

Commission Regulation (EC) No 612/2009 of 7 July 2009
on laying down common detailed rules for the application of
the system of export refunds on agricultural products (Recast)

TITLE IV **U.K.**

PROCEDURE FOR PAYMENT OF REFUNDS

CHAPTER 2 **U.K.**

Penalties and recovery of amounts over-paid

Article 48 **U.K.**

1 Where it is found that an exporter with a view to the grant of an export refund has applied for a refund exceeding that applicable, the refund due for the relevant exportation shall be that applicable to the products actually exported, reduced by:

- a half the difference between the refund applied for and that applicable to the actual export;
- b twice the difference between the refund applied for and that applicable where the exporter intentionally provides false information.

2 Without prejudice to the second paragraph of Article 9, where it is found that the rate of export refund pursuant to Article 9 was not mentioned, the rate mentioned will be deemed to be zero. If the amount of export refund calculated according to the information pursuant to Article 9 is lower than the amount applicable, the refund due for the relevant exportation shall be that applicable to the products actually exported, reduced by:

- a 10 % of the difference between the calculated refund and that applicable to the actual export if the difference is more than EUR 1 000;
- b 100 % of the difference between the calculated refund and that applicable to the actual export if the exporter indicated that the refunds would be less than EUR 1 000 and the refund applicable is more than EUR 10 000;
- c 200 % of the difference between the calculated refund and that applicable where the exporter intentionally provides false information.

The first subparagraph shall not apply if the exporter proves to the satisfaction of the competent authorities that the situation referred to in that subparagraph is due to *force majeure*, to obvious error, or, where applicable, that it was based on correct previous payment information.

The first subparagraph shall not apply when penalties based on the same elements fixing the right to export refunds are applied pursuant to paragraph 1.

3 The refund applied for shall be deemed to be the amount calculated from the information provided pursuant to Article 5. Where the refund varies according to destination, the differentiated part of the refund applied for shall be calculated using the particulars of quantity, weight, and destination provided pursuant to Article 46.

4 The penalty provided for in point (a) of paragraph 1 shall not apply:

- a in cases of *force majeure*;

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- b in exceptional cases where the exporter, on his own initiative, immediately after becoming aware that the refund applied for is excessive, notifies the competent authority thereof in writing, unless the competent authority has informed the exporter that it intends to examine the request or the exporter has otherwise become aware of this intention, or the competent authority has already established that the refund requested was incorrect;
- c in cases of obvious error as to the refund applied for, recognised by the competent authorities;
- d in cases where the refund sought is in accordance with Regulation (EC) No 1043/2005, and in particular Article 10 thereof, and is calculated on the basis of the average quantities used over a specified period;
- e in cases of weight adjustment in so far as the difference in weight is due to a difference in the weighing method applied.

5 Where the reduction provided for in points (a) and (b) of paragraph 1 results in a negative amount, the exporter shall pay that negative amount.

6 Where the competent authorities establish that the refund applied for is incorrect and that export has not taken place and consequently the refund cannot be reduced, the exporter shall pay the penalty under point (a) or (b) of paragraph 1 which would apply if the export had taken place. Where the rate of refund varies according to destination, the lowest positive rate or, if higher, the rate resulting from the indications as to the destination pursuant to Article 31(2) shall be used to calculate the refund applied for and the refund applicable, except where a compulsory destination is stipulated.

7 Payment under paragraphs 5 and 6 shall be made within 30 days of receipt of the application for payment. Where that time limit is not met, the exporter shall pay interest at the rate referred to in Article 49(1) on the period commencing 30 days from the date of receipt of the payment demand and ending on the day preceding that of payment of the amount demanded.

8 The penalties shall not apply simply where the refund applied for is higher than the refund applicable pursuant to Articles 4(2), 25(3), and/or 47.

9 Penalties shall apply without prejudice to additional penalties laid down at national level.

10 Member States may waive the imposition of penalties of EUR 100 or less per export declaration.

11 Where the product indicated on the export declaration is not covered by the licence, no refund shall be due and paragraph 1 shall not apply.

12 Where the refund has been fixed in advance, the calculation of the penalty shall be based on the refund rates valid on the day on which the licence application is lodged and without taking account of the loss of refund pursuant to Article 4(1) or the reduction of the refund pursuant to Article 4(2) or Article 25(3). Where necessary, those rates shall be adjusted on the day of acceptance of the export declaration or payment declaration.

Article 49 **U.K.**

1 Without prejudice to the obligation to pay the negative amount pursuant to Article 48(5), the beneficiary shall reimburse refunds unduly received, which includes any penalty applicable pursuant to Article 48(1) and interest calculated on the time elapsing between payment and reimbursement. However,

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- a where reimbursement is covered by an unreleased security, seizure of that security in accordance with Article 32(1) shall constitute recovery of the amounts due;
- b where the security has been released, the beneficiary shall pay that part of the security which would have been forfeited, plus interest calculated from the date of release to the day preceding that of payment.

Payment shall be made within 30 days of receipt of the demand for payment.

Where beneficiaries are asked to reimburse funds, for the purposes of calculating interest the Member State may consider payment to be made on the 20th day following the date of the request for reimbursement.

The rate of interest applicable shall be calculated in accordance with national law; it may not, however, be lower than the rate applicable for the recovery of amounts under national provisions.

Where payment is made unduly as a result of an error by the competent authorities, no interest or at most an amount corresponding to the profit realised unduly, to be determined by the Member State, shall be collected.

Where the refund is paid to an assignee, he and the exporter shall be jointly and severally liable for reimbursement of amounts over-paid, securities unduly released and interest relating to the exports concerned. The assignee's liability shall, however, be limited to the amount paid to him, plus interest.

2 Amounts recovered, amounts pursuant to Article 48(5) and (6) and interest collected shall be paid to the paying agencies, which shall deduct the amounts concerned from European Agricultural Guarantee Fund (EAGF) expenditure.

Where the time limit for payment is not met, Member States may decide that, in place of reimbursement, any amounts over-paid, securities unduly released and compensatory interest shall be deducted from subsequent payments to the exporter concerned.

The second subparagraph shall also apply to amounts to be paid pursuant to Article 48(5) and (6).

3 Without prejudice to the possibility provided for in Article 48(10) of waiving the application of penalties in the case of small amounts, Member States may waive the reimbursement of refunds over-paid, securities unduly released, interest and amounts as provided for in Article 48(5) where such reimbursement per export declaration does not exceed EUR 100, on condition that national law lays down similar rules providing for non-recovery in such cases.

- 4 The reimbursement obligation referred to in paragraph 1 shall not apply:
- a if the payment was made by error of the competent authorities itself of the Member States or of another authority concerned and the error could not reasonably be detected by the beneficiary and the beneficiary for his part acted in good faith; or
 - b if the period which passed between the day of the notification to the beneficiary of the final decision on the granting of the refund and that of the first information of the beneficiary by a national or Community authority concerning the undue nature of the payment concerned is more than four years. This provision shall apply only if the beneficiary has acted in good faith.

The acts of any third party relating directly or indirectly to the formalities necessary for the payment of the refund, including the acts of the supervisory agencies, shall be attributable to the beneficiary.

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The provisions of this paragraph shall not apply to advances on refunds. In case of non-reimbursement due to the application of this paragraph, the administrative sanction pursuant to point (a) of Article 48(1) shall not apply.

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