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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	14 May 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2018) 276 final
Subject:	Proposal for a COUNCIL REGULATION on fixing the export refunds on poultrymeat

Delegations will find attached document COM(2018) 276 final.

Encl.: COM(2018) 276 final



EUROPEAN
COMMISSION

Brussels, 14.5.2018
COM(2018) 276 final

2018/0134 (NLE)

Proposal for a

COUNCIL REGULATION

on fixing the export refunds on poultrymeat

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

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

On 18 July 2013, the Commission adopted Implementing Regulation (EU) No 689/2013¹, setting export refunds at zero for the sector of poultrymeat.

By its judgment of 20 September 2017², the Court of Justice of the European Union (hereafter referred to as "the Court") declared invalid Implementing Regulation (EU) No 689/2013, holding that its adoption did not comply with the procedural rules.

In the same judgment, the Court also ruled that notwithstanding the breach of essential procedural requirements, no error had been disclosed affecting the conformity of the act, which contained the measures necessary for the implementation of Regulation (EC) No 1234/2007.

Thus, for the sake of legal certainty and to avoid adversely affecting the implementation of Regulation (EC) No 1234/2007, it established to maintain the effects of the contested Regulation until the entry into force of a new act intended to replace it.

Regulation (EC) No 1234/2007 was in the meantime repealed by Regulation (EU) No 1308/2013 of the European Parliament and the Council, which sets refunds at zero as from 1st January 2014.

The proposed act is intended to replace Implementing Regulation (EU) No 689/2013 for the period between its original entry into force, 19 July 2013, and 31 December 2013. It is submitted to the Council on the legal basis of Article 43(3) of the Treaty on the Functioning of the European Union as the only possible legal basis for an act with retroactive effects as the one here considered.

- **Consistency with existing policy provisions in the policy area**

This act is meant to replace Implementing Regulation (EU) No 689/2013, the effects of which have been maintained by the Court. It is consistent with the cross-sector policy choice to refrain from using export refunds under the Common Agricultural Policy.

- **Consistency with other Union policies**

Generally speaking, the Union has taken a commitment at the World Trade Organisation to phase out trade-distorting measures, among which export refunds. Export refunds in the poultry sector were the last ones to be brought to zero, in July 2013.

¹ Commission Implementing Regulation (EU) No 689/2013 of 18 July 2013 fixing the export refunds on poultrymeat (OJ L 196, 19.7.2013, p. 13).

² Judgment of 20 September 2017, Tilly-Sabco / Commission (C-183/16 P) ECLI:EU:C:2017:704.

2. **LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

The legal basis is the Common Organisation of the Markets in agricultural products (single CMO). The previous CMO, Regulation (EU) No 1234/2007, empowered the Commission to set export refunds. The current CMO, Regulation (EU) No 1308/2013, sets refunds at zero, while leaving the measures regarding the fixing of export refunds to the Council, under Article 43(3) of the Treaty on the Functioning of the European Union.

- **Subsidiarity (for non-exclusive competence)**

Export refunds are a tool of the Common Market Organisation managed at EU level. They are set in Regulations applying in all Member States, and are the same across the Union.

- **Proportionality**

Regulation (EU) No 1308/2013 sets export refunds at zero across all sectors from 1 January 2014. This proposed retroactive Regulation is therefore to be adopted by the Council on the basis of Article 43(3) TFEU as the only possible legal basis for such an act.

- **Choice of the instrument**

Export refunds, as part of the Common Market Organisation for agricultural markets, are set by Regulations.

3. **RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable. This proposal is replacing an existing act without changing its effects, which were maintained by the Court.

Stakeholder consultations

Not applicable. This proposal is replacing an existing act without changing its effects, which were maintained by the Court.

- **Collection and use of expertise**

Not applicable. This proposal is replacing an existing act without changing its effects, which were maintained by the Court.

- **Impact assessment**

Not applicable. This proposal is replacing an existing act without changing its effects, which were maintained by the Court.

- **Regulatory fitness and simplification**

Not applicable. This proposal is replacing an existing act without changing its effects, which were maintained by the Court.

- **Fundamental rights**

Not applicable. This proposal is replacing an existing act without changing its effects, which were maintained by the Court.

4. BUDGETARY IMPLICATIONS

No budgetary implications.

The effects of the act to be replaced were to set refunds at zero, therefore not having any budgetary implication. These effects were maintained by the Court. The replacement of the Regulation will have no budgetary implications.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Not applicable. This proposal is replacing an existing act which requires no implementation plan.

- **Explanatory documents (for directives)**

Not applicable.

- **Detailed explanation of the specific provisions of the proposal**

Not applicable. This proposal is replacing an existing act. It does not contain any specific new provisions.

