



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.11.2006
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2006/0247 (CNS)

Proposal for a

COUNCIL REGULATION

introducing a scheme to compensate for the additional costs incurred in the marketing of certain fishery products from the Azores, Madeira, the Canary Islands, and the French departments of Guiana and Réunion from 2007 to 2013

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

Article 12 of Council Regulation (EC) No 2328/2003 introducing a scheme to compensate for the additional costs incurred in the marketing of certain fishery products from the Azores, Madeira, the Canary Islands and the French departments of Guiana and Réunion, as a result of those regions' remoteness requires of the Commission to report to the European Parliament, the Council and the European Economic and Social Committee on the implementation of the measures provided for in this regulation, accompanied, if necessary, by proposals for appropriate adjustments needed to achieve the objectives laid down in this Regulation.

- **General context**

Since 1992, the European Union provides support to the producers of fishery products in the outermost regions in order to offset the extra costs of transporting fisheries products to distant mainland European markets and thus, to integrate the fisheries sector in those regions better into the internal market. It has progressively been extended from the Azores, Madeira, the Canary Islands to the French territories of Guiana (from 1994 on) and Réunion (from 1998 on).

- **Existing provisions in the area of the proposal**

The current basis for support, Regulation (EC) No 2328/2003, covering an overall financial envelope of 15 million €/year, expires by 31 December 2006.

The Commission's report and the accompanying Commission Staff Working Document provide an assessment of the application of the compensation scheme on the basis of data available in the Commission and of an external study on "the structural aspects of the Common Fisheries Policy in the outermost regions". The report concludes that the continuation of the scheme for the period 2007-2013 should be considered in view of the positive impact of the scheme on the fisheries sector in the outermost regions and the persisting need for support.

However, in view of the assessment and the study's findings it is suggested to improve the efficiency of the compensation scheme by introducing the following amendments to the current scheme:

- Determination and adjustments of lists of eligible fishery products and their quantities and of compensation amounts by Member States within a fixed annual amount based on allocations in the current scheme to increase pertinence and flexibility of the scheme.
- Introduction of safeguards to avoid unjustified levels of compensation by focusing on compensation of transport costs, limiting compensation to a determined share in transport and other related costs and taking into

consideration other types of public intervention for the determination of compensation.

- Definition of clearer eligibility conditions for recipients and products in order to guarantee a better achievement of the objectives of the scheme and compliance of assisted products with the Common Fisheries Policy.
- Introduction of annual reporting by the Member States and of the requirement to ensure the setting-up of an implementation system that assures the regularity of operations.
- Switch of the financial management system from shared management under the Guarantee Section of the European Agricultural Guidance and Guarantee Funds to direct centralised management under the European Agricultural Guarantee Fund in accordance with Article 3(2) f) of Council Regulation (EC) No 1290/2005 on the financing of the common agricultural policy.

It should be noted in that context that the Guidelines for the examination of state aid to fisheries and aquaculture (2004/C229/03, OJ C 229 of 14.9.2004, p.5) allow for the assessment of aid to meet the needs of the outermost regions on a case-by-case basis and in the light of the specific handicaps recognised in Article 299(2) of the Treaty.

- **Consistency with the other policies and objectives of the Union**

The continuation of the compensation scheme is in line with Article 299(2) of the EC Treaty providing for specific measures to assist the outermost regions. It also corresponds to the Commission's commitment given in its Communication on a stronger partnership for the outermost regions of 26 May 2004 (COM) (2004) 343final) which identifies the reduction of additional costs in the outermost regions due to their recognised handicaps as one of the main priorities of the Union's activities to help these regions to overcome the problems resulting of their remoteness.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Consultation of stakeholders of the fisheries sector in the outermost regions as well as of representatives of regional and national administrations took place in the framework of fact finding missions for the external study on 'the structural aspects of the Common Fisheries Policy in the outermost regions'. In addition, the Commission organised two seminars in order to inform and consult them on this study. One event took place in November 2005 in Réunion, France, on 'the outermost regions and fishing – outlook and particular issues' to explain the objectives and the methodology of the study, the other one in Brussels in January 2006 to present and discuss the factual part of the study.

Responses resulting from interviews and the discussions in the seminar have been taken on board to a large extent in the study by the external experts.

- **Collection and use of expertise**

See above.

- **Impact assessment**

An impact assessment was not considered as the proposal is no major policy initiative but a mere prolongation of an existing support scheme. It appeared also not to be necessary in view of the external study which purpose was to provide recommendations amongst others for the future of the compensation scheme.

3. LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

It is proposed to continue Community compensation for additional costs incurred in the marketing of fishery products by some outermost regions for the period 2007-2013 in order to off-set the extra-costs for transporting these products to the European mainland.

- **Legal basis**

Article 37 and 299(2) of the EC Treaty

- **Subsidiarity principle**

Article 299(2) of the EC Treaty requires of the Council to adopt specific measures for the outermost regions on a proposal from the Commission.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

The proposal for the continuation of the compensation scheme introduces a higher degree of proportionality as it leaves the determination of eligible products, quantities and compensation amounts to the Member States within a fixed allocation per Member State.

The administrative burden for both Member States' national and regional authorities and the Commission services is kept to a minimum by providing for simple submission and acceptance procedures.

- **Choice of instruments**

Proposed instruments: Regulation.

Other means would not be adequate for the following reason(s).

Article 299(2) of the Treaty is the basis for this type of Community action.

4. BUDGETARY IMPLICATION

For the period 2007-2013 an annual budget of around 15 m€ is envisaged. It will be covered by the European Agricultural Guarantee Fund and be implemented by direct centralised management.

5. ADDITIONAL INFORMATION

- **Simplification**

The proposal provides for simplification of legislation, simplification of administrative procedures for public authorities (EU or national).

Eligible fishery products, quantities and compensation amounts are not any more determined at Council level but will be established by the national/regional authorities in the framework of general eligibility rules established in the Council Regulation.

The national authorities have to submit the information on the determination and adjustment of eligible products, quantities and compensation amounts to the Commission which is deemed to be accepted if the Commission does not react within 2 months of submission.

The proposal is included in the Commission's rolling programme for up-date and simplification of the *acquis communautaire*.

- **Review/revision/sunset clause**

The proposal includes a review clause.

The proposal includes a sunset clause.

Proposal for a

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introducing a scheme to compensate for the additional costs incurred in the marketing of certain fishery products from the Azores, Madeira, the Canary Islands, and the French departments of Guiana and Réunion from 2007 to 2013

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 and Article 299(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament¹,

Having regard to the opinion of the European Economic and Social Committee²,

Whereas:

- (1) The fisheries sector in the outermost regions of the Community is facing difficulties, and in particular additional costs incurred in the marketing of certain fishery products due to the particular handicaps recognised by Article 299(2) of the Treaty, and resulting mainly from the transport costs to continental Europe.
- (2) With a view to maintaining the competitiveness of certain fishery products compared with that of similar products from other Community regions, the Community introduced measures from 1992 to compensate for such additional costs in the fisheries sector. The measures applying for the period 2003-2006 are laid down in Regulation (EC) No 2328/2003³. It is necessary from 2007 to continue measures for offsetting the additional costs for the marketing of certain fishery products on the basis of a report by the Commission to the European Council, the European Parliament and the European Economic and Social Committee.
- (3) In view of the different marketing conditions in the outermost regions concerned, the fluctuations in captures and stocks and of market demands, it should be left to the Member States concerned to determine the fishery products eligible for compensation, their respective maximum quantities and the compensation amounts within the overall allocation per Member States.

¹ Opinion of(OJ...or not yet published in the OJ)

² Opinion of (OJ ... or not yet published in the OJ)

³ OJ L 345, 31.12.2003, p.34

- (4) Member States should be authorised to differentiate the list and the quantities of fishery products concerned and the amount of compensation within the overall allocation per Member State. They should also be authorised to adjust their compensation plans if justified by changing conditions.
- (5) Member States should set the compensation amount at a level which allows appropriate off-setting of additional costs, arising from the specific handicaps of the outermost regions and in particular from the costs of transporting the products to the European mainland. To avoid overcompensation, the amount should be proportional to the additional costs the aid off-sets and in no case exceed a determined share of the transport and other related costs to the European continent. To this end, it should also take into account other types of public intervention having an impact on the level of additional costs.
- (6) In order to achieve properly the objectives of this Regulation and to guarantee the compliance with the Common Fisheries Policy, support should be limited to fishery products harvested and processed in accordance with its rules.
- (7) So that the compensation scheme operates effectively and correctly, Member States should also make sure that the recipients of aid are economically viable and that the implementing system allows for a regular application of the scheme.
- (8) To permit appropriate monitoring of the compensation scheme, the Member States concerned should submit annual reports on its operation.
- (9) To enable a decision to be taken on whether to continue the compensation scheme after 2013 the Commission should submit a report to the European Parliament, the European Council and the European Economic and Social Committee based on an independent evaluation in due time before the end of the scheme.
- (10) The Community expenditure envisaged for the compensation scheme should be implemented under the European Agricultural Guarantee Fund in direct centralised management according to Article 3(2)(f) of Council Regulation (EC) No 1290/2005⁴.
- (11) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁵.
- (12) For the implementation of direct centralised financial management, Commission Regulation (EC) xxx/2006⁶ laying down detailed rules for the application of the common market organisation for fishery and aquaculture products should apply,

⁴ OJ L 209, 11.8.2005, p. 1.

