COMMISSION REGULATION (EEC) No 1033/89

of 20 April 1989

amending Regulation (EEC) No 1546/88 laying down detailed rules for the application of the additional levy referred to in Article 5c of Council Regulation (EEC) No 804/68

THE COMMISSION 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 (7) thereof,

Having regard to Council Regulation (EEC) No 857/84 of 31 March 1984 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 (3), as last amended by Regulation (EEC) No 764/89 (4), and in particular the second subparagraph of Article 3a (4) and Articles 7 (5) and 11 (c) thereof,

Whereas Article 3a of Regulation (EEC) No 857/84 lays down the conditions under which special reference quantities are granted to producers who as a result of an undertaking given 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 (5), as last amended by Regulation (EEC) No 1300/84 (6), have been unable to obtain quantities under the general additional levy scheme; whereas amendments should be made accordingly to Commission Regulation (EEC) No 1546/88 (7), as last amended by Regulation (EEC) No 215/89 (8);

Whereas Council Regulation (EEC) No 766/89 (9) fixes the Community reserve for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 at 1 043 000 tonnes; whereas 443 000 tonnes of this should be granted to the same Member States as during previous periods of application of this scheme and under the same conditions, the reasons for the original allocation continuing to be identical; whereas the second part of the Community reserve, of 600 000 tonnes, is intended for producers whose entitlement to a special reference quantity is recognized pursuant to Article 3a of Regulation (EEC) No 857/84 and, within the limits of that entitlement, in proportion to the requests submitted;

Whereas it should be stipulated that applications may be submitted solely by producers in a position to operate at least in part the same production units as those they operated when applying for the premium for the non-marketing milk or for the conversion of dairy herds; whereas, where producers no longer operate the same holdings, they have thereby demonstrated, according to the logic of the premium scheme, their intention of ceasing milk production and are therefore not affected by the special arrangements laid down as a result of the judgments handed down by the Court of Justice on 28 April 1988 pursuant to Article 3a of Regulation (EEC) No 857/84; whereas these special arrangements only concern producers who could not obtain the allocation of a reference quantity for their holdings since their holdings were subject to an obligation in the reference year selected by the Member State; whereas the aim of these arrangements may be to rectify the consequences arising from this situation only to the extent that it turns out to be unchanged;

Whereas rules of procedure, including the fixing of time limits, should be laid down so that Article 3a of Regulation (EEC) No 857/84 can be implemented in circumstances that guarantee compliance with the rights and obligations of all the parties concerned;

Whereas Article 12 of Regulation (EEC) No 1546/88 determines the characteristics of the milk which are considered to be representative for drawing up the final levy account; whereas, in spite of the numerous amendments made to this provision, it has proved difficult to implement; whereas, from the sixth period of application, it should be simplified and made less coercive by drawing the consequences for the producer of a negative difference in the average fat content of the milk supplied compared with that recorded during the reference period;

Whereas the Management Committee for Milk and Milk Products has not delivered an opinion within the time limit set by its chairman,

(1) OJ No L 148, 28. 6. 1968, p. 13.
(2) OJ No L 84, 29. 3. 1989, p. 1.
(3) OJ No L 90, 1. 4. 1984, p. 13.
(4) OJ No L 84, 29. 3. 1989, p. 2.
(5) OJ No L 131, 26. 5. 1977, p. 1.
(6) OJ No L 125, 12. 5. 1984, p. 3.
(7) OJ No L 139, 4. 6. 1988, p. 12.
(8) OJ No L 25, 27. 1. 1989, p. 72.
(9) OJ No L 84, 29. 3. 1989, p. 6.

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 1546/88 is hereby amended as follows:

1. The following subparagraph is added to Article 1:

'For the period 1 April 1989 to 31 March 1990, the Community reserve referred to in Article 5c (4) of Regulation (EEC) No 804/68 shall be distributed as follows:

(a) 443 000 tonnes distributed as follows:

— Spain	50 000 tonnes
— Ireland	303 000 tonnes
— Luxembourg	25 000 tonnes
— United Kingdom (for the region of Northern Ireland)	65 000 tonnes

(b) 600 000 tonnes are to be distributed pursuant to Article 3a of Regulation (EEC) No 857/84 in proportion to the requests notified to the Commission pursuant to Article 19 (4) and recognized as being in conformity with Article 3a of Regulation (EEC) No 857/84 and Article 3a of this Regulation.'

2. The following Article 3a is inserted:

'Article 3a

1. The requests referred to in Article 3a (1) of Regulation (EEC) No 857/84 shall be made by the producers concerned to the competent authority designated by the Member State, in accordance with the procedure laid down by it and provided that the producers can prove that they still operate, in whole or in part, the same holdings as those they operated at the time of the approval, referred to in Article 5 (2) of Commission Regulation (EEC) No 1391/78 (*), of their premium applications.

The competent authority shall acknowledge receipt of the request, verify compliance with the conditions laid down in the abovementioned Article 3a (1) and record the written undertakings given by the producer.

Evidence of the producer's ability to produce a quantity equal to the reference quantity requested may involve in particular:

— direct sales and/or deliveries of milk already made since the end of the non-marketing or conversion period,

— the dairy herd, within the meaning of Article 1 (1) (b) of Regulation (EEC) No 1391/78, kept on the holding,

— the holding's permanent grazing area and/or area under forage resulting from the rotation and sowing plan implemented,

— the investments referred to in the second subparagraph of point 1 of Article 3 of Regulation (EEC) No 857/84.

