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(Acts whose publication is obligatory)

## COUNCIL REGULATION (EEC) No 3950/92

of 28 December 1992

establishing an additional levy in the milk and milk products sector

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 43 thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Whereas, pursuant to Council Regulation (EEC) No 856/84 of 31 March 1984 amending Regulation (EEC) No 804/68 on the common organization of the market in milk and milk products <sup>(3)</sup>, an additional levy scheme was introduced from 2 April 1984 in the said sector; whereas the purpose of this scheme, introduced for nine years and due to expire of 31 March 1993, was to reduce the imbalance between supply and demand on the milk and milk-products market and the resulting structural surpluses; whereas the scheme remains necessary in the future in order to achieve a better market balance; whereas it should therefore continue to be applied for seven further consecutive 12-month periods starting on 1 April 1993;

Whereas, in order to make full use of the experience gained in this area and in the interests of simplification and clarification with a view to ensuring the legal certainty of producers and other parties concerned, the basic rules of the extended scheme should be laid down in a separate regulation, their scope and diversity should be reduced and Council Regulation (EEC) No 2074/92 of 30 June 1992 establishing an additional levy on the milk and milk-products sector <sup>(4)</sup>, adopted as an interim measure by the Council, and Regulation (EEC) No 857/84 of 31 March 1984 laying down 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 <sup>(5)</sup>, should both be repealed, without prejudice to the obligations and undertakings entered into under the said Regulation;

Whereas the method adopted in 1984, consisting of the application of a levy to quantities of milk collected or sold for direct consumption above a certain guarantee threshold, must be maintained; whereas the said threshold is expressed for each Member State by a guaranteed total quantity which may not be exceeded by the sum of the individually allocated quantities for both deliveries and sales for direct consumption; whereas the quantities are established for the seven periods as from 1 April 1993 and take account of the various factors relating to the scheme in the past;

Whereas in particular, a Community reserve was created at the start of the scheme to take account of the difficulties created for certain Member States by the implementation of a scheme for controlling milk production; whereas the said reserve had been increased several times to meet the special needs of certain Member States and certain producers; whereas in the light of this experience the various parts of the Community reserve should be incorporated into the guaranteed total quantities and the reserve be abolished;

Whereas the Council has decided, in the context of the reform of the common agricultural policy, to take a definitive decision on the level of the total quantities to apply during the first of the two periods of twelve months, in the light, in particular, of a report on the market situation which the Commission will present before each of these periods;

Whereas if any of the total guaranteed quantities is overrun, the consequence for the Member State is that the producers who contributed to the overrun must pay the levy; whereas the levy on deliveries and sales for direct consumption should be fixed at 115% of the target price for milk; whereas a difference in rates is no longer justified if producers are placed in a comparable position as regards the calculation of the levy;

Whereas, in order to keep the management of the scheme sufficiently flexible, provision should be made for individual overruns to be equalled out over all the individual reference quantities of the same type within the territory of a Member State; whereas in the case of deliveries, which constitute nearly all the quantities marketed, the need to ensure that the levy is fully effective

<sup>(1)</sup> OJ No C 337, 31. 12. 1991, p. 35.

<sup>(2)</sup> OJ No C 94, 13. 4. 1992, p. 101.

<sup>(3)</sup> OJ No L 90, 1. 4. 1984, p. 10.

<sup>(4)</sup> OJ No L 215, 30. 7. 1992, p. 69.

<sup>(5)</sup> OJ No L 90, 1. 4. 1984, p. 13. Regulation as last amended by Regulation (EEC) No 817/92 (OJ No L 86, 1. 4. 1992, p. 85).

throughout the Community justifies, in principle, continuing to allow Member States the choice between two methods of equalling out overruns of individual reference quantities, bearing in mind the variety of milk production and collection structures; whereas, in this connection, Member States should be authorized not to reallocate unused reference quantities at the end of a period, whether nationally or between purchasers, and to use the amount collected in excess of the levy due for funding national restructuring programmes and/or to refund it to producers of certain categories or producers who find themselves in an exceptional situation;

Whereas, in order to avoid, as in the past, long delays between collection and payment of the levy, which are incompatible with the scheme's objective, provision should be made for the purchaser, who seems in the best position to carry out the necessary operations, to be liable for the levy, and for him to be given the means to collect the levy from the producers who owe it;

