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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 590/85

of 26 February 1985

amending Regulation (EEC) No 857/84 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

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 1557/84 [2], and in particular Article 5c (6) thereof,

Whereas Article 5c of Regulation (EEC) No 804/68 lays down a system for the control of milk production based on the determination of individual reference quantities for producers or purchasers of milk and milk products in accordance with the formula chosen by the Member State ; whereas a levy is payable by the producer or purchaser in the form of provisional advances where, for each quarter, he exceeds the corresponding production or collection figure of a reference year ; whereas the aforesaid individual reference quantities are determined so as not to exceed a total quantity guaranteed by the Member State corresponding to the collection for 1981 plus 1 % or, for the first year of application of the system, the collection for that year plus 2 % ; whereas, given the rate of increase in milk production recorded generally in the last few years, the fixing of such production thresholds and the amount of the additional levy applicable oblige producers and pruchasers to make serious efforts to restrain and adapt their production ; whereas, in the first year of application, such adaptation is made more difficult for each producer or purchaser by belated notification of the individual reference quantities, due to difficulties generally encountered with regard to the implementation of the system in the various Member States ;

Whereas, in order to enable those subject to the levy to adapt more gradually, especially in regions experiencing a considerable increase in their milk production, the Community mechanisms should be made less rigorous for the first year of application ; whereas this desired objective may be attained by allowing Member States to grant, on a temporary basis and within one region, to producers or purchasers, those quantities which have not been used by other producers or purchasers of the same region because of the drop in deliveries or purchases by the latter as compared with those of their reference year ; whereas the remaining non-used quantities may be allocated, likewise on a temporary basis, to producers or purchasers of other regions ; whereas in the context of deliveries and direct sales, such mechanism can, however, be implemented only differently ; whereas it should be made possible for the above allocation to be carried out by using certain differentiation criteria ; whereas these provisions should be limited to the first year in which the additional levy is applied ;

Whereas Article 2 (2) of Regulation (EEC) No 857/84 [3] authorizes Member States, for the purpose of determining the reference quantities of producers or purchasers throughout their territory under formulas A and B, to take account of their production or collection circumstances by considering the production of a calendar year other than 1981 weighted by a percentage ; whereas it is appropriate to provide for the possibility of applying similar provisions for determining reference quantities in the case of producers of milk and milk products who sell directly to the consumer ;

Whereas, under the terms of Article 5 of Regulation (EEC) No 857/84, the additional reference quantities needed in order to provide for the special situation of certain producers are drawn from a reserve constituted

[1] OJ No L 148, 28. 6. 1968, p. 13.
[2] OJ No L 150, 6. 6. 1984, p. 6.
[3] OJ No L 90, 1. 4. 1984, p. 13.

by each Member State within the guaranteed quantity; whereas the detailed rules for the constitution of the direct sales reserve should be clarified;

Whereas certain producers deliver their production in part to a purchaser and in part sell it direct to the consumer; whereas, having regard to the fluctuations of the respective portions of their two economic activities, there is justification, in order to enable them to meet certain specific marketing needs, for granting them, within the same 12-month period, an increase in one of their reference quantities when an equal part of the other remains unused for the same period; whereas the increase of one quantity is thus subject to the prior reduction of the other, for the same amount;

Whereas the application of Article 7 of Regulation (EEC) No 857/84, concerning the transfer of reference quantities in the event of the sale, leasing or inheritance of a holding, may in certain cases result in difficult situations at an economic and social level; whereas it is therefore appropriate, in order to enable a lessee whose lease on a holding is due to expire to continue milk production elsewhere, that Member States be authorized to place at the disposal of such lessee all or part of the reference quantity corresponding to the holding which he is leaving; whereas, with the same purpose in mind, comparable provisions should be introduced for the benefit of the departing producer where land is transferred to public authorities or for purposes of public use;

Whereas Article 12 of Regulation (EEC) No 857/84 provides a definition of the term 'purchaser' for the application of the additional levy scheme; whereas the said definition does not take sufficient account of the case of very small dairies to be found in certain geographical areas of the Community; whereas the fixing of a higher amount for the levy under formula B was motivated by the concern to enable dairies to offset increasing deliveries of certain producers automatically against the falling deliveries of others; whereas such offsetting operations cannot be carried out harmoniously in very small dairies; whereas, in order to ensure a better equivalence of results, there is justification for considering as purchaser within the meaning of the said Article any group of purchasers carrying out certain operations on behalf of its members when the collection of the latter and the total collection of the group fall below certain thresholds,

HAS ADOPTED THIS REGULATION:

Article 1

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

1. The following Article is inserted:

'Article 4a

1. For the first period of 12 months, Member States may allocate the non-utilized reference quantities of producers or purchasers to producers or purchasers in the same region and, if necessary, in other regions.

