

COUNCIL REGULATION (EEC) No 764/89

of 20 March 1989

amending Regulation (EEC) No 857/84 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organization of the market in milk and milk products⁽¹⁾, as last amended by Regulation (EEC) No 763/89⁽²⁾, and in particular Article 5c (6) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament⁽³⁾,

Having regard to the opinion of the Economic and Social Committee⁽⁴⁾,

Whereas Article 3 of Regulation (EEC) No 857/84⁽⁵⁾, as last amended by Regulation (EEC) No 1110/88⁽⁶⁾, provides for certain special situations to be taken into account in determining the reference quantities; whereas the situations which may entail the grant of a special quantity from the national reserve do not cover producers who entered into an undertaking pursuant to Council Regulation (EEC) No 1078/77 of 17 May 1977 introducing a system of premiums for the non-marketing of milk and milk products and for the conversion of dairy herds⁽⁷⁾, as last amended by Regulation (EEC) No 1300/84⁽⁸⁾, and who for that reason did not deliver any milk or milk products during the reference year selected by the Member State concerned, unless such producers have made investments, have implemented a development plan or rank as young farmers; whereas the Court of Justice, in the judgments it handed down on 28 April 1988 in Cases 120/86 and 170/86 considered that the producers in question may not be excluded from the allocation of a reference quantity by reason of their undertaking not to deliver milk during the reference year in question; whereas the list of special situations in Article 3 must therefore be supplemented by a new Article, so that the producers concerned can receive a special reference quantity from 'deliveries' and/or from 'direct sales';

Whereas, however, producers may claim such special quantities only if they comply with certain eligibility criteria thus making clear that they intend and are really able to resume milk production and find it impossible to

obtain a reference quantity pursuant to Article 2 of Regulation (EEC) No 857/84;

Whereas, by way of contrast to the producers referred to in Article 2 of Regulation (EEC) No 857/84, these producers have not delivered milk during the reference year and, thus, have not contributed to the establishment of the overall guaranteed quantity per Member State, fixed on the basis of quantities actually delivered in each Member State; whereas, by way of contrast to the producers referred to in Article 3 of that Regulation, save those referred to in paragraph 3 of that Article, the same producers may invoke an entitlement to allocation of a certain reference quantity, as the Court recognized in its abovementioned judgments; whereas, under those conditions, the situation of the producers in question is characterized by the factors specific thereto;

Whereas a reference production should therefore be set on the basis of the most recent figures known and accepted by the competent authority prior to the implementation of the non-marketing and conversion programme;

Whereas, it is advisable in these circumstances, in order to take account of the various interests involved, on the one hand to increase by 600 000 tonnes the Community reserve fixed by Regulation (EEC) No 2237/88⁽⁹⁾, in order to create the necessary availability of supplies so as to allow allocation of the necessary reference quantities to the producers concerned, and on the other hand to limit such quantities to 60 % of the abovementioned reference production taking into account the overriding necessity of not jeopardizing the fragile stability that currently obtains in the milk products sector;

Whereas the quantities granted are not intended to confer an undue advantage but must in fact be produced by those to whom they are allocated; whereas such quantities should therefore be made subject to certain restrictive conditions;

Whereas where the producer has resumed production prior to receiving his special reference quantity, it seems fair not to subject the quantities thus produced to the levy, within the limit of the reference quantity allocated;

Whereas Article 4a authorizes quantities which have not been used by purchasers or producers to be redistributed to other purchasers or producers; whereas the levy is then collected only on those quantities which exceed the individual reference quantities, as corrected by the said redistribution; whereas these provisions, which are applicable to the person liable to the levy and to the

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ See page 1 of this Official Journal.

⁽³⁾ OJ No C 12, 16. 1. 1989.

⁽⁴⁾ OJ No C 337, 31. 12. 1988, p. 16.

⁽⁵⁾ OJ No L 90, 1. 4. 1984, p. 13.

⁽⁶⁾ OJ No L 110, 29. 4. 1988, p. 28.

⁽⁷⁾ OJ No L 131, 26. 5. 1977, p. 1.

⁽⁸⁾ OJ No L 125, 12. 5. 1984, p. 3.