Whereas the individual reference quantity should be defined as the quantity available, irrespective of any quantities which may have been transferred temporarily, on 31 March 1993, the expiry date of the nine initial periods of application of the levy scheme; whereas the principles or provisions pursuant to which the said quantity must or may be reduced or increased under the extended scheme should be specified;

Whereas, therefore, under the rules for determining the individual reference quantities, account should be taken of producers who have provisionally received a specific quantity under the scheme in the past;

Whereas it has been agreed that application of the arrangements to control milk production must not jeopardize the restructuring of agricultural holdings in the territory of the former German Democratic Republic; whereas the difficulties encountered make it necessary to extend for a further period the flexibility introduced into those arrangements for that territory, while ensuring that it remains the sole beneficiary;

Whereas reference quantities for deliveries and direct sales should be adapted to reflect economic realities and whereas a producer should therefore be entitled to have a reference quantity increased or established where another is reduced or abolished, commensurately, on condition that the request is duly justified by the need to take account of changes in his marketing requirements;

Whereas experience has shown that that implementation of this scheme presupposes the existence of a national reserve to accommodate all those quantities which, for whatever reasons, are not, or are no longer, allocated individually; whereas a Member State may need to have reference quantities available to cater for special situations, determined by objective criteria; whereas it

should be authorized, to this end, to top up its national reserve, especially following a linear reduction in all reference quantities;

Whereas the temporary transfer of parts of individual reference quantities in Member States which have authorized this has proven to be an improvement to the scheme; whereas this facility should therefore be extended to all producers; whereas, however, implementation of this principle should not stand in the way of further structural change and adjustment, nor fail to take account of the resulting administrative difficulties;

Whereas when the additional levy system was brought in in 1984, the principle was established that when an undertaking was sold, leased or transferred by inheritance, the corresponding reference quantity was transferred to the purchaser, tenant or heir; whereas this original decision should not be changed; whereas, however, national provisions to safeguard the legitimate interests of the parties should be implemented in all cases of transfer, where the parties are not in agreement;

Whereas, in order to continue restructuring milk production and improving the environment, certain derogations to the principle linking reference quantities to holdings should be extended, and Member States should be authorized to continue implementing national restructuring programmes and to organize some degree of mobility for reference quantities within a given geographical area, on the basis of objective criteria;

Whereas the purpose of the levy provided for in this Regulation is to stabilize the market in milk products; whereas the revenue accruing from this Regulation should therefore be used for financing expenditure in the milk sector,

HAS ADOPTED THIS REGULATION:

*Article 1*

For seven new consecutive periods of twelve months commencing on 1 April 1993, an additional levy shall be payable by producers of cow's milk on quantities of milk or milk equivalent delivered to a purchaser or sold directly for consumption during the 12-month period in question in excess of a quantity to be determined.

The levy shall be 115% of the target price for milk.

*Article 2*

1. The levy shall be payable on all quantities of milk or milk equivalent marketed during the 12-month period in question in excess of the relevant quantity referred to in

Article 3. It shall be shared between the producers who contributed to the overrun.

In accordance with a decision of the Member State, the contribution of producers towards the levy payable shall be established, after the unused reference quantities have been reallocated or not, either at the level of the purchaser, in the light of the overrun remaining after unused reference quantities have been allocated in proportion to the reference quantities of each producer, or at national level, in the light of the overrun in the reference quantity of each individual producer.

2. As regards deliveries, before a date and in accordance with detailed rules to be laid down, the purchaser liable for the levy shall pay to the competent body of the Member State the amount payable, which he shall deduct from the price of milk paid to producers who owe the levy or, failing this, collect by any appropriate means.

Whereas a purchaser replaces in whole or in part one or more purchasers, the individual reference quantities available to producers shall be taken into account for the remainder of the twelve-month period in progress, less quantities already delivered and account being taken of their fat content. The same provisions shall apply where a producer transfers from one purchaser to another.

Where quantities delivered by a producer exceed his reference quantity, the purchaser shall be authorized, by way of an advance on the levy payable, in accordance with detailed rules laid down by the Member State, to deduct an amount from the price of the milk in respect of any delivery by that producer in excess of his reference quantity.

3. As regards direct sales, the producer shall pay the levy payable to the competent body of the Member State before a date and in accordance with rules to be laid down.

