COMMISSION REGULATION (EEC) No 2138/90

of 25 July 1990

amending Regulation (EEC) No 1546/88 laying down detailed rules for the application of the additional levy referred to in Article 5c of 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 3879/89 [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 1183/90 [4], and in particular Articles 3c (4) and 4 (1b) (e) thereof,

Whereas Council Regulation (EEC) No 1184/90 [5] fixes the Community reserve referred to in Article 5c (4) of Regulation (EEC) No 804/68 at 2 082 885, 740 tonnes for the period 1 April 1990 to 31 March 1991 ; whereas the previous distribution should be continued for the seventh period, for the same reasons as previously ;

Whereas under Articles 3c and 4 (1b) of Regulation (EEC) No 857/84, producers may discontinue milk production and the quantities thereby released may be rassigned to other producers according to certain criteria ; whereas the procedures to be followed and the timing thereof should be laid down in respect of both producers and the national agencies responsible for implementing the whole programme ;

Whereas producers who are assigned an additional quantity must renounce their right to benefit under any milk production abandonment programme in respect of their entire quantity ; whereas producers should therefore be given the option of refusing such assignment ;

Whereas, where the number of producers benefiting from the additional reference quantities determined pursuant to the first subparagraph of Article 3c (1) of Regulation (EEC) No 857/84 is so great that it would result in the assignment of very small quantities the administrative cost of which would not be justified having regard to the anticipated benefits, in order to attain the objective of paragraph 2 of that Article provision should be made for the Member States concerned to make a choice among recipient producers having regard to restructuring requirements ;

Whereas, in cases where the total of the reference quantities offered for purchase by all of the Member States exceeds 500 000 tonnes, the quantities eligible for financing at Community level should be determined for each Member State, taking into account the dates on which the eligible applications were registered as received by it ; whereas, within that limit, Member States should be able to allow purchases from producers other than those meeting the sole criterion of the date on which the application was recorded, with a view to controlling structural production trends more effectively ;

Whereas provision should be made for Member States to be obliged, firstly, in cases where producers do not fulfil their obligations, to adopt all the necessary rules to implement and supervise the action, including legal or administrative sanctions to obtain repayment of compensation wrongly paid, and, secondly, to provide the Commission with the information required to assess the results of the programme ;

Whereas it is therefore necessary to amend Commission Regulation (EEC) No 1546/88 [6], as last amended by Regulation (EEC) No 1033/89 [7] ;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION :

Article 1

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

1. In the third subparagraph of Article 1, the words 'For the period 1 April 1989 to 31 March 1990' are replaced by 'for both of the periods 1 April 1989 to 31 March 1990 and 1 April 1990 to 31 March 1991'.

[1] OJ No L 148, 28. 6. 1968, p. 13.
[2] OJ No L 378, 27. 12. 1989, p. 1.
[3] OJ No L 90, 1. 4. 1984, p. 13.
[4] OJ No L 119, 11. 5. 1990, p. 27.
[5] OJ No L 119, 11. 5. 1990, p. 30.
[6] OJ No L 139, 4. 6. 1988, p. 12.
[7] OJ No L 110, 21. 4. 1989, p. 27.

2. The following Article 3b is inserted:

'Article 3b

1. Member States shall notify the producers referred to in Article 3c (1) or (3) of Regulation (EEC) No 857/84 of the additional quantity allocated them not later than 1 June 1991.

2. Within one month from the date on which they receive the notification referred to in paragraph 1, the producers concerned shall send the competent national authority the undertaking referred to in the second subparagraph of Article 3c (2) of Regulation (EEC) No 857/84. Producers who fail to fulfil this obligation within the prescribed time limit shall forfeit allocation of the additional reference quantity referred to in paragraph 1.

3. Where the quantities allocated in accordance with Article 3c of Regulation (EEC) No 857/84 are less than the quantities released in accordance with Article 4 (1b) of that Regulation, the quantity still available shall remain in the reserve referred to in Article 5 of that Regulation.

4. Where the objective of Article 3c of Regulation (EEC) No 857/84 cannot be attained by the allocation of quantities to producers as a whole as defined in the first subparagraph of Article 3c (1) of that Regulation, the Member States shall determine the recipient producers on the basis of one or more of the following criteria:

— the age of the producer,

— the fact that the producer has or has not a successor,

— the reference quantity to which the producer is entitled at the beginning of the seventh 12-month period,

— the situation of the holding in one of the areas defined in Article 3 (3), (4) and (5) of Directive 75/268/EEC,

— producers whose partially unused production capacity places them in an difficult specific situation.'

3. The second indent of the first paragraph of Article 4 is replaced by the following:

'— as regards the second indent, to producers who discontinue part of their milk production definitively at a stroke.'

4. The following Article 4a is inserted:

'Article 4a

If Member States decide to implement the milk production abandonment programme referred to in Article 4 (1b) of Regulation (EEC) No 857/84, the following provisions apply.

