



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.02.1996
COM(96) 40 final

96/0037 (CNS)

Proposal for a

COUNCIL REGULATION (EC)

amending Regulation (EEC) No 3813/92 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy

(presented by the Commission)

EXPLANATORY MEMORANDUM

Amounts fixed in ecus and collected or applied in national currency for the importing of agricultural products are converted using different rates depending on the legal basis of the instrument fixing the amount in question. As a result there are numerous economic inconsistencies and much red tape, which leads to mistakes and a lack of legal safety.

1. Legally speaking, amounts in national currency expressed in ecus in Commission Regulation (EC) No 3009/95 of 22 December 1995 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff¹, referred to hereinafter as "Regulation CN/CCT", are in principle to be converted into national currency using the rate provided for in Article 18 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code². Generally, that rate remains for one year the rate in force on 1 October of the preceding year.

Before 1 July 1995 and the introduction, pursuant to the GATT Agreements, of a large number of import charges expressed in ecus, this system created no difficulties since most customs duties subject thereto were expressed in fact as percentages of values in national currencies and therefore did not generally require conversion.

As from 1 July 1995, given the existence of many import charges in ecus, the year-long fixing of the rate in Article 18 of the Customs Code could have created significant market distortion. As a consequence, the Commission presented a proposal to Parliament and the Council for a Regulation³ amending the Customs Code to introduce a monthly rate from 1 July 1996. Pending that date, Commission Regulation (EC) No 1482/95⁴ introduces a transitional derogation for almost all agricultural products, replacing the annual rate by a monthly rate, subsequently referred to as the "monthly customs rate".

¹ OJ No L 319, 30.12.1995, p. 1.

² OJ No L 302, 19.10.1992, p. 1.

³ COM (95) 335 final.

⁴ OJ No L 145, 29.6.1995, p. 43.

The monthly customs rate for the agricultural products concerned applies in place of the rate provided for in Article 18 of the Customs Code and thus in so far as the latter is applicable.

However, pursuant to Article 1 of the Customs Code, the rate provided for in Article 18 thereof is to apply without prejudice to special rules laid down in other fields.

Thus the application of the agricultural regulations with regard to conversion rates takes precedence over the rate determined pursuant to Article 18 of the Customs Code in the case of amounts fixed in ecus in legal instruments relating to the common agricultural policy (CAP), as defined in Article 1(a) of Regulation (EEC) No 3813/92⁵:

- " -- legal instruments based directly or indirectly on Article 43 of the EEC Treaty, with the exception of the Common Customs Tariff and other legal instruments of customs legislation applicable to both agricultural and industrial products,
- legal instruments applicable to goods processed from agricultural products and subject to specific trade arrangements".

By virtue of that derogation, which is based on Article 1 of the Customs Code, all amounts in ecus fixed in legal instruments relating to the CAP must be converted in accordance with the agricultural regulations, i.e. using the agricultural conversion rate, except where explicitly provided for otherwise in those regulations.

Lastly, as a general rule and expressed in very simple terms, amounts fixed in legal instruments based on Article 43 of the Treaty are to be converted using the agricultural conversion rate while amounts fixed in other legal instruments, and in particular most of those in Regulation CN/CCT, are to be converted using the monthly customs rate.

⁵ OJ No L 387, 31.12.1992, p. 1.

2. The monetary gaps between the daily rate for the ecu on the one hand and the agricultural conversion rate or the monthly customs rate on the other hand are relatively small since the correcting factor applicable to the agricultural conversion rate under the "switchover" mechanism was abolished on 1 February 1995⁶.

In the first six months of operation of the system of monthly customs rates, i.e. between 1 July and 31 December 1995, the gaps recorded were as follows:

- the average gaps for the monthly customs rate were between - 0.284% and + 1.129% depending on the currency and 95% of the daily gaps fell between - 0.348% and + 1.411%;
- the average gaps for the agricultural conversion rate were between -0.179% and + 5.167% depending on the currency and 95% of the daily gaps fell between - 0.248% and + 5.489%.

For 95% of the days in the period under examination and most currencies, the difference between the agricultural conversion rate and the monthly customs rate remained below 2.5%. It substantially exceeded that figure in Denmark, Italy, Sweden and Finland, standing in the latter two Member States at the maximum recorded, i.e. around 4% on average.

