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EUROPEAN COMMISSION

Brussels, 11.4.2011
COM(2011) 193 final

2011/0075 (NLE)

Proposal for a

COUNCIL REGULATION

**determining measures on fixing certain aids, refunds and prices related to the single
common organisation of agricultural markets**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

On 21 December 2010 the Commission adopted a Proposal for a Regulation of the European Parliament and of the Council establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)¹, the purpose of which is to align Council Regulation (EC) No 1234/2007² on the Single Common Market Organisation with the differentiation between delegated and implementing powers of the Commission introduced by Articles 290 and 291 of the Treaty on the Functioning of the European Union (TFEU).

In the above proposal, the Commission proposed that the Council should determine measures on the fixing of certain aids, refunds and prices under Article 43(3) TFEU, which is the purpose of this proposal.

Following the entry into force of the Lisbon Treaty, the ordinary legislative procedure is now the standard procedure for the adoption of EU legislative acts. In particular, Article 43(2) TFEU requires the use of the ordinary legislative procedure "to establish the common organisation of agricultural markets ... and the other provisions necessary for the pursuit of the objectives of the common agricultural policy".

Article 43(3) TFEU stipulates that "The Council, on a proposal from the Commission, shall adopt measures on fixing prices, levies, aids and quantitative limitations (...)". As an exception to the standard procedure, Article 43(3) TFEU needs to be interpreted restrictively so as to ensure that the Legislator can exercise its legislative prerogatives under Article 43(2) TFEU. This includes the Legislator regulating the fundamental elements of the common agricultural policy and taking the political decisions that shape its structure, instruments and effects. Against this background the specific procedure laid down in Article 43(3) TFEU should only apply where an issue referred to in that provision does not form part of the fundamental policy decisions reserved to the Legislator under Article 43(2) TFEU. Therefore, where such an issue is *inextricably* linked with the political substance of the decisions to be taken by the Legislator, Article 43(3) TFEU should not be applied.

Against this background, the Commission in its proposal for a new Single CMO Regulation has proposed that measures on the fixing of certain aids, refunds and prices, as referred to in Article 43(3), which do not fall in the scope of Article 43(2) TFEU, shall be taken by the Council. The relevant Articles of the Single CMO proposal are:

- (i) Articles 20 and 21 on the mandatory aid for private storage of butter;
- (ii) Article 99 on the production refund in the sugar sector;

¹ COM(2010) 799 final
² OJ L 299, 16.11.2007, p. 1.

- (iii) Article 101 on aid for skimmed milk and skimmed milk powder for use as feedingstuffs;
- (iv) Article 102 on aid for skimmed milk powder processed into casein and caseinates;
- (v) Article 108 on the supply of milk products to pupils;
- (vi) Article 155 on aid for silkworm rearers;
- (vii) Article 273 on export refund fixation; and
- (viii) Article 281 on minimum export prices for live plants.

In respect of the above mentioned provisions, the proposal provides for measures on the fixing of aid amounts, export refunds and minimum export prices to be determined by the Council under Article 43(3) TFEU and that amounts of such aids, refunds and prices should be fixed by the Commission by means of implementing acts.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

There was no need for consultation of interested parties or for an impact assessment since the proposal introduces no change of substance compared to the existing situation. Rather the proposal is limited to adapting the Single Common Market Organisation to the new requirements introduced by the Lisbon Treaty, which is an inter-institutional matter.

3. LEGAL ELEMENTS OF THE PROPOSAL

• Summary of the proposal

Establish the corresponding procedure for adoption of the acts related to the Single Common Market Organisation which do not fall within the scope of Article 43(2) TFEU.

• Legal basis

Article 43(3) TFEU.

• Subsidiarity principle

Agricultural policy is of shared competence between the EU and the Member States. This means that as long as the EU does not legislate in a sector Member States maintain their competence. The proposal, together with the Commission's parallel proposal (COM(2010)799 final), is limited to adapting the existing Single Common Market Organisation to the Lisbon Treaty. The existing common market organisation has, by definition, the role of regulating the markets of agricultural products and of defining the common rules for these products. Market mechanisms in force are intended to exclude any discrimination between producers or consumers within the

Union (Article 40(2) TFEU). This approach is not affected by the present proposal, which respects the subsidiarity principle in relation to Member States competences in the agricultural sector.

- **Proportionality principle**

The proposal entails no change to the existing situation in terms of financial impacts or burdens.

- **Choice of instruments**

Proposed instrument: Council Regulation

4. BUDGETARY IMPLICATION

This measure does not involve any additional Union expenditure.