⁵ OJ L 184, 17.7.1999, p.23. Decision as last amended by Council Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11)

⁶ OJ L

HAS ADOPTED THIS REGULATION:

Article 1
Subject-matter

This Regulation introduces a scheme for the period 2007 to 2013 to provide compensation for the additional costs incurred by the operators set out in Article 3 in the marketing of certain fishery products from the following regions as a result of those regions' specific handicaps (hereinafter referred to as 'the compensation'):

- Azores,
- Madeira,
- Canary Islands,
- French Guiana,
- Réunion

Article 2
Definitions

For the purposes of this Regulation the definition of "fishery products" set out in Article 1 of Council Regulation (EC) No 104/2000⁷ shall apply.

Article 3
Operators

1. The compensation shall be paid to the following operators who incur additional costs in the marketing of fishery products:
 - (a) the producers,
 - (b) the owners or operators of vessels registered in the ports of the regions referred to in Article 1 and operating therein or associations of such operators, and
 - (c) the operators in the processing and marketing sector or associations of such operators, who incur additional costs in marketing the products concerned.
2. The Member States concerned shall take steps to ensure the economic viability of operators receiving the compensation.

⁷ OJ L 17, 21.1.2000, p. 22

Article 4
Eligible fishery products

1. Each Member State concerned shall determine for its regions referred to in Article 1 the list of fishery products and the quantity of those products which are eligible for the compensation. The list of fishery products and the quantities may be differentiated for each of the regions belonging to one Member State.
2. When establishing the list and the quantities referred to in paragraph 1, Member States shall take into account all the relevant factors, in particular the need to ensure that the compensation does not result in an increased pressure on biologically sensitive stocks, the level of additional costs and qualitative and quantitative aspects of production and marketing.
3. Fishery products for which the compensation is granted must have been harvested and processed in accordance with the rules of the Common Fisheries Policy on:
 - (a) conservation and management,
 - (b) traceability,
 - (c) grading standards.
4. The compensation shall not be granted for fishery products:
 - (a) caught by third country vessels, with the exception of fishing vessels that fly the flag of Venezuela and operate in Community waters,
 - (b) caught by Community fishing vessels that are not registered in a port of one of the regions referred to in Article 1,
 - (c) imported from third countries,
 - (d) derived from illegal, unreported or unregulated (IUU) fishing.

Article 5
The compensation

1. Each Member State concerned shall determine for its regions referred to in Article 1 the level of compensation for each fishery product in the list referred to in Article 4. That level may be differentiated for individual regions or between regions belonging to one Member State.
2. The compensation shall take into account:
 - (a) for each fishery product the additional costs resulting from the specific handicaps of the regions concerned, in particular the expenditure for the transport to the European continent,
 - (b) any other type of public intervention affecting the level of additional costs.

3. The compensation to the additional costs shall be proportional to the additional costs it intends to off-set and shall not exceed 75 % of the transport and other related costs to the European continent.
4. The total amount of compensation per year shall not exceed:
 - (a) Azores and Madeira: EUR 4 283 992
 - (b) Canary Islands: EUR 5 844 076
 - (c) French Guiana and Réunion: EUR 4 868 700

Article 6 **Adjustments**

The Member States concerned may adjust the list and quantities of eligible fishery products referred to in Article 4(1) and the level of compensation referred to in Article 5(1) to take account of changing conditions provided that the total amounts referred to in Article 5(4) are respected.

Article 7 **Submission of compensation plans**

1. Within four months of the entry into force of this Regulation the Member States concerned shall submit to the Commission the list and quantities referred to in Article 4(1) and the level of compensation referred to in Article 5(1), hereinafter jointly referred to as “the compensation plan”.
2. If the compensation plan does not meet the requirements set out in this Regulation, the Commission, within two months, shall ask the Member State to adapt the plan accordingly. In that event the Member State shall submit its adapted compensation plan to the Commission.
3. If the Commission fails to react within the period of two months after receiving the compensation plan referred to in paragraph 1 and 2, the compensation plan shall be deemed to have been approved.
4. If a Member State makes amendments pursuant to Article 6, it shall submit its amended compensation plan to the Commission and the procedure laid down in paragraph 2 and 3 shall apply *mutatis mutandis*.