Naturally these results relate to the short term but overall they reflect the extent of the differences between the two systems, which by design should always remain below 5% on average over several months, whatever the Member State concerned.

3. The difficulties created by the dual conversion system are very numerous and could increase still further in the future, in the wake of new regulations and amendments to existing legal instruments. They involve the appearance of economic inconsistencies and excessive administrative and legal complications.

⁶ Regulation (EC) No 150/95 (OJ No L 22, 31.1.1995, p. 1).

The mistakes which must inevitably ensue are likely to be financially detrimental to the operators concerned, to the Member States and to the Community budget.

A few examples, which are far from exhaustive, illustrate the problems arising:

- The amounts in Regulation CN/CCT are to be converted using the monthly customs rate except in the case of certain cheeses and WTO tariff quotas, to which the agricultural conversion rate applies. However, in the case of some of those quotas, e.g. for bananas, there are agricultural derogations from the agri-monetary arrangements, which re-trigger the use of the monthly customs rate after four successive derogations.

- The duty of ECU 7.80, which rose to ECU 9.419 from 1 February 1995, applicable to imports of olive oil from Tunisia within a quota of 46 000 tonnes was fixed in Council Regulation (EC) No 287/94⁷. The latter's legal basis is Article 113 of the Treaty and Article 36 of Council Regulation 136/66/EEC, which is itself based on Articles 42 and 43 of the Treaty; it is therefore a legal instrument relating to the CAP since it is indirectly based on Article 43 of the Treaty. Following a fairly complex legal analysis, the agricultural conversion rate has proved to be applicable to the amount in question.

- Charges on imports of bran, sharps and other residues from Algeria, Morocco and Tunisia are determined by Commission Regulation (EC) No 1710/95⁸, which is a legal instrument relating to the CAP. The monthly customs rate applies to the duty set out in Regulation CN/CCT on these products. It must be reduced by 60%, which implies the use of the same rate, and then reduced by ECU 7.25, to which the agricultural conversion rate applies.

⁷ OJ No L 39, 10.2.1994, p. 1.

⁸ OJ No L 163, 14.7.1995, p. 1.

-- The reduced duties fixed at the beginning of December 1995 for a particular category of rice amounted to ECU 602.52, which is, rightly, less than the conventional duty of ECU 611. Since the reduced duty is expressed in national currency using the agricultural conversion rate while the conventional duty is converted using the monthly customs rate, as a result the reduced duty during the period in question is higher than the conventional duty in 11 national currencies out of 15.

4. The aim of the Commission proposal is to introduce greater transparency and economic consistency into the import arrangements. The relevant measures must necessarily be taken at Community level to ensure uniform application of the CAP. The administrative simplifications they entail are beneficial for the management of small and medium-sized enterprises.

Since the examples given are not isolated cases with potential one-off solutions, entailing further legal complications the legal bases for which would in any case have to be established, a single conversion rate should be applied to all amounts relating to imports which must be expressed in national currency. This therefore covers import charges as well as the amounts required for determining tariff classifications and securities to be lodged.

The use of a single conversion rate could theoretically be contemplated through the generalized use of the agricultural conversion rate. However, this would entail applying the rate in areas not covered by the CAP, without the bases on which it is determined in the agri-monetary arrangements. Such generalized use would be pointless and could create further difficulties in other fields.

The only solution to the problem therefore lies in the use of the monthly customs rate to convert all amounts relating to imports. This is implied in the determination of an agricultural conversion rate equal, in the particular case, to the rate applicable under Article 18 of the Customs Code, which is without prejudice to the provisions on methods for calculating the amounts in question in ecus or the possibilities of exceptional measures which certain special situations may require.

The proposal avoids risks of disputes but does entail a loss affecting the Community's own resources, estimated at less than ECU 10 million per year, assuming the dual conversion rate system could have been applied without any error.

It is without prejudice to the application of the agricultural conversion rate in connection with exports, which is closely bound up with the arrangements applicable to common prices fixed in ecus.