5. ADDITIONAL INFORMATION

The proposal is directly linked with the Proposal for a Regulation of European Parliament and of the Council establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation).

Proposal for a

COUNCIL REGULATION (EU) [No .../..

of...

**determining measures on fixing certain aids, refunds and prices related to the single
common organisation of agricultural markets**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Regulation of the European Parliament and of the Council (EU) No [xxxx/yyyy], establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)³ refers to measures to be adopted by the Council in accordance with Article 43(3) of the Treaty.
- (2) To ensure the proper functioning of the system of aid for private storage of butter, appropriate conditions should be determined to fix the amounts of aid and to adapt aid following adverse changes in market conditions unforeseeable at the time of entry into storage of butter.
- (3) To ensure an efficient production refund system for certain products of the sugar sector, appropriate conditions should be set to fix the amount of the production refund.
- (4) To achieve the aim of the aid scheme for skimmed milk and skimmed milk powder intended for use as feedingstuffs, appropriate conditions should be set to fix the amounts of aid.
- (5) To achieve the aim of the aid scheme for skimmed milk processed into casein and caseinates, appropriate conditions should be set to fix the amounts of aid and to adapt aid according to the type of product that the skimmed milk is processed into and the quality of those products.
- (6) To ensure the proper functioning of the aid scheme for the supply of certain processed milk products to pupils in educational establishments functions smoothly and to ensure

³ OJ L [...], [...], p. [...].

flexibility in the scheme's administration, appropriate conditions should be set to fix the amounts of aid for all milk and other eligible milk products.

- (7) To ensure an effective aid scheme for silkworm rearers and flexibility in the scheme's administration, appropriate conditions should be set to fix the amounts of aid.
- (8) To ensure the proper functioning of the export refund system, appropriate measures should be set to fix the amount of the refunds. In addition, in the cereals and rice sectors appropriate measures should be set to fix the corrective amounts and to provide for the adjustment of the refund amount in line with any changes in the level of the intervention price.
- (9) To ensure the proper functioning of the export system of certain live plants and, particularly, to take into account market developments, appropriate measures should be set to fix the minimum export prices.
- (10) To ensure an efficient day-to-day management of the Common Agricultural Policy, the measures on fixing aid, refunds and prices set out in the present Regulation should be limited to the broad conditions allowing concrete amounts to be laid down in the specific circumstances of each case. In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to lay down those amounts. Those powers should be exercised with the assistance of the Committee established by Article 323(1) of Regulation (EU) No [xxxx/yyyy] and in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers⁴. Furthermore, to ensure a swift response by the Commission to fast changing market situations, it should be empowered to fix new refund levels and, in the cereals and rice sectors, to adapt the corrective amount without the assistance of the Committee referred to in Article 323(1) of Regulation (EU) No [xxxx/yyyy],

HAS ADOPTED THIS REGULATION:

Article 1

Scope

This Regulation provides for measures on the fixing of certain aids, refunds and prices related to the single common organisation of agricultural markets established by Regulation (EU) No [xxxx/yyyy] ("Single CMO Regulation").

⁴ OJ L 55, 28.2.2011

Article 2

Commission powers

Save as otherwise provided for in this Regulation, where powers are conferred upon the Commission, it shall adopt implementing acts in accordance with the procedure referred to in Article 323(2) of the Single CMO Regulation.

Article 3

Aid for private storage of butter

Aid amounts for private storage for butter, as referred to in Article 20 of the Single CMO Regulation, shall be fixed by the Commission taking into account storage costs and the likely trends in prices for fresh butter and butter from stocks.

Where, at the time of removal from storage, an adverse change, unforeseeable at the time of entry into storage, occurs on the market, the Commission may increase the amount of the aid.

Article 4

Production refund in the sugar sector

The production refund for the products of the sugar sector, as referred to in Article 99 of the Single CMO Regulation, shall be fixed by the Commission taking into account, in particular:

- (a) the costs arising from the use of imported sugar that the industry would have to bear in the event of supply from the world market; and
- (b) the price of surplus sugar available on the Union market or, if there is no surplus sugar on that market, the reference price for sugar fixed in point (c) of Article 8(1) of the Single CMO Regulation.

Article 5

Aid for skimmed milk and skimmed milk powder for use as feedingstuffs

Aid amounts for skimmed milk and skimmed milk powder for use as feedingstuffs, as referred to in Article 101 of the Single CMO Regulation, shall be fixed by the Commission taking into account the reference price for skimmed milk powder fixed in point (e)(ii) of Article 8(1) of the Single CMO Regulation, and the development of the market situation as regards skimmed milk and skimmed milk powder.

