withdrawals of certain products, which is likely to adversely affect their liquidity and thus their ability to implement other market support measures; whereas provision should accordingly be made for special financial compensation, under certain conditions, once significant withdrawals occur over a limited period;

Whereas, in the case of the tuna market, the supply requirements of the Community industry and the need to protect the income of producers justifies maintaining the tariff status of the products in question and the compensatory mechanism in accordance with the provisions in force; whereas, to ensure that production does not develop abnormally, with a consequent deterioration in associated costs, the conditions under which the said mechanism is triggered should be reviewed; whereas, furthermore, in the light of experience, the compensatory allowance scheme should be simplified so as to reduce the length of time required for payment of the allowance to the producers' organizations eligible for it,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 3759/92 is hereby amended as follows:

1. The following Article is inserted after Article 4:

"Article 4a

Member States may exclusively recognize a producers' organization for a specific area of activity if it is

found to be representative under the terms of Article 5(1)."

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

"2. Before their decision enters into force, Member States shall notify to the Commission the rules which they intend to make obligatory pursuant to paragraph 1.

Where the Commission is unsure as to the validity of the decision, it may ask the Member State in question within one month of receipt of the said notification to suspend application of the decision in whole or in part. In this case and within two months from that same date, the Commission:

- shall confirm that the rules notified may be made obligatory,

or

- by means of a reasoned decision, declare null and void the extension of the rules decided by the Member State where it finds them to be incompatible with Community law. In this case the Commission decision shall apply from the date on which the request to suspend the rules was sent to the Member State."

3. The following Article is inserted after Article 5:

"Article 5a

1. Non-members who market within the area for which a producers' organization is representative one or more products for which measures have been adopted pursuant to Articles 22, 23 or 24 of this Regulation

shall, for the period in which the said measures apply, be required to comply with the rules referred to in Article 5(1) (a) and (b), should the producers' organization concerned apply them to the products in question.

In this case the Member States shall apply Article 5(4) and (5) and grant non-members an indemnity under the terms laid down in Article 6.

2. At the start of each fishing year, the Member States shall prepare and notify to the Commission the updated list of the producers' organizations that fulfil the conditions for representativeness and the corresponding areas for which they are representative.

This list shall be published as an annex to the measures adopted by the Commission pursuant to Articles 22, 23 or 24."

4. The following chapter is inserted in Title II

"Chapter 3

Specific measures to improve product quality

Article 7a

1. The Member States shall grant specific recognition to producers' organizations as referred to in Article 4(1) that market the products listed in Annex I and Annex VI and that have submitted a plan to improve the quality of the products approved by the competent national authorities.
2. The primary purpose of the plan referred to in

paragraph 1 shall be to improve product quality and, where appropriate, marketing; the plan shall provide for the following in particular:

- a marked improvement in the quality of products on board,
 - optimal quality maintenance during unloading and sale,
 - application of adequate quality controls.
3. The Member States shall forward to the Commission the plans that the producers' organizations submit to them. These plans may not be approved by the competent authority in the Member State until they have been sent to the Commission and sixty days have subsequently elapsed during which the Commission can request changes or reject the plan.
4. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 32.

Article 7c

1. Article 7 notwithstanding, the Member States shall grant the producers' organizations that have been specifically recognized under Article 7a(1) aid to facilitate the implementation of their plans to improve quality and marketing.

Entitlement to the aid in question shall be for the three years following the date on which specific recognition was granted.

2. The aid in the first, second and third years may not exceed 3%, 2% and 1% respectively of the production value of the products covered by the plan and marketed by the producers' organizations. As a percentage of the research and administrative costs allocated by the organization to carry out the plan the aid may not be greater than 60% in the first year, 50% in the second year and 40% in the third year.

The aid shall be paid in the year following that for which it was approved.

Fifty per cent of the aid granted shall be refunded by the European Agricultural Guidance and Guarantee Fund, Guidance Section.

3. The Member States shall monitor the implementation of the plans to improve quality and marketing which they have approved.

Each year they shall send the Commission, along with their application for payment of the Community contribution, a report describing progress as regards improvements in quality for each producers' organization benefiting from the specific recognition provided for in Article 7a.

4. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 32."