Proposal for a

COUNCIL REGULATION

on fixing the export refunds on poultrymeat

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) Under Article 164(2) of Council Regulation (EC) No 1234/2007³, repealed by Regulation (EU) No 1308/2013⁴, the Commission was empowered to fix refunds when considered necessary in accordance with the criteria and requirements established in Regulation (EU) No 1234/2007. Against this background, Commission Implementing Regulation (EU) No 689/2013 was adopted.
- (2) By its judgment of 20 September 2017⁵, the Court of Justice of the European Union declared invalid Implementing Regulation (EU) No 689/2013. In its judgment, the Court held that the failure to comply with the procedural rules relating to the adoption of an act adversely affecting a person constitutes an infringement of an essential procedural requirement and that, therefore, the act vitiated by such a defect has to be annulled.
- (3) In the same judgment, the Court also ruled that notwithstanding the breach of essential procedural requirements, no error had been disclosed affecting the conformity of the act, which contained the measures necessary for the implementation of Regulation (EC) No 1234/2007. Thus, for the sake of legal certainty and to avoid adversely affecting the implementation of Regulation (EC) No 1234/2007, it established to maintain the effects of the contested Regulation until the entry into force of a new act intended to replace it.
- (4) Regulation (EU) No 1308/2013 repealed the procedural provisions of Regulation (EC) No 1234/2007 concerning the adoption of acts fixing refunds. In accordance with

³ Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ L 299, 16.11.2007, p. 1).

⁴ Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671).

⁵ Judgment of 20 September 2017, Tilly-Sabco / Commission (C-183/16 P) ECLI:EU:C:2017:704.

Article 232 of Regulation (EU) No 1308/2013, that Regulation applies from 1 January 2014.

- (5) It is therefore necessary to fix again the export refunds on poultrymeat at the same level as they had been fixed by Implementing Regulation (EU) No 689/2013, in order to comply with the Court's judgment. This Regulation should thus apply retroactively for the period between 19 July 2013 and 31 December 2013.
- (6) Refunds should be granted only on products which are authorised to move freely in the Union and bear the identification mark provided for in Article 5(1)(b) of Regulation (EC) No 853/2004 of the European Parliament and of the Council⁶. Those products should also comply with the requirements of Regulation (EC) No 852/2004 of the European Parliament and of the Council⁷.
- (7) The refunds applicable until the adoption of Implementing Regulation (EU) No 689/2013 had been fixed by Commission Implementing Regulation (EU) No 360/2013⁸. The expiration of the effects of Implementing Regulation (EU) No 689/2013 would therefore imply, *inter alia*, the revival of Regulation (EU) No 360/2013. For the sake of legal certainty, Regulation (EU) No 360/2013 should therefore be repealed by this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. Export refunds as provided for in Article 162 of Regulation (EC) No 1234/2007 shall be granted on the products and for the amounts set out in the Annex to this Regulation subject to the conditions provided for in paragraph 2 of this Article.

2. The products eligible for a refund under paragraph 1 shall meet the relevant requirements of Regulations (EC) No 852/2004 and (EC) No 853/2004 and, in particular, shall be prepared in an approved establishment and comply with the identification marking conditions laid down in Section I of Annex II to Regulation (EC) No 853/2004.

Article 2

Implementing Regulation (EU) No 360/2013 is hereby repealed.

Article 3

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

⁶ Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin (OJ L 139, 30.4.2004, p. 55).

⁷ Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs (OJ L 139, 30.4.2004, p. 1).

⁸ Commission Implementing Regulation (EU) No 360/2013 of 18 April 2013 fixing the export refunds on poultrymeat (OJ L 109, 19.4.2013, p. 27).

It shall apply from 19 July 2013 until 31 December 2013.

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

Done at Brussels,

*For the Council
The President*

FINANCIAL STATEMENT		FS/18/CM/aj Ares (2018) 1021181	
		6.146.2018.1	
		DATE: 9.2.2018	
1. BUDGET HEADING:		APPROPRIATIONS:	
05 02 15 05 (refunds for poultrymeat)		Budget 2018: EUR p.m.	
2. TITLE:			
COUNCIL REGULATION (EU) No 2018/xxxx on fixing the export refunds on poultrymeat			
3. LEGAL BASIS:			
Article 43(3) of the Treaty on the Functioning of the European Union			
4. AIMS:			
The proposed act is intended to replace Implementing Regulation (EU) No 689/2013 for the period between its original entry into force, 19 July 2013, and 31 December 2013.			
5. FINANCIAL IMPLICATIONS	12 MONTH PERIOD (EUR million)	FINANCIAL YEAR 2018 (EUR million)	FINANCIAL YEAR 2019 (EUR million)
5.0 EXPENDITURE			
- CHARGED TO THE EU BUDGET (REFUNDS/INTERVENTIONS)	p.m.	p.m.	p.m.
- NATIONAL AUTHORITIES			
- OTHER			
5.2 METHOD OF CALCULATION:			
See observations			
6.0	CAN THE PROJECT BE FINANCED FROM APPROPRIATIONS ENTERED IN THE RELEVANT CHAPTER OF THE CURRENT BUDGET?		n.a.
6.1	CAN THE PROJECT BE FINANCED BY TRANSFER BETWEEN CHAPTERS OF THE CURRENT BUDGET?		No
6.2	WILL A SUPPLEMENTARY BUDGET BE NECESSARY?		No
6.3	WILL APPROPRIATIONS NEED TO BE ENTERED IN FUTURE BUDGETS?		No
OBSERVATIONS:			
No budgetary implications			
The effects of the act to be replaced were to set refunds for poultrymeat at zero, therefore not having any budgetary implication. The replacement of the Regulation, maintaining the same effects, will have no budgetary implications.			