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**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE
EUROPEAN PARLIAMENT**

Simplification: Modification of Regulation (EEC) No 386/90

Proposal for a

COUNCIL REGULATION

**amending Regulation (EEC) No 386/90 on the monitoring carried out at the time of
export of agricultural products receiving refunds or other amounts**

(presented by the Commission)

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

Simplification: Modification of Regulation (EEC) No 386/90

In the framework of control on export refunds, Article 3(2) of Regulation (EEC) No 386/90¹ requires Member States' authorities to execute physical checks on goods for a scrutiny rate of 5% per customs office, per calendar year and per product sector.

A first simplification was brought in by Council Regulation (EC) No 163/94²: when a Member State applies risk analysis in accordance with (now Regulation (EC) No 3122/94), the minimum rate may be set on 2% per sector and 5% covering all sectors.

A second simplification is now proposed, by which a Member State applying risk analysis according to Regulation (EC) No 3122/94 covering all exporters may opt for applying the 5% average rate covering all sectors for the complete Member State instead of setting the rate per customs office.

The measure has been proposed by several Member States, in particular those who reorganised their customs services and processes by which centralised IT export declaration systems and a considerable reduction in the number of customs offices caused a need for better allocating the control efforts over their national territory. Summarising the control rate per Member State as a whole is only justified when risk analysis in accordance with Regulation (EC) No 3122/94 is applied, and it is optional in order to allow Member States whose customs organisation is more complex to continue its decentralised control management.

¹ OJ L 42, 16.2.1990, p.6. Regulation as last amended by Regulation (EC) No 163/94 (OJ L 24, 29.1.1994, p.2)

² OJ L 24, 29.1.1994, P.2

EXPLANATORY MEMORANDUM

Council Regulation (EEC) No 386/90

Under its responsibilities of Article 8 of Council Regulation (EEC) No 729/90 of 21 April 1970 on the financing of the common agricultural policy³ the Council established that Member States should execute physical checks on goods for which export refunds are claimed at the time the export formalities are completed and before authorisation is given for the goods in question to be exported. This situates at the customs office of export, which is often an inland office. The minimum control norm is 5% per customs office, per calendar year and per product sector, which may be summarised to 5% for all sectors with a minimum of 2% per sector if risk analysis is applied in the selection procedures. Moreover, when export declarations are accepted by an internal customs office, physical checks on substitution may be carried out by each customs office of exit from the Community (= at the outer border).

Since the introduction of these requirements in 1990 by Council Regulation (EEC) No 386/90⁴ and in 1994 by Council Regulation (EC) No 163/94⁵, customs organisations underwent ongoing IT developments in export procedures, reorganisations due to the opening of the internal market and the enlargements of the Union, and they build up more experience in applying the control regulations. These developments had their impact on the number of customs offices of export and of exit, their organisation of work and their know-how.

Although all customs services apply some form of risk management technique, only 7 of the 27 Member States apply risk analysis in accordance with Regulation (EC) No 3122/94⁶. The following measures to improve the use of risk analysis and to simplify the allocation of physical controls and of substitution checks are proposed.

5% Physical controls per Member State

Article 3(2) of Regulation (EEC) No 386/90 requires Member States' authorities to execute physical checks on goods for a scrutiny rate of 5% per customs office, per calendar year and per product sector.

In some cases the customs office is not a relevant criterion anymore for setting the annual control rate. In some Member States the number of customs offices has decreased, the management of controls has been centralised and the use of risk management techniques could lead to proportionally spread physical checks amongst all exporters of refund products. Given these developments, Member States noticed that efficient attribution of controls to the sectors or exporters where they should be prioritised is hindered by the requirement to lay the minimum norm at the level of the customs office of export. For some offices 5% is a too high administrative burden for the few exporters concerned and for the administration, while in other offices the 5% norm hardly covers the real control needs.