5. The following subparagraph is added to Article 12(1) (a) and Article 14(1):

"The 10% margin of tolerance below the Community price may not be applied to products whose importation is subject to the terms of Article 22(4) (b) and (c);

6. The following Article is inserted after Article 12:

"Article 12a

1. Where, in a given calendar month, the withdrawals effected by a producers' organization reach, in the case of a product listed in Annex I A or D, 10% of the quantities of the said product placed on sale in the same month pursuant to the rules adopted by the producers' organization in accordance with Article 4(1), the Member State shall grant the producers' organization concerned special financial compensation, equivalent to 95% of the withdrawal price applied by the said organization, for the quantities of the product in question withdrawn from the market which do not exceed 14% of the quantities placed on sale in the month in question.

Eligibility for this special financial compensation shall be granted subject to compliance with the terms and rules laid down in Article 12(1), (2), (4) and (5), except for the increase mentioned in Article 12(1)(c), which shall be reduced to 5.

Special financial compensation may not be granted for more than two successive calendar months and may be granted only for a maximum of four calendar months over the whole fishing year.

The quantities accepted for special financial compensation shall not be eligible for the financial compensation provided for in Article 12, nor for the carry-over aid provided for in Article 14.

2. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid

down in Article 32".

7. The word "canning" in the heading of Chapter 3 of Title III is hereby replaced by "processing".
8. Article 17 is replaced by the following:

"Article 17

1. The Council, acting by qualified majority on a proposal from the Commission, shall fix for each of the products listed in Annex III a Community producer price before the start of the fishing year. This price shall be established in accordance with the first and second indents of Article 9(2).

In fixing this price, account shall also be taken of the need to

- consider the supply conditions for the Community processing industry,
- help support producers' incomes,
- avoid the creation of surpluses in the Community.

These prices shall apply throughout the Community and shall be fixed for each fishing year.

2. The Member States shall notify the Commission of the average monthly prices recorded at representative wholesale markets or ports for products of Community origin as referred to in paragraph 1 which have defined commercial characteristics.
3. For the purposes of paragraph 2, the representative markets and ports in the Member States shall be those

where a significant proportion of Community tuna production is marketed.

4. Detailed rules for the application of this Article, in particular the fixing of conversion factors for the various species, sizes and presentations of tuna and a list of the representative markets and ports referred to in paragraph 3, shall be adopted in accordance with the procedure laid down in Article 32."

9. Article 18 is replaced by the following:

"Article 18

1. An allowance may be granted to the producers' organizations for the quantities of products listed in Annex III caught by their members, then sold and delivered to processing industries established within the customs territory of the Community and intended for the industrial manufacture of products falling within CN code 1604. This allowance shall be granted when, for a given quarter,

- the average selling price recorded on the Community market

and

- the free-at-frontier price referred to in Article 22 plus, where appropriate, the applicable countervailing charge

are both lower than a triggering threshold equivalent to 85% of the Community producer price for the product in question.

The Member States shall prepare or update and notify to the Commission the list of the industries referred to in this paragraph before the start of each fishing year.

2. The amount of the allowance in any case may not exceed:
 - neither the difference between the triggering threshold and the average selling price of the product in question on the Community market,
 - nor a flat-rate amount equivalent to 12% of this threshold.
3. The maximum total quantity of each of the products eligible for the allowance shall be limited to an amount equal to the average of the quantities sold and delivered, under the terms set out in paragraph 1, during the equivalent quarter in the three fishing years preceding that for which the allowance is paid.
4. The amount of the allowance granted to each producers' organization shall be equal to:
 - the ceiling laid down in paragraph 2 for the quantities of the product in question which have been disposed of in accordance with paragraph 1 and which do not exceed the average of the quantities sold and delivered under the same conditions by its members in the equivalent quarter in the three fishing years preceding the year for which the allowance is paid,
 - 50% of the ceiling laid down in paragraph 2 for the quantities of the product in question which exceed the quantities referred to in the previous

indent and which are equal to the surplus of the quantities resulting from the allocation of the quantities eligible pursuant to paragraph 3 among the producers' organizations.

The allocation shall be made proportionally between the producers' organizations in question on the basis of their respective average production in the equivalent quarter in the three fishing years preceding the year for which the allowance is paid.

5. The producers' organizations shall allocate the allowance granted to their members proportionally on the basis of the quantities produced by them and sold and delivered in accordance with paragraph 1.
6. Detailed rules for the application of this Article, in particular the amount and the conditions under which the allowance is granted, shall be adopted in accordance with the procedure laid down in Article 32."
10. Annexes I and VI are hereby amended in accordance with the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 1 January 1995.