Proposal for a
COUNCIL REGULATION (EC) No/.
of amending Regulation (EEC) No 3813/92 on the unit of account and the conversion
rates to be applied for the purposes of the common agricultural policy

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,

Whereas different conversion rates apply to amounts established in ecus and applicable
in national currency relating to imports of agricultural products, depending on the legal
instruments fixing such amounts; whereas, except where explicit derogations apply, the
relevant amounts fixed by a legal instrument relating to the common agricultural policy
within the meaning of Article 1(a) of Council Regulation (EEC) No 3813/92³, as last
amended by Regulation (EC) No 150/95⁴, are to be expressed in national currency using
the agricultural conversion rates; whereas the other amounts in question are to be
converted using the rate applicable under Article 18(1) of Council Regulation (EEC) No
2913/92 of 12 October 1992 establishing the Community Customs Code⁵, as amended by
the Act of Accession of Austria, Finland and Sweden;

Whereas the existence of two systems for converting amounts relating to imports of
agricultural products leads to economic inconsistencies and considerable red tape;
whereas, save in exceptional or very special cases, the same conversion rate as that

¹ OJ No
² OJ No
³ OJ No L 387, 31.12.1992, p. 1.
⁴ OJ No L 22, 31.1.1995, p. 1.
⁵ OJ No L 302, 19.10.1992, p. 1.

applicable to amounts collected on imports of agricultural or non-agricultural products must be used where they are fixed by a legal instrument not relating to the common agricultural policy;

Whereas the measures required must necessarily be taken at Community level; whereas they fall within an area of exclusive Community competence and seek to achieve the uniform application of the common agricultural policy,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 3813/92 is hereby amended as follows:

1. In Article 3(1), the words "Subject to the derogations referred to in paragraphs 2 and 3" are replaced by: "Without prejudice to the derogations provided for in paragraphs 2, 3 and 4".
2. The following paragraph is added to Article 3:
 - "4. Without prejudice to paragraph 2 and Article 5, in the case of amounts relating to imports fixed in ecus by a legal instrument relating to the common agricultural policy and applicable by the Member States in their national currencies, the agricultural conversion rate shall be equal, in the case in question, to the rate applicable to the products concerned pursuant to Article 18(1) of Regulation (EEC) No 2913/92."
3. The first subparagraph of Article 6(2a) is replaced by the following:
 - "2a. As regards amounts fixed in advance in ecus and amounts established in ecus under an invitation to tender with the exception of those referred to in Article 3(4), the agricultural conversion rate may be fixed in advance."

Article 2

This Regulation shall enter into force on the seventh 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 ... ,

For the Council

The President

FINANCIAL STATEMENT

1. BUDGET HEADING: Article 100		APPROPRIATIONS: ECU 864 million			
2. TITLE: Proposal for a Council Regulation amending Regulation (EEC) No 3813/92 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy					
3. LEGAL BASIS: Articles 42 and 43 of the Treaty					
4. AIMS: To use a single conversion rate for import charges					
5. FINANCIAL IMPLICATIONS:		PERIOD OF 12 MONTHS (ECU million)	CURRENT FINANCIAL YEAR (96) (ECU million)	FOLLOWING FINANCIAL YEAR (97) (ECU million)	
5.0. EXPENDITURE - CHARGED TO THE EC BUDGET (REFUNDS/INTERVENTION) - NATIONAL AUTHORITIES - OTHER					
5.1. REVENUE - OWN RESOURCES OF THE EC (LEVIES/CUSTOMS DUTIES) - NATIONAL		- 9	- 3	- 9	
		1998	1999	2000	2001
5.0.1. ESTIMATED EXPENDITURE		-	-	-	-
5.1.1. ESTIMATED REVENUE					
5.2. METHOD OF CALCULATION: Estimated quantities for 1996 of the principal imports affected by the measure multiplied by the average duty levied in ECU/tonne for each category of products and multiplied by the difference between the agricultural conversion rate and the monthly customs rate on 1 January 1996					
6.0. CAN THE PROJECT BE FINANCED FROM APPROPRIATIONS ENTERED IN THE RELEVANT CHAPTER OF THE CURRENT BUDGET?		YES/NO			
6.1. CAN THE PROJECT BE FINANCED BY TRANSFER BETWEEN CHAPTERS OF THE CURRENT BUDGET?		YES/NO			
6.2. WILL A SUPPLEMENTARY BUDGET BE NECESSARY?		YES/NO			
6.3. WILL FUTURE BUDGET APPROPRIATIONS BE NECESSARY?		YES/NO			
OBSERVATIONS					

ISSN 0254-1475

COM(96) 40 final

DOCUMENTS

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Catalogue number : CB-CO-96-052-EN-C

ISBN 92-78-00203-8

Office for Official Publications of the European Communities

L-2985 Luxembourg