4. Where the levy is payable and the amount collected is greater than that levy, the Member State may use the excess to finance the measures referred to in the first indent of Article 8 and/or redistribute it to producers who fall within priority categories established by the Member State on the basis of objective criteria to be determined or who are affected by an exceptional situation resulting from a national provision unconnected with this scheme.

#### Article 3

The sum of the individual reference quantities of the same type may not exceed the corresponding total quantities to be determined for each Member State.

When the Council decides to adjust the abovementioned total quantities to the market situation, the adjustments shall be expressed as a percentage of the total quantities to be met in respect of the preceding period.

#### Article 4

1. The individual reference quantity available on the holding shall be equal to the quantity available on 31 March 1993 and shall be adjusted, where appropriate, for each of the periods concerned, so that the sum of the individual reference quantities of the same type does not exceed the corresponding global quantities referred to in Article 3, taking account of any reductions made for allocation to the national reserve provided for in Article 5.

2. Individual reference quantities shall be increased or established at the duly justified request of producers to take account of changes affecting their deliveries and/or direct sales. The increase or establishment of such a reference quantity shall be subject to a corresponding reduction or cancellation of the other reference quantity the producer owns. Such adjustments may not lead to an increase in the sum of the deliveries and direct sales referred to in Article 3 for the Member State concerned.

Where the individual reference quantities undergo a definitive change, the quantities referred to in Article 3 shall be adjusted in accordance with the procedure laid down in Article 11.

3. If a producer who has provisionally received a specific individual reference quantity pursuant to the last subparagraph of Article 3a(1) of Regulation (EEC) No 857/84 can prove before 1 July 1993 to the satisfaction of the competent authority that he has actually resumed sales and/or deliveries and that his direct sales and/or his deliveries have in the course of the preceding twelve months reached a level equal to or higher than 80% of the provisional reference quantity, the specific reference quantity shall be allocated definitively to him. Otherwise, the reference quantity definitively allocated shall be equal to the quantity actually delivered or sold direct.

Actual deliveries and/or direct sales shall be determined in the light of the trend in production on the producer's holding, seasonal conditions and any exceptional circumstances.

4. In the case of agricultural holdings situated in the territory of the former German Democratic Republic, the reference quantity may be allocated provisionally for the period from 1 April 1993 to 31 March 1994, provided that the quantity thus allocated is not modified during that period.

#### Article 5

Within the quantities referred to in Article 3, the Member State may replenish the national reserve following an across-the-board reduction in all the individual reference quantities in order to grant additional or specific quantities to producers determined in accordance with objective criteria agreed with the Commission.

Without prejudice to Article 6 (1), reference quantities available to producers who have not marketed milk or other milk products for one of the twelve-month periods shall be allocated to the national reserve and may be reallocated in accordance with the first subparagraph. Where the producer resumes production of milk or other milk products within a period to be determined by the Member State, he shall be granted a reference quantity in accordance with Article 4 (1) no later than 1 April following the date of his application.

#### Article 6

1. Before a date that they shall determine and by 31 December at the latest, Member States shall authorize, for the 12-month period concerned, temporary transfers of individual reference quantities which producers who are entitled thereto do not intend to use. However, the reference quantities referred to in Article 4 (3) may not be the subject of such temporary transfers until 31 March 1995.

Member States may vary transfer operations depending on the category of producers or dairy production structures, may limit them at the level of the purchaser within regions and may determine to what extent transfer operations may be renewed.

2. Any Member State may decide not to implement paragraph 1 on the basis of one or both of the following criteria:

- the need to facilitate structural developments and adjustments,
- overriding administrative needs.

#### Article 7

1. Reference quantities available on a holding shall be transferred with the holding in the case of sale, lease or transfer by inheritance to the producers taking it over in accordance with detailed rules to be determined by the Member States taking account of the areas used for dairy production or other objective criteria and, where applicable, of any agreement between the parties. Any part of the reference quantity which is not transferred with the holding shall be added to the national reserve.

The same provisions shall apply to other cases of transfers involving comparable legal effects for producers.