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

Done at Brussels,

For the Council

"Annex I

CN codes	Descriptions
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A. Fresh or chilled products of heading Nos 0302 and 0307 :

21. ex 0302 69 97	Great silver smet (<i>Argentina silus</i>)
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D. Live, fresh or chilled products or products cooked by steaming or by boiling in water :

ex 0306 23 10, ex 0306 23 31 and ex 0306 23 39	Shrimps of the species <i>Crangon crangon</i> and Deep-water prawn (<i>Pandalus borealis</i>)
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"Annex VI

Fresh or chilled products of the following species	CN code
14) Catfish (<i>Anarhichas</i> spp.)	ex 0302 69 97
15) Roundnose grenadier (<i>Coryphaenoides rupestris</i>)	ex 0302 69 97
16) Greenland halibut (<i>Reinhardtius hippoglossoides</i>)	0302 21 10
17) Atlantic halibut (<i>Hippoglossus hippoglossus</i>)	0302 21 30
18) Tusk (<i>Brosme brosme</i>)	ex 0302 69 97

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FINANCIAL STATEMENT

DATE: 20.7.94

1. BUDGET HEADING : 1.261 Aid for fishery and aquaculture products APPROPRIATIONS: ECU 35m

2. TITLE : Proposal for a Council Regulation (EC) amending Regulation (EEC) No 3759/92 on the common organization of the market in fishery and aquaculture products

3. LEGAL BASIS : Articles 42 and 43 of the EC Treaty and the Acts of Accession of the new Member States

4. AIMS : To include new species now taken into account and expand the rules on producers' organizations as a result of the new accessions.
 - To amend the aid scheme for tuna.
 - To adjust the compensation paid in times of crisis.

5. FINANCIAL CONSEQUENCE	1995			
5.0. EXPENDITURE				
- CHARGED TO EC BUDGET				
- NATIONAL AUTHORITIES				
5.1.-RECEIPTS				
	1995	1996	1997	1998
5.0.1. ESTIMATED EXPENDITURE	- ECU 1 m	- ECU 1 m	- ECU 1 m	- ECU 1 m
5.1.1. ANTICIPATED RECEIPTS				

5.2. METHOD OF CALCULATION :

- Community and autonomous withdrawals and carryovers of new species	ECU 3.0m
- compensatory allowance for tuna	ECU(6.0)m
- special compensation	ECU 2.0m

6.0. FINANCING POSSIBLE WITH CREDITS INSCRIBED IN RELEVANT CHAPTER OF CURRENT BUDGET YES

6.1. FINANCING POSSIBLE BY TRANSFER BETWEEN CHAPTERS OF CURRENT BUDGET

6.2. NECESSITY FOR A SUPPLEMENTARY BUDGET NO

6.3. CREDITS TO BE WRITTEN INTO FUTURE BUDGETS YES

COMMENTS : The reduction in this budget heading is compensated for by an increase in budget heading 2.181, which is also affected by this proposal to amend the Regulation.

FINANCIAL STATEMENT

DATE: 20.7.94

1. BUDGET HEADING : 2.181 Transitional measures and innovatory schemes and aid for producers' organizations
 APPROPRIATIONS: ECU 10m

2. TITLE : Proposal for a Council Regulation (EC) amending Regulation (EEC) No 3759/92 on the common organization of the market in fishery and aquaculture products

3. LEGAL BASIS : Articles 42 and 43 of the EC Treaty

4. AIMS : - To adjust the aid to producers' organizations for introducing plans to improve quality

5. FINANCIAL CONSEQUENCE

1995

5.0. EXPENDITURE

- CHARGED TO EC BUDGET
- NATIONAL AUTHORITIES

ECU 1 m

ECU 1m

5.1. RECEIPTS

5.0.1. ANTICIPATED EXPENDITURE

1995

1996

1997

1998

ECU 1 m

ECU 1 m

ECU 1 m

ECU 1 m

5.1.1. ANTICIPATED RECEIPTS

5.2. METHOD OF CALCULATION :

6.0. FINANCING POSSIBLE WITH CREDITS INSCRIBED IN RELEVANT CHAPTER OF CURRENT BUDGET

NO

6.1. FINANCING POSSIBLE BY TRANSFER BETWEEN CHAPTERS OF CURRENT BUDGET

NO

6.2. NECESSITY FOR A SUPPLEMENTARY BUDGET

YES

6.3. CREDITS TO BE WRITTEN INTO FUTURE BUDGETS

YES

COMMENTS : The increase in this budget heading is offset by a reduction in budget heading 1.261, which is also affected by this proposal to amend the Regulation.

DOCUMENTS

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