Article 6

Aid for skimmed milk processed into casein and caseinates

Aid amounts for skimmed milk processed into casein and caseinates, as referred to in Article 102 of the Single CMO Regulation, shall be fixed by the Commission taking into account the

reference price for skimmed milk powder fixed in point (e)(ii) of Article 8(1) of the Single CMO Regulation, and the development of the market situation as regards skimmed milk and skimmed milk powder.

The aid referred to in the first paragraph may be varied by the Commission, according to whether the skimmed milk is processed into casein or caseinates and according to the quality of those products.

Article 7

Aid for the supply of milk products to pupils

Aid amounts for the supply of milk products to pupils, as referred to in Article 108 of the Single CMO Regulation, shall be fixed by the Commission taking into account the need to sufficiently encourage the supply of milk products to educational establishments.

Aid amounts for eligible milk products other than milk shall be fixed by the Commission taking into account the milk components of the product concerned.

Article 8

Aid for silkworm rearers

Aid amounts granted to silkworm rearers, as referred to in Article 155 of the Single CMO Regulation, shall be fixed by the Commission taking into account the organisation of the silkworm rearing sector in certain regions of the Union and the need to facilitate the adaptation of supply to the market situation.

Article 9

Export refund fixation

1. Export refunds, as referred to in Article 273 of the Single CMO Regulation, shall be fixed by the Commission.
2. Refunds may be fixed by the Commission:
 - (a) at regular intervals;
 - (b) by tendering procedures for cereals, rice, sugar and milk and milk products.

Except where fixed by tendering procedure, the Commission shall fix the list of products on which an export refund is granted and the amount of export refunds at least once every three months. The amount of the refund may, however, remain at the same level for more than three months and may, where necessary, be adjusted in the intervening period by the Commission without the assistance of the Committee referred to in Article 323(1) of the Single CMO Regulation, either at the request of a Member State or on its own initiative.

3. One or more of the following aspects shall be taken into account when refunds for a certain product are being fixed:
- (a) the existing situation and the future trend with regard to:
 - (i) prices and availabilities of that product on the Union market,
 - (ii) prices for that product on the world market.
 - (b) the aims of the common market organisation which are to ensure equilibrium and the natural development of prices and trade on this market;
 - (c) the need to avoid disturbances likely to cause a prolonged imbalance between supply and demand on the Union market;
 - (d) the economic aspect of the proposed exports;
 - (e) the limits resulting from agreements concluded in accordance with Article 218 of the Treaty;
 - (f) the need to establish a balance between the use of Union basic products in the manufacture of processed goods for export to third countries and the use of third country products brought in under processing arrangements;
 - (g) the most favourable marketing costs and transport costs from Union markets to Union ports or other places of export together with forwarding costs to the countries of destination;
 - (h) demand on the Union market;
 - (i) in respect of the pigmeat, eggs and poultrymeat sectors, the difference between prices within the Union and prices on the world market for the quantity of feed grain input required for the production in the Union of products of those sectors.

Article 10

Specific measures on export refunds for cereals and rice

1. The Commission may fix a corrective amount applicable to the export refunds fixed in respect of the cereals and rice sectors. Where necessary, the Commission, without the assistance of the Committee referred to in Article 323(1) of the Single CMO Regulation, may amend the corrective amounts.

The Commission may apply the first subparagraph to products of the cereals and rice sectors that are exported in the form of goods listed in Annex XVII to the Single CMO Regulation.

2. For the first three months of the marketing year, the refund applicable to exports of malt, either in storage at the end of the previous marketing year or made from barley in stock at that time, shall be that which would have applied in respect of the export

licence in question to exports made during the last month of the preceding marketing year.

3. The refund on products listed in points (a) and (b) of Part I of Annex I to the Single CMO Regulation, established in accordance with Article 274(2) of the Single CMO Regulation, may be adjusted by the Commission in line with any changes in the level of the intervention price.

The first subparagraph may be applied, in whole or in part, to products listed in points (c) and (d) of Part I of Annex I to the Single CMO Regulation as well as to products listed in Part I of that Annex I and exported in the form of goods referred to in Part I of Annex XVII to the Single CMO Regulation. In that case, the adjustment referred to in the first subparagraph shall be corrected by the Commission by applying a coefficient expressing the ratio between the quantity of basic product and the quantity thereof contained in the processed product exported or used in the goods exported.

Article 11

Minimum export prices for live plants

One or more minimum prices for exports of the live plants sector to third countries, as referred to in Article 281 of the Single CMO Regulation, may be fixed by the Commission taking into account, in particular, the prices on international markets.

Article 12

Entry into force

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

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

Done at Brussels

For the Council
The President