

COUNCIL REGULATION (EEC) No 1639/91

of 13 June 1991

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 1630/91 ⁽²⁾, and in particular Article 5c (6) thereof,

Having regard to the proposal from the Commission,

Whereas the Court of Justice, in its Judgments handed down on 11 December 1990 in Cases C-189/89 and C-217/89, declared invalid Article 3a of Regulation (EEC) No 857/84 ⁽³⁾, as last amended by Regulation (EEC) No 306/91 ⁽⁴⁾, in so far as it excludes from the grant of a special reference quantity under that provision producers whose period of non-marketing or conversion expired before 31 December 1983 or 30 September 1983, as the case may be, and in so far as it restricts the special reference quantity provided for in that provision to 60% of the quantity of milk delivered by the producers in question during the period of 12 calendar months prior to the application for the non-marketing or conversion premium; whereas, therefore, it is necessary to amend the relevant provisions of Article 3a in order to comply with the abovementioned Judgments; whereas, furthermore, following the interpretation of the aforementioned Article by the Court of Justice in Case C-314/89, producers who acquired the milk holding through an inheritance or similar means and made no application between 29 March and 29 June 1989, or whose applications were rejected, should be allowed to apply or to re-apply;

Whereas a greater increase in the Community reserve provided for in Article 5c (4) of Regulation (EEC) No 804/68 cannot be envisaged without prejudicing the equilibrium of the milk market; whereas, therefore, in order to grant new special reference quantities to producers having given a non-marketing or conversion undertaking, the possibility of reducing the reference quantities for other producers should be provided for, as suggested by the Court of Justice; whereas provision should therefore be made to

increase national reserves and Articles 3 and 5 of Regulation (EEC) No 857/84 should be amended to this end;

Whereas a producer who has given a non-marketing or conversion undertaking should nevertheless be allowed, in all cases where he has been able to obtain a special reference quantity pursuant to the general provisions of the additional levy scheme, to benefit from the provisions of Article 3a of Regulation (EEC) No 857/84 since the said quantity is deducted from the quantity obtained pursuant to Article 3a;

Whereas in its Judgments the Court of Justice stated that the Community legislator may validly introduce a time limit concerning the expiry of the non-marketing or conversion period with the aim of preventing producers from benefiting from Article 3a of Regulation (EEC) No 857/84 if they did not deliver milk during all or part of the reference year in question for reasons not connected to a non-marketing or conversion undertaking; whereas all the Member States concerned took 1983 as the reference year; whereas, therefore, a producer, who, with every opportunity to do so, had not resumed milk production between 1 January 1983 and 1 April 1984, had adequately demonstrated his wish to abandon milk production definitively for personal reasons not connected to the undertaking given or its consequences; whereas, therefore, only those producers whose period of non-marketing or conversion expired after 31 December 1982 should be allowed to benefit from the provisions of Article 3a;

Whereas, in the interests of sound management and with a view to avoiding excessive administration, the time limits for submission of applications should only be re-opened for those producers whose period of non-marketing or conversion expired in 1983 prior to 31 December 1983 or 30 September 1983, as the case may be, or for those producers who, having obtained a reference quantity pursuant to the general provisions of the additional levy scheme, nevertheless intend to make use of the provisions of this Regulation;

Whereas, in its said Judgments, the Court of Justice agrees that there were good grounds for calculating the special reference quantity on the basis of the production volume which the producers in question had achieved prior to entering into a non-marketing or conversion undertaking, and that the quantity thus calculated could validly have an abatement rate applied to it for the purpose of ensuring that the producers in question do not receive an undue advantage over producers who continued to deliver milk during the

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ See page 19 of this Official Journal.

⁽³⁾ OJ No L 90, 1. 4. 1984, p. 13.

⁽⁴⁾ OJ No L 37, 9. 2. 1991, p. 4.

reference year; whereas, therefore, the Member States should apply to the producers in question an abatement rate representative of all the abatements applied to the producers referred to in Article 2 of Regulation (EEC) No 857/84, including a basic reduction of 4,5% in reference quantities for deliveries;

Whereas Council Regulation (EEC) No 775/87 of 16 March 1987 temporarily withdrawing a proportion of the reference quantities mentioned in Article 5c (1) of Regulation (EEC) No 804/68 on the common organization of the market in milk and milk products ⁽¹⁾, as last amended by Regulation (EEC) No 3643/90 ⁽²⁾, provides for degressive compensation over five years for the reduction in production capacity resulting from such suspension; whereas this provision cannot apply to producers who, as in the case in point, resume or will be resuming milk production and are required to establish that they are able to resume production up to the amount requested; whereas, furthermore, the special reference quantity is likely to be reduced to the level of actual production prior to its definitive allocation; whereas, therefore, the 4,5% rate applied to both the producers in question and the other producers is the only provision of Regulation (EEC) No 775/87 which may be carried over to this Regulation;

Whereas Article 3a of Regulation (EEC) No 857/84 contains certain provisions intended to ensure that the quantities granted are actually produced by those to whom they are granted; whereas, while the sanction provided for in paragraph 3 of the said Article in the event of producers not achieving a minimum production level over a period of two years has to be relaxed, the other restrictive conditions should nevertheless be maintained in order that the effort made by all producers to supply the national reserve is balanced by the finding that quantities granted under the present scheme are not intended to give an undue advantage to those to whom they are granted;