Such allocation shall be effected in order of priority within the same region, and then as between regions.

2. The provisions of paragraph 1 may be applied by taking account of:

— the level or trend of deliveries of certain categories of persons liable for the levy,

— if appropriate, the trend in deliveries in certain regions.

3. This Article shall also apply to direct sales.

4. Member States shall communicate to the Commission the measures taken for the implementation of this Article'.

2. Article 6 is replaced by the following:

'Article 6

1. Each producer of milk and milk products referred to in Article 5c (2) of Regulation (EEC) No 804/68 shall be assigned a reference quantity corresponding to the direct sales made by the producer during the 1981 calendar year, plus 1 %.

However, Member States may provide that, on their territory, the producer's reference quantity is equal to the quantity of direct sales which he has made during the 1982 or 1983 calendar year, weighted by a percentage.

This percentage may be modified on the basis of the level of sales by certain categories of persons liable for the levy, the trend in sales in certain regions between 1981 and 1983 or the trend in sales by certain categories of persons liable for the levy during the same period, in accordance with the conditions to be determined under the procedure laid down in Article 30 of Regulation (EEC) No 804/68.

2. Subject to the provisions of Article 6a, the total reference quantities assigned in accordance with paragraph 1 may not exceed the quantities set in the Annex.

3. Articles 3, 4 and 7 shall be applied to the producer referred to in this Article in accordance with the rules to be determined under the procedure laid down in Article 30 of Regulation (EEC) No 804/68. For the implementation of Articles 3 and 4, Member States may constitute a reserve within the total quantity set for each of them in the Annex'.

3. The following Article is inserted :

'Article 6a

Producers who have two reference quantities, one for deliveries and one for direct sales, may, on request, obtain an increase in one of the reference quantities within a 12-month period to enable them to adapt to changes in their marketing requirements. Any such increase shall be subject to a reduction of the same amount in the other reference quantity during the same 12-month period. This reduction and the related increase shall be entered in the corresponding reserves referred to in Articles 5 and 6.

To be admissible, the producer's request referred to in the first paragraph must contain all the necessary items of information to assess :

— the size of the applicant's dairy farm,

— the total volume of his milk production, deliveries and direct sales of milk and/or milk products,

— the nature and the scope of the change to his marketing requirements'.

4. Article 7 is replaced by the following :

'Article 7

1. Where a holding is sold, leased or transferred by inheritance, all or part of the corresponding reference quantity shall be transferred to the purchaser, tenant or heir according to procedures to be determined.

Where land is transferred to the public authorities and/or for public use, without prejudice to the second subparagraph of paragraph 3, Member States may provide that all or part of the reference quantity corresponding to the holding or to the part of the holding transferred shall be put at the disposal of the departing producer if he intends to continue milk production.

2. Under formula B, where a purchaser replaces, wholly or in part, one or more purchasers, his annual reference quantity shall be established :

— for the end of the current 12-month period, by taking into account all or part of the reference quantities on a pro rata basis of the time still to run,

— for the following period of 12 months, by adopting all or part of the reference quantities of the purchaser or purchasers whom he replaces.

3. Member States may provide that part of the quantities concerned shall be added to the reserve referred to in Article 5 or to that referred to in Article 6 (3), as the case may be.

However, in the case of the transfer of land to the public authorities and/or for public use, Member States may provide that the corresponding reference quantity shall be assigned in full to the reserve referred to in Article 5 or to that in Article 6 (3), as the case may be.

4. In the case of rural leases due to expire, where the lessee is not entitled to an extension of the lease on similar terms, Member States may provide that all or part of the reference quantity corresponding to the holding which forms the subject of the lease shall be put at the disposal of the departing lessee if he intends to continue milk production.

5. The detailed implementing rules for this Article shall be adopted under the procedure laid down in Article 30 of Regulation (EEC) No 804/68'.

5. The following shall be added to Article 12 (e) :

'However, any group of purchasers in the same geographical area which carries out administrative and accounting management operations on behalf of its members shall be regarded as a purchaser, provided that :

— the quantity collected from each member is less than 165 tonnes of milk per day,

— the annual average quantity collected from members is less than 30 tonnes of milk per day, and

— the total quantity collected by the group is less than 1 100 000 tonnes of milk per year'.

Article 2

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

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

Done at Brussels, 26 February 1985.

For the Council

The President

F. M. PANDOLFI