However:

- (a) until 30 June 1994, the reference quantity referred to in Article 4 (3) shall be added to the national reserve in the case of sale or leasing of the holding;
- (b) where land is transferred to public authorities and/or for use in the public interest, or where the transfer is

carried out for non-agricultural purposes, Member States shall provide that the measures necessary to protect the legitimate interests of the parties are implemented, and in particular that the departing producer is in a position to continue milk production, if such is his intention.

2. Where there is no agreement between the parties, in the case of rural leases due to expire without any possibility of renewal on similar terms, or in situations involving comparable legal effects, the reference quantities available on the holdings in question shall be transferred in whole or in part to the producers taking them over, in accordance with provisions adopted or to be adopted by the Member States, taking account of the legitimate interests of the parties.

#### Article 8

With a view to completing restructuring of milk production at national, regional or collection area level, or to environmental improvement, Member States may take one or more of the following actions in accordance with detailed rules which they shall lay down taking account of the legitimate interests of the parties:

- grant compensation in one or more annual instalments to producers who undertake to abandon definitively all or part of their milk production and place the reference quantities thus released in the national reserve,
- determine on the basis of objective criteria the conditions under which producers may obtain, in return for payment, at the beginning of a 12-month period, the reallocation by the competent authority or by the body designated by that authority, of reference quantities released definitively at the end of the preceding twelve-month period by other producers in return for compensation in one or more annual instalments equal to the abovementioned payment,
- provide, in the case of land transferred with a view to improving the environment, for the allocation of the reference quantity available on the holding concerned to the departing producer if he intends continuing milk production,
- determine, on the basis of objective criteria, the regions or collection areas within which the transfer of reference quantities between certain producer categories without transfer of the corresponding land is authorized, with the aim of improving the structure of milk production,
- authorize, upon application by the producer to the competent authority or the body designated by that authority, the transfer of reference quantities without transfer of the corresponding land, or vice versa, with the aim of improving the structure of milk production at the level of the holding or to allow for extensification of production.

However, until 30 June 1994, producers with a reference quantity as referred to in Article 4 (3) may not benefit from the provisions of this Article, with the exception of the third indent.

#### Article 9

For the purposes of this Regulation:

- (a) 'milk' means the produce of the milking of one or more cows;
- (b) 'other milk products' means cream, butter and cheese in particular;
- (c) 'producer' means a natural or legal person or a group of natural or legal persons farming a holding within the geographical territory of the Community:
  - selling milk or other milk products directly to the consumer,
  - and/or supplying the purchaser;
- (d) 'holding' means all production units operated by the single producer and located within the geographical territory of the Community;
- (e) 'purchaser' means an undertaking or grouping which purchases milk or other milk products from a producer:
  - to treat or process them,
  - to sell them to one or more undertakings treating or processing milk or other milk products.

However, any group of purchasers in the same geographical area which carries out administrative and accounting operations necessary for the payment of the levy on behalf of its members shall be regarded as a purchaser. For the purposes of applying this provision, Greece shall be deemed a single geographical area and it may deem an official body to be a group of purchasers as referred to above;

- (f) 'undertaking treating or processing milk or other milk products' means an undertaking or grouping which is

involved in collection, packaging, storage, chilling and processing operations or whose dairying activities are restricted to one of those operations;

- (g) 'delivery' means any delivery of milk or other milk products, whether the transport is carried out by the producer, a purchaser, an undertaking processing or treating such products or a third party;
- (h) 'milk or milk equivalent sold directly for consumption' means milk or milk products converted into milk equivalent, sold or transferred free without going through an undertaking treating or processing milk or other milk products.

#### Article 10

The levy shall be considered as intervention to stabilize agricultural markets and shall be used to finance expenditure in the milk sector.

#### Article 11

The detailed rules for the application of this Regulation and in particular the characteristics of milk, including fat content, which are considered representative for the purposes of establishing the quantities of milk delivered or purchased shall be adopted in accordance with the procedure provided for in Article 30 of Regulation (EEC) No 804/68 <sup>(1)</sup>.

#### Article 12

Regulations (EEC) Nos 857/84 and 2074/92 are hereby repealed.

#### Article 13

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

It shall apply from 1 April 1993.

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

Done at Brussels, 28 December 1992.

For the Council

The President

J. GUMMER

<sup>(1)</sup> OJ No L 148, 28. 6. 1968, p. 13. Regulation as last amended by Regulation (EEC) No 2071/92 (OJ No L 215, 30. 7. 1992, p. 64).