Article 8 **Reporting**

1. Each Member State concerned shall draw up an annual report on the implementation of the compensation and submit it to the Commission by 30 April of each year.
2. By 31 December 2011 at the latest, the Commission shall on the basis of an independent evaluation report to the European Parliament, the Council and the

European Economic and Social Committee on the implementation of the compensation, accompanied where necessary, by legislative proposals.

Article 9

Financial provisions

1. Expenditure incurred by Member States in accordance with this regulation shall be deemed to be expenditure as referred to in Article 3(2)(f) of Council Regulation (EC) No 1290/2005.
2. For the implementation of paragraph 1 Commission Regulation (EC) No .../2006 [laying down detailed rules for the application of Council Regulation (EC) No 104/2000 as regards the financing by the European Agricultural Guarantee Fund (EAGF) of expenditure relating to the common organisation of the markets in fishery and aquaculture products] shall apply.

Article 10

Control

Member States shall adopt appropriate provisions to ensure compliance with the requirements set out in this Regulation and the regularity of operations.

Article 11

Detailed rules

Detailed rules for the application of this Regulation may be adopted in accordance with the procedure laid down in Article 12(2).

Article 12

Committee

1. The Commission shall be assisted by the Management Committee for Fishery Products (hereinafter referred to as 'the Committee').
2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at one month.

3. The Committee shall adopt its internal Rules of Procedure.

Article 13

Transitional measures

1. If Member States have submitted to the Commission requests for adjustments pursuant to Article 8 (1) and (2) of Regulation (EC) No 2328/2003 on which no

decision has been taken by 31 December 2006, Article 8 of that Regulation shall continue to apply to those requests.

2. The provisions of Article 9 shall apply to expenditure incurred by Member States under Regulation (EC) No 2328/2003 and declared to the Commission after 15 October 2006.

Article 14

Entry into force

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

It shall apply from 1 January 2007 until 31 December 2013

Done at Brussels,

For the Council

FINANCIAL STATEMENT

1. BUDGET HEADING: 11 02 03	APPROPRIATIONS: EUR 15 million			
2. TITLE: Proposal for a Council Regulation introducing a scheme to compensate for the additional costs incurred for the marketing of certain fishery products from the Azores, Madeira, the Canary Islands, and the French departments of Guiana and Réunion from 2007 to 2013.				
3. LEGAL BASIS: Articles 37 and 299(2) of the EC Treaty				
4. AIMS: To ensure for seven years (2007-2013), with improved efficiency, the continuation of the scheme to compensate for the additional costs incurred in the marketing of certain fisheries products from the outermost regions. The regulation currently in force (see Observation (1)) expires at the end of 2006.				
5. FINANCIAL IMPLICATIONS	12 MONTH PERIOD (EUR million)	CURRENT FINANCIAL YEAR 2006 (EUR million)	FOLLOWING FINANCIAL YEAR 2007 (EUR million)	
5.0 EXPENDITURE – CHARGED TO THE EC BUDGET (REFUNDS/INTERVENTIONS) – NATIONAL AUTHORITIES – OTHER	15	–	15	
5.1 REVENUE – OWN RESOURCES OF THE EC (LEVIES/CUSTOMS DUTIES) – NATIONAL	–	–	–	
	2008	2009	2010	2011
5.0.1 ESTIMATED EXPENDITURE	15	15	15	15
5.1.1 ESTIMATED REVENUE	–	–	–	–
5.2 METHOD OF CALCULATION: The annual financial ceilings provided for by the present scheme are maintained. They are explicitly mentioned in Article 5(4) of the proposal.				
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 APPROPRIATIONS NEED TO BE ENTERED IN FUTURE BUDGETS?				YES / NO
OBSERVATIONS:				
(1) The legal basis for the current scheme (2003-2006) is Council Regulation (EC) No 2328/2003 introducing a scheme to compensate for the additional costs incurred in the marketing of certain fisheries products from the Azores, Madeira, the Canary Islands and the French departments of Guiana and Réunion, as a result of those regions' remoteness (OJ L345 of 31.12.2003, p. 34).				
(2) The proposal has no impact on the current budget, i.e. the budget 2006, but only from 2007 onwards. An amount of EUR 15 million has been asked for on the reserve line in the PDB 2007 pending the adoption of the proposed Regulation. The measures are financed from the European Agricultural Guarantee Fund (EAGF) under centralised direct management by the Commission.				