2. The quantities referred to in the first and third subparagraphs of Article 3a (2) of Regulation (EEC) No 857/84 for which entitlement to the premium has been retained or acquired shall be those determined pursuant to Article 9 of Regulation (EEC) No 1391/78.

Before 29 August 1989 the competent authority shall notify the producer of his special reference quantity determined in accordance with Article 3a (2) of Regulation (EEC) No 857/84.

3. In accordance with rules to be laid down by the Member State, the producer shall supply evidence to the competent authority, before 29 March 1991, that he has resumed direct sales and/or deliveries of milk for at least 12 months.

The level of direct sales of milk or milk products and/or the level of milk deliveries during the 12 months preceding the supply of evidence shall be determined by the competent authority taking into consideration the trend in the rate of production on the producer's holding, seasonal conditions and any exceptional circumstances, in accordance with rules similar to those referred to in the first part-sentence in Article 5 (4) (b).

(*) OJ No L 167, 24. 6. 1978, p. 45.'

3. The following Article 7a is inserted:

'Article 7a

The special reference quantity granted under the conditions laid down in Article 3a of Regulation (EEC) No 857/84 shall, in the event of the transfer of the holding by inheritance or by any similar transaction, be transferred in accordance with the first and third subparagraphs of Article 7 provided that the producer to whom the holding is transferred in whole or in part undertakes in writing to comply with the undertakings of his predecessor. Article 3a (4) of Regulation (EEC) No 857/84 shall continue to apply to the special reference quantity thus transferred.

Where the second subparagraph of Article 3a (4) of Regulation (EEC) No 857/84 applies, the producer shall notify his intentions in advance to the competent authority, which shall issue him with an acknowledgement of receipt. Within one month from the date of acknowledgement of receipt, the competent authority shall determine the quantity which is to return to the Community reserve and, where appropriate, notify the producer of the special reference quantity which will continue to be granted to him.

In the latter case, the part which is to return to the Community reserve shall be calculated on the basis of the area under forage within the meaning of Article 1 (1) (d) of Regulation (EEC) No 1391/78 sold or leased.'

4. In Article 9 (1) (a), 'Articles 3 and 4' is replaced by 'Articles 3, 3a and 4'.

5. Article 12 is replaced by the following:

'Article 12

1. For the purposes of Article 11 (c) of Regulation (EEC) No 857/84, the characteristics of the milk considered to be representative shall be those recorded for the milk delivered during the second period of application of the additional levy arrangements.

However,

— in the case of producers for whom, as regards the period mentioned in the first subparagraph, the quantity of milk serving as a basis for the calculation of the levy has been increased as a result of an increase in the fat content of the milk delivered, the fat content of the milk delivered that is to be considered representative shall be the average content recorded for the 1983 calendar year,

— in the case of producers whose deliveries of milk were interrupted, or the fat content of whose delivered milk fell during the period referred to in the preceding subparagraph, the Member State may decide, at the request of the party concerned, that the fat content considered to be representative is to be the average content recorded during the first period of application of the addditional levy arrangements. The Member States shall notify the Commission of the measures which they adopt for the application of the abovementioned provisions,

— in the case of producers who commence delivery of milk for the first time after the beginning of the second period of the additional levy arrangements, the fat content of the milk that is to be considered representative shall be the average content recorded during the first 12 months of their operations.

2. In order to draw up the final account of the levy for each producer or purchaser in accordance with Article 9 (1) of Regulation (EEC) No 857/84, the average fat content of milk delivered during the period concerned shall be established for each producer:

— if a positive difference is noted with respect to the average content recorded during the period referred to in paragraph 1, the quantity of milk delivered shall be increased by 0,18 % per 0,1 gram of additional fat per kilogram of milk,

— if a negative difference is noted with respect to the average content recorded during the period referred to in paragraph 1, the quantity of milk delivered shall be reduced by 0,18 % for each 0,1 gram reduction in fat per kilogram of milk.

Where the quantity of milk delivered is expressed in litres, the 0,18 % adjustment per 0,1 gram of fat shall be multiplied by the coefficient 0,971.

3. The application of paragraph 2 in each Member State may not result in the additional levy not being paid in respect of any quantity exceeding the guaranteed total quantity indicated in Article 5c (3) of Regulation (EEC) No 804/68.'

6. In Article 14 (1) (b), 'Articles 2, 3, 4 and 7' is replaced by 'Articles 2, 3, 3a, 4 and 7'.

7. In Article 19, the following paragraph 4 is added:

'4. For the purposes of Article 3a of Regulation (EEC) No 857/84, Member States shall notify the Commission:

— before 29 June 1989, of the competent authority designated and the procedure referred to in Article 3a (1) of this Regulation, including the evidence for establishing the producer's ability to produce,

— before 29 September 1989, of the number of requests, the quantities for which entitlement to the premium has been retained or acquired and the special reference quantities granted temporarily, broken down by month during which the applications under Articles 2 and 3, individually, of Regulation (EEC) No 1078/77 were approved,

— before 29 March 1990, of the rules referred to in Article 3a (3) of this Regulation,

— before 29 June 1991, of the special reference quantities granted definitvely under the conditions laid down in Article 3a (3) of this Regulation and the quantities which are to return to the Community reserve,

— on 1 April each year in respect of the preceding year and for the first time on 1 April 1990, of the quantities which are to return to the Community reserve pursuant to the second paragraph of Article 7a of this Regulation.'

Article 2

This Regulation shall enter into force on the day of its 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, 20 April 1989.

For the Commission
Ray MAC SHARRY
Member of the Commission