⁽⁹⁾ OJ No L 197, 26. 7. 1988, p. 39.

amount of the reference quantity to which he is entitled, may have caused the Member States some problems in applying the additional levy scheme when it was first implemented; whereas the difficulties experienced by Member States should be taken into account by requiring the levy to be paid to the Community, in the case of the first two periods of application of the scheme, only if one or other of the two overall guaranteed quantities is exceeded,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 857/84 is hereby amended as follows:

1. The following Article is added:

Article 3a

1. Producers referred to in the third paragraph of Article 12 (c):

— whose period of non-marketing or conversion, pursuant to the undertaking given under Regulation (EEC) No 1078/77, expires after 31 December 1983, or after 30 September 1983 in Member States where the milk collection in the months April to September is at least twice that of the months October to the March of the following year;

— who have not received a reference quantity under the terms laid down pursuant to Article 5 (4) (b) and/or Article 9 (2) of Regulation (EEC) No 1546/88 (1) and/or, with regard to the person to whom the premium is transferred, pursuant to Article 2 of this Regulation,

shall receive provisionally, if they so request within three months from 29 March 1989, a special reference quantity and provided that such producers:

- (a) did not cease farming within the meaning of Article 2 (3) and (4) of Regulation (EEC) No 1078/77 or transfer the whole of their dairy enterprise before the end of the non-marketing or conversion period;
- (b) establish in support of their request, to the satisfaction of the competent authority, that they are able to produce on their holding up to the reference quantity requested;
- (c) undertake to sell milk or other products direct to the consumer and/or to deliver milk to a buyer;
- (d) undertake, as regards the special reference quantity, not to apply for assistance under any programme

for the abandonment of reference quantities until the end of the additional levy scheme.

2. The special reference quantity shall be equal to 60 % of the quantity of milk delivered or the quantity of milk equivalent sold by the producer during the 12 calendar months preceding the month in which the application for the non-marketing or conversion premium was made, as determined by the competent authority concerned pursuant to Article 5 (1) (e) of Regulation (EEC) No 1391/78 (2), as last amended by Regulation (EEC) No 84/83 (3), and for which the producer has not lost his entitlement to the premium.

Where the producer has obtained a reference quantity pursuant to Article 3, points 1 and 2, and/or Article 4 (1) (b) and (c), the special reference quantity referred to in the first subparagraph of the paragraph shall be reduced by such quantity.

Where the producer has transferred part of his holding during the non-marketing or conversion period:

- the transferor's special reference quantity as established above shall be equal to 60 % of the quantity for which entitlement to the premium has been retained,
- the transferee's special reference quantity as established above shall be equal to 60 % of the quantity for which entitlement to the premium has been acquired.

3. If, within two years from 29 March 1989, producers can prove to the satisfaction of the competent authority that they have actually resumed direct sales and/or deliveries, and that such direct sales and/or deliveries have attained during the previous 12 months a level equal to or greater than 80 % of the provisional reference quantity, the special reference quantity shall be definitively allocated to the producers. Should this not prove to be the case, the provisional reference quantity shall be returned in its entirety to the Community reserve. The level of direct sales and/or actual deliveries shall be determined by taking into account production rate trends on the producers's holding, seasonal conditions and any exceptional circumstances.

4. That part of the special reference quantity which is not intended for use during a 12-month period may not be the subject of a temporary transfer as referred to in Article 5c (1a) of Regulation (EEC) No 804/68.

Where the holding is sold or leased before the end of the eighth period of application of the additional levy scheme, the special reference quantity shall be returned to the Community reserve. Where only part of the holding is sold or leased, part of the special

reference quantity shall be returned to the Community reserve. Such part shall be calculated on the basis of the feed-crop area sold or leased in accordance with the detailed rules to be defined under the procedure laid down in Article 30 of Regulation (EEC) No 804/68.

5. Producers eligible under paragraph 1 who receive a special reference quantity on the terms laid down in paragraphs 2, 3 and 4 shall not be liable to the additional levy in respect of quantities produced prior to the sixth period of application of the scheme which do not exceed the provisional special quantity.

6. The special reference quantities allocated pursuant to this Article may not be the subject of any programme for the cessation of milk production until the end of the additional levy scheme.

2. The following subparagraph is added to Article 4a (3a):
'However, for the first two periods of application in each Member State of the additional levy scheme, levies shall be due to the Community only on the quantity by which either the overall guaranteed quantity referred to in Article 5c (3) of Regulation (EEC) No 804/68 and/or the overall guaranteed quantity referred to in Article 6 (2) of this Regulation is exceeded.'
3. The following subparagraph is added to Article 12 (c):
'For the purposes of applying Article 3a, any natural or legal person or group of natural or legal persons farming a holding located within the geographical territory of the Community shall be deemed to be a producer of an agricultural holding.'

Article 2

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

(¹) OJ No L 139, 4. 6. 1988, p. 12.

(²) OJ No L 167, 24. 6. 1978, p. 45.

(³) OJ No L 13, 15. 1. 1983, p. 5."

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

Done at Brussels, 20 March 1989.

For the Council

The President

C. ROMERO HERRERA