



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 1.12.2005
COM(2005) 613 final

2005/0231 (CNS)

Proposal for a

COUNCIL REGULATION

applying certain rules of competition to production of and trade in agricultural products

(presented by the Commission)

(Codified version)

EXPLANATORY MEMORANDUM

1. In the context of a people's Europe, the Commission attaches great importance to simplifying and clarifying Community law so as to make it clearer and more accessible to the ordinary citizen, thus giving him new opportunities and the chance to make use of the specific rights it gives him.

This aim cannot be achieved so long as numerous provisions that have been amended several times, often quite substantially, remain scattered, so that they must be sought partly in the original instrument and partly in later amending ones. Considerable research work, comparing many different instruments, is thus needed to identify the current rules.

For this reason a codification of rules that have frequently been amended is also essential if Community law is to be clear and transparent.

2. On 1 April 1987 the Commission therefore decided¹ to instruct its staff that all legislative acts should be codified after no more than ten amendments, stressing that this is a minimum requirement and that departments should endeavour to codify at even shorter intervals the texts for which they are responsible, to ensure that the Community rules are clear and readily understandable.
3. The Conclusions of the Presidency of the Edinburgh European Council (December 1992) confirmed this², stressing the importance of codification as it offers certainty as to the law applicable to a given matter at a given time.
4. Codification must be undertaken in full compliance with the normal Community legislative procedure.

Given that no changes of substance may be made to the instruments affected by codification, the European Parliament, the Council and the Commission have agreed, by an interinstitutional agreement dated 20 December 1994, that an accelerated procedure may be used for the fast-track adoption of codification instruments.

5. The purpose of this proposal is to undertake a codification of Council Regulation No 26 of 4 April 1962 applying certain rules of competition to production of and trade in agricultural products³. The new Regulation will supersede the various acts incorporated in it⁴; this proposal fully preserves the content of the acts being codified and hence does no more than bringing them together with only such formal amendments as are required by the codification exercise itself.

¹ COM(87) 868 PV.

² See Annex 3 to Part A of the Conclusions.

³ Carried out pursuant to the Communication from the Commission to the European Parliament and the Council – Codification of the Acquis communautaire, COM(2001) 645 final.

⁴ See Annex I to this proposal.

6. The codification proposal was drawn up on the basis of a preliminary consolidation, in all official languages, of Regulation No 26 and the instrument amending it, carried out by the Office for Official Publications of the European Communities, by means of a data-processing system. Where the Articles have been given new numbers, the correlation between the old and the new numbers is shown in a table contained in Annex II to the codified Regulation.

↓ 26/62

2005/0231 (CNS)

Proposal for a

COUNCIL REGULATION

applying certain rules of competition to production of and trade in agricultural products

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 36 and 37 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament⁵,

Whereas:

↓

- (1) Council Regulation No 26 of 4 April 1962 applying certain rules of competition to production of and trade in agricultural products⁶ has been substantially amended⁷. In the interests of clarity and rationality the said Regulation should be codified.

↓ 26/62 Recital 1 (adapted)

- (2) By virtue of Article 36 of the Treaty one of the matters to be decided under the Common Agricultural Policy is whether the rules on competition laid down in the Treaty are to apply to production of and trade in agricultural products ☒ . ☒ Accordingly the provisions ☒ of this Regulation ☒ will have to be supplemented in the light of developments in that policy.

⁵ OJ C [...], [...], p. [...].

⁶ OJ 30, 20.4.1962, p. 993/1962. Regulation as amended by Regulation No 49 (OJ 53, 1.7.1962, p. 1571/62).

⁷ See Annex I.

↓ 26/62

- (3) The rules on competition relating to the agreements, decisions and practices referred to in Article 81 of the Treaty and to the abuse of dominant positions must be applied to production of and trade in agricultural products, in so far as their application does not impede the functioning of national organisations of agricultural markets or jeopardise attainment of the objectives of the Common Agricultural Policy.
- (4) Special attention is warranted in the case of farmers' organisations which are particularly concerned with the joint production or marketing of agricultural products or the use of joint facilities, unless such joint action excludes competition or jeopardises attainment of the objectives of Article 33 of the Treaty.

↓ 26/62 Recital 5

- (5) In order both to avoid compromising the development of a Common Agricultural Policy and to ensure certainty in the law and non-discriminatory treatment of the undertakings concerned, the Commission must have sole power, subject to review by the Court of Justice, to determine whether the conditions provided for in the two preceding Recitals are fulfilled as regards the agreements, decisions and practices referred to in Article 81 of the Treaty.

↓ 26/62 Recital 7

- (6) In order to implement, as part of the development of the Common Agricultural Policy, the rules on aids for production of or trade in agricultural products, the Commission should be in a position to draw up a list of existing, new or proposed aids, to make appropriate observations to the Member States and to propose suitable measures to them,

↓ 26/62 (adapted)

HAS ADOPTED THIS REGULATION:

Article 1

Articles 81 to 86 of the Treaty and provisions made in implementation thereof shall, subject to Article 2 ☒ of this Regulation ☒, apply to all agreements, decisions and practices referred to in Articles 81(1) and 82 of the Treaty which relate to production of or trade in the products listed in Annex I to the Treaty.

Article 2

1. Article 81(1) of the Treaty shall not apply to such of the agreements, decisions and practices referred to in Article 1 of this Regulation as form an integral part of a national market organisation or are necessary for attainment of the objectives set out in Article 33 of the Treaty.

In particular, it shall not apply to agreements, decisions and practices of farmers, farmers' associations, or associations of such associations belonging to a single Member State which concern the production or sale of agricultural products or the use of joint facilities for the storage, treatment or processing of agricultural products, and under which there is no obligation to charge identical prices, unless the Commission finds that competition is thereby excluded or that the objectives of Article 33 of the Treaty are jeopardised.

2. After consulting the Member States and hearing the undertakings or associations of undertakings concerned and any other natural or legal person that it considers appropriate, the Commission shall have sole power, subject to review by the Court of Justice, to determine, by decision which shall be published, which agreements, decisions and practices fulfil the conditions specified in paragraph 1.

The Commission shall undertake such determination either on its own initiative or at the request of a competent authority of a Member State or of an interested undertaking or association of undertakings.

3. The publication shall state the names of the parties and the main content of the decision; it shall have regard to the legitimate interest of undertakings in the protection of their business secrets.

Article 3

The provisions of Article 88(1) and of the first sentence of Article 88(3) of the Treaty shall apply to aids granted for production of or trade in the products listed in Annex I to the Treaty.



Article 4

Regulation No 26 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

↓ 26/62 (adapted)

Article 5

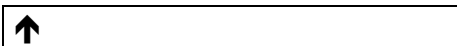
This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

↓ 26/62

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

Done at Brussels,

For the Council
The President



ANNEX I

Repealed Regulation with its amendment

Council Regulation No 26
(OJ 30, 20.4.1962, p. 993/62)

Council Regulation No 49
(OJ 53, 1.7.1962, p. 1571/62)

Only Article 1(1) pt. g

ANNEX II

CORRELATION TABLE

Regulation No 26	This Regulation
Article 1	Article 1
Article 2(1)	Article 2(1)
Article 2(2)	Article 2(2), first subparagraph
Article 2(3)	Article 2(2), second subparagraph
Article 2(4)	Article 2(3)
Article 3	-
Article 4	Article 3
-	Article 4
Article 5	Article 5
-	Annex I
-	Annex II