Whereas the producers affected by the abovementioned provisions will only be in a position to know the precise amount of their special reference quantity during the eighth period of the additional levy scheme; whereas it seems fair to make allowance for this in the collection of the levy; whereas it should also be specified that where a special reference quantity is returned to the national reserve pursuant to Article 3a (3) of Regulation (EEC) No 857/84, the producer in question will not be liable for the additional levy in respect of the quantities nevertheless produced,

HAS ADOPTED THIS REGULATION:

Article 1

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

I. In Article 2 (3), 'Articles 3 and 4' shall be replaced by 'Articles 3, 3a and 4'.

II. In Article 3a

(a) in paragraph 1:

1. in the first indent the words 'expires after 31 December 1983' shall be replaced by 'expires, without prejudice to the provisions of the last subparagraph, after 31 December 1983';

2. the second indent shall be replaced by the following:

— who, being premium transferees, have not received a reference quantity pursuant to Article 2 and/or Article 6 of this Regulation;'

3. point (c) shall be deleted;

4. point (d) shall be replaced by the following:

'(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 eighth period of application of the additional levy scheme or, in the case referred to in the last subparagraph, until 1 July 1994, provided that the additional levy scheme is extended.'

5. the following subparagraph shall be added:

'Producers:

— whose period of non-marketing or conversion in performance of the undertaking given under Regulation (EEC) No 1078/77, expired in 1983 or, in the case referred to in the first indent of the first subparagraph during the period 1 January to 30 September 1983 inclusive, or, as the case may be, after the dates set out in the first indent of the first subparagraph if they had received a reference quantity in respect of holdings having been the subject of a non-marketing or conversion premium, on the terms referred to in Article 5 (4) (b) and/or Article 9 (2) of Regulation (EEC) No 1546/88 (*) or on the terms referred to in Article 2 of this Regulation if the Member State has not applied the said Article 9 (2) and who, being premium transferees, have not received a reference quantity on the terms referred to in Article 2 and/or Article 6 of this Regulation,

or

— who have received the holding through an inheritance or similar means following expiry of the undertaking entered into under Regulation (EEC) No 1078/77 by the originator of the inheritance, albeit before 29 June 1989,

⁽¹⁾ OJ No L 78, 20. 3. 1987, p. 5.

⁽²⁾ OJ No L 362, 27. 12. 1990, p. 12.

shall receive on a provisional basis, on application submitted within a time limit of three months from 1 July 1991 a special reference quantity on the terms laid down in (a), (b) and (d) above.

(*) OJ No L 139, 4. 6. 1988, p. 12.'

(b) paragraph 2 shall be replaced by the following:

'2. The special reference quantity shall be determined by the Member State in accordance with objective criteria, by deducting from the quantity in respect of which the premium entitlement under Regulation (EEC) No 1078/77 has been preserved or acquired a percentage representative of all the abatements applied to the reference quantities established in accordance with article 2, including in any case a basic reduction of 4,5 %, or Article 6.

Where the producer has obtained a reference quantity, in respect of the holding having been the subject of a non-marketing or conversion undertaking, pursuant to Article 3 (1) and (2) and/or Article 4 (1)(b) and (c) of this Regulation or Article 5 (4) (b) and/or Article 9 (2) of Regulation (EEC) No 1546/88 or to Article 2 of this Regulation if the Member State has not applied the aforementioned Article 9 (2), the special reference quantity referred to in the first subparagraph of this paragraph shall be reduced by such quantity.'

(c) paragraph 3 shall be replaced by the following:

'3. If, within two years of 29 March 1989 or, in the case referred to in the last subparagraph of paragraph 1, from 1 July 1991 provided that the additional levy scheme is extended, the producer can prove, to the satisfaction of the competent authority, that he has actually resumed direct sales and/or deliveries and that the direct sales and/or deliveries reached a level greater than or equal to 80 % of the provisional reference quantity during the last twelve months, the special quantity reference shall be definitively allocated to him. If this is not the case, the reference quantity definitively allocated shall be equal to the quantity actually delivered or sold directly, and the balance shall be returned to the national reserve. The level of actual direct sales and/or deliveries shall be

determined taking into account the trend of production on the producer's holding, seasonal conditions and any exceptional circumstances.'

(d) the second subparagraph of paragraph 4 shall be replaced by the following:

'Where the holding is sold or leased before the end of the eighth period of the additional levy scheme, or in the case referred to in the last subparagraph of paragraph 1, before 1 July 1994 provided that the additional levy scheme is extended, the special reference quantity shall be returned to the national reserve, as the case may be. Where only part of the holding is sold or leased, part of the special reference quantity shall be returned to the national reserve. Such part shall be calculated on the basis of the fodder area sold or leased in accordance with detailed rules to be defined in accordance with the procedure laid down in Article 30 of Regulation (EEC) No 804/68.'

(e) in paragraph 5 the terms 'the sixth period of application of the scheme which do not exceed the provisional special reference quantity' shall be replaced by the terms 'the eighth period of application of the scheme which do not exceed the special reference quantity made available or increased under this Article.'

(f) in paragraph 6, the words 'until the end of the additional levy scheme' shall be replaced by 'until the end of the eighth period of application of the additional levy scheme or, in the case referred to in the last subparagraph of paragraph 1, until 30 June 1994 provided that the additional levy scheme is extended.'

III. In Article 5 and Article 6 (3), second sentence, 'Articles 3 and 4' shall be replaced by 'Articles 3, 3a and 4'.

Article 2

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

Point II (c) of Article 1 shall apply as from 28 March 1991.

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

Done at Luxembourg, 13 June 1991.

For the Council

The President

A. BODRY