1. Member States shall, where applicable, fix the level of the supplement to the Community compensation and lay down detailed rules for submitting and accepting applications for compensation, which must include at least the following information:

(a) the reference quantity of milk delivered referred to in Article 5c (1) of Regulation (EEC) No 804/68 to which the producer is entitled at 11 May 1990, with a separate indication, where applicable, of the quantities granted under Article 3b of Regulation (EEC) No 857/84, stating explicity that those quantities are not taken into acount in the calculation of the compensation, and the quantity of milk sold for direct consumption referred to in Article 5c (2) of Regulation (EEC) No 804/68;

(b) where applicable, a declaration that the holding is not located in one of the areas defined in Article 3 (3), (4) and (5) of Directive 75/268/EEC;

(c) a declaration by the producer that he undertakes, on the one hand:

— not to withdraw his application,

— to refrain from any transfer of reference quantity which has comparable legal effects to those referred to in Article 7,

and on the other, where his application is accepted:

— to discontinue all milk production definitively by 31 March 1991,

— to forego entitlement to a reference quantity under the scheme introduced by Article 5c of Regulation (EEC) No 804/68.

The competent authority of the Member State shall acknowledge receipt of the application immediately, explicitely stating the date on which it was registered. The applications may only be registered from 1 October 1990.

2. After receiving the application, the competent authority shall:

(a) verify that the producer meets the conditions for entitlement and check the information referred to in point 1 (a) and (b);

(b) register the written undertaking referred to in point 1 (c);

(c) transmit to the Commission not later than 30 November 1990 the number of applications approved in accordance with (a), ranked in order of the date of registration by the national authority, stating the reference quantities eligible for purchase against each date.

3. The Commission shall decide which applications may be approved for Community financing in accordance with the procedure laid down in Article 30 of Regulation (EEC) No 804/68.

It the total of the reference quantities offered for sale by the Member States exceeds 500 000 tonnes, the Commission shall determine which applications should be given priority for each Member State on the basis of the order in which applications were received and registered by the national authorities.

However, Member States may, in respect of the quantities allocated them lay down rules for accepting applications on the basis of the age of the producer or the amount of the reference quantity to be compensated, instead of the date on which the application was registered.

4. (a) For applications which have been definitively approved, the amount of the compensation shall be paid from 1 April 1991 and not later than 30 June 1991, provided that the competent authority has verified that the producer has definitively disontinued all milk production by 31 March 1991 at the latest.

(b) In cases where a supplement is paid, Member States shall decide the date or dates on which payment is to be made after having verified that the obligation referred to in (a) has been fulfilled.

(c) In the event of the death of the recipient of the compensation, the successors may receive the amounts payable or still due provided they undertake, *vis-à-vis* the competent authority, to take on the obligations assumed by the deceased producer.

5. The level of the compensation referred to in the second subparagraph of Article 4 (1b) (d) of Regulation (EEC) No 857/84 for the quantities referred to in point 1 (a) shall be converted into national currency using the agricultural conversion rate valid on 14 May 1990.

6. Member States shall take the necessary measures to ensure the repayment of compensation which has already been paid in cases where the undertakings provided for have not been respected and to ensure that interested parties are informed of the legal or administrative penalties which they can incur if they fail to comply with this Regulation.

Member States shall notify the Commission of the measures adopted to ensure that undertakings are respected and inform it regularly of any administrative or legal proceedings which have bene instituted.

Sums recovered shall be paid to the agencies or departments which made the original payments, which shall deduct them from the expenditure financed by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund.

7. For the purposes of the third indent of point 1 (c), milk production shall mean all production of cow's milk by a producer as defined in the first subparagraph of Article 12 (c) of Regulation (EEC) No 857/84.'

5. Article 9 (1) (a) is replaced by the following:

'(a) additional quantities assigned to producers under Articles 3, 3a, 3b, 3c and 4 of Regulation (EEC) No 857/85.'

6. Article 14 (1) (b) is replaced by the following:

'(b) all the reference quantities granted under Articles 2, 3, 3a, 3b, 3c, 4 and 7 of Regulation (EEC) No 857/84;'

7. The following paragraph 5 is added to Article 19:

'5. Where Article 4 (1b) of Regulation (EEC) No 857/84 applies, Member States shall notify to the Commission:

— before 1 November 1990, the detailed rules for submitting and accepting applications for compensatory and, where applicable, the level of the supplement to the Community compensation and the measures taken pursuant to the second subparagraph of Article 4 (1b) (a) of Regulation (EEC) No 857/84;

— before 1 April 1991, where applicable, the criteria referred to in the third subparagraph of Article 4a (3) of this Regulation;

— before 1 June 1991, where applicable, the amount or amounts fixed pursuant to the second subparagraph of Article 3c (1) of Regulation (EEC) No 857/84, the quantities assigned to the producers referred to in paragraph 3 of that Article and the quantities referred to in Article 30 (3) 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, 25 July 1990.

For the Commission
Ray MAC SHARRY
Member of the Commission