³ OJ L 94, 28.4.1970, p.13, replaced by Article 9 of Regulation (EC) No 1290/2005, OJ L 209, 11.8.2005, P.1

⁴ OJ L 42, 16.2.1990, p.6. Regulation as last amended by Regulation (EC) No 163/94 (OJ L 24, 29.1.1994, p.2)

⁵ OJ L 24, 29.1.1994, P.2

⁶ OJ L 330, 21.12.1994, p.31

For the sake of efficiency and simplicity and according to the shared management principle of controls on budget expenditure, the Member States applying risk analysis in conformity with Regulation (EC) No 3122/94 should have the option to apply the minimum control norm on national level, rather than on the level of the customs office of export. Member States not applying such risk analysis will not benefit this summarised control rating and will stay legally bound to a control rate per customs office of export. Member States applying aforementioned risk analysis, but preferring decentralised control management via harmonised legally binding rates, may continue today's standing practice in applying the legally required minimum control rate per customs office of export.

Proposal for a

COUNCIL REGULATION

amending Regulation (EEC) No 386/90 on the monitoring carried out at the time of export of agricultural products receiving refunds or other amounts

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

Having regard to the proposal from the Commission⁷,

Having regard to the opinion of the European Parliament⁸,

Whereas:

- (1) Since the entry into force of Council Regulation (EEC) No 386/90⁹ a number of Member States have reorganised their customs services leading to a significant reduction in the number of customs offices. The introduction of customs export procedures processed electronically with centralised control has reduced the relevance of the customs office of export as the basis for the application of checking rates.
- (2) Moreover, the use of risk management techniques including risk analysis should lead to a spread of physical checks amongst all exporters. However, the efficient allocation of checks to the sectors or exporters where they should be prioritised is hindered by the requirement to apply minimum checking rates at the level of the customs office of export. Therefore, in the interests of efficiency and simplicity and according to the principle of shared management, those Member States applying risk analysis in conformity with Community law should have the opportunity to apply the minimum checking rate on a national level, rather than on the level of the customs office of export.
- (3) Regulation (EEC) No 386/90 should therefore be amended accordingly,

⁷ OJ C [...], [...], p. [...].

⁸ OJ C [...], [...], p. [...].

⁹ OJ L 42, 16.2.1990, p. 6. Regulation as amended by Regulation (EC) No 163/94 (OJ L 24, 29.1.1994, p. 2).

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 386/90 is amended as follows:

In Article 3(2), the following third subparagraph is added:

"Where the Member State applies the second subparagraph, it may also choose to replace the rate of 5% per customs office by a rate of 5% for its entire territory. The Member State shall notify the Commission before it applies or ceases to apply this subparagraph."

Article 2

This Regulation shall enter into force on the twentieth 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

IMPACT ASSESSMENT FORM

THE IMPACT OF THE PROPOSAL ON BUSINESS WITH SPECIAL REFERENCE TO SMALL AND MEDIUM-SIZED ENTERPRISES (SMEs)

TITLE OF PROPOSAL

Draft Regulation, modifying Council Regulation (EEC) No 386/90 of 12 February 1990 on the monitoring carried out at the time of export of agricultural products receiving refunds or other amounts

DOCUMENT REFERENCE NUMBER

COM(2007) 489 final 2007/0178 (CNS)

THE PROPOSAL

1. Taking account of the principle of subsidiarity, why is Community legislation necessary in this area and what are its main aims?

The proposal does not affect business, as it only re-arranges the management of physical and substitution checks in the framework of export refunds by customs authorities.

Community legislation is necessary in this area, in order to adapt existing control provisions to changed control environments in some Member States.

The main aims are to simplify centralised allocation of physical and substitution controls by customs authorities.

THE IMPACT ON BUSINESS

2. Who will be affected by the proposal?

No impact on business

- which sectors of business
- which sizes of business (what is the concentration of small and medium-sized firms)
- are there particular geographical areas of the Community where these businesses are found

3. What will business have to do to comply with the proposal?

No changes for business

4. What economic effects is the proposal likely to have?

- on employment
- on investment and the creation of new businesses
- on the competitiveness of businesses

No effects

5. Does the proposal contain measures to take account of the specific situation of small and medium-sized firms (reduced or different requirements etc)?

No effects

CONSULTATION

6. List the organisations which have been consulted about the proposal and outline their main views.

Global pre-consultations of Member States' technical specialists, being delegates in the Trade Mechanisms Management Committee. These specialists are in contact with exporters organisations.

The organisations did not react. The Member States specialists' main views were that summarisation of control norms would better meet the modernised IT supported customs control management. However, as some (big) Member States prefer to continue decentralised control management via harmonised legal control rates per customs office of export, the opportunity for opting in the summarised norm is introduced.