COUNCIL REGULATION (EEC) No 2055/93

of 19 July 1993

allocating a special reference quantity to certain producers of milk and milk products

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 (1),

Having regard to the opinion of the European Parliament (2),

Whereas certain producers of milk and milk products, as a result of having given an undertaking not to market milk or to convert dairy herd, did not supply or sell risk or milk products from their holding during the reference year adopted by the Member States in the context of the implementation of the quota system; whereas in consequence those producers were not allocated a reference quantity;

Whereas 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) has been amended successively in favour of those producers by Regulations (EEC) No 764/89 (4) and (EEC) No 1639/91 (5);

Whereas the Court of Justice in its Judgment of 3 December 1992 in Case C 224/90 declared invalid the second indent of Article 3a (1) of Regulation (EEC) No 857/84 as provided for in the abovementioned Regulations (EEC) No 764/89 and (EEC) No 1636/91 in so far as it excludes from the allocation of a special reference quantity the transferees of a premium granted 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 (6), whereas the transferees have already obtained a reference quantity for another holding pursuant to Article 2 or 6 of Regulation (EEC) No 857/84;

Whereas the Court of Justice was thereafter minded, in a Judgment handed down on 19 May 1993 in the Case C-81/91, to give an interpretation on the principle of and arrangements for allocating a special reference quantity in the case of a partial transfer of a holding on which such a quantity was already available pursuant to Article 3a of Regulation (EEC) No 857/84;

Whereas Council Regulation (EEC) No 3950/92 of 28 December 1992 establishing an additional levy in the milk and milk products sector (7) repealed Regulation (EEC) No 857/84 with effect from 1 April 1993; whereas the inferences should be drawn from the abovementioned Judgments by adopting a new regulation, having as its object that of allocating, under certain conditions, a special reference quantity to the transferee of all or part of a holding and who had been excluded from such an allocation;

Whereas in order to take fully into account the decisions of the Court of Justice, it is necessary to adopt provisions that vary depending on whether all or part of the holding has been transferred and in the latter case, whether the holding had or had not already received a special reference quantity pursuant to Article 3a of Regulation (EEC) No 857/84;

Whereas pursuant to Article 3a of Regulation (EEC) No 857/84 the special reference quantity is provisionally, and subsequently definitively, allocated subject to compliance with certain conditions; whereas the said conditions specify in particular that the applicant concerned must effectively recommence activity as a milk producer which he had to abandon completely; whereas in the present case the transferees concerned are active milk producers, in accordance with Article 9 (c) of Regulation (EEC) No 3950/92; whereas, therefore, for the allocation of the special reference quantity they cannot be subject to conditions that are identical with those laid down in Article 3a of Regulation (EEC) No 857/84;

Whereas if the holding, of which part has been transferred, has already received a special reference quantity pursuant to Article 3a of Regulation (EEC) No 857/84, the said quantity should be shared, in accordance with the Judgment of the Court of Justice of 19 May 1993, between the transferor and transferee and the necessary rules for such sharing should be drawn up, without prejudice, however, to the possibility of the Member States to have recourse to the national reserve, in cases of necessity;

Whereas, should recourse be had to the national reserve, either by way of obligation or option, it should be stipulated that this reserve is to be replenished particularly for

(1) OJ No C 107, 17. 4. 1933, p. 9.
(2) OJ No C 176, 28. 6. 1993.
(3) OJ No L 90, 1. 4. 1984, p. 13.
(4) OJ No L 84, 29. 3. 1989, p. 2.
(5) OJ No L 150, 15. 6. 1991, p. 35.
(6) OJ No L 131, 26. 5. 1977, p. 6. 1. Regulation as last amended by Regulation (EEC) No 1300/84 (OJ No L 125, 12. 5. 1984, p. 3).
(7) OJ No L 405, 31. 12. 1992, p. 1. Regulation as last amended by Regulation (EEC) No 1560/93 (OJ No L 154, 25. 6. 1993, p. 30).

that purpose, following the provisions of Regulation (EEC) No 3950/92 and, if need be, in accordance with Article 5 and the first indent of Article 8 of that Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. A producer, within the meaning of Article 9 (c) of Regulation (EEC) No 3950/92, who:

— is the transferee of a non-marketing or conversion premium pursuant to Regulation (EEC) No 1078/77 and is not eligible pursuant to Article 3a of Regulation (EEC) No 857/84 as a consequence of having received a reference quantity pursuant to Article 2 or 6 of that Regulation, or

— has taken over part of a holding subject to the same provisions but for which no reference quantity has been allocated pursuant to Article 3a of Regulation (EEC) No 857/84,

shall receive a special reference quantity on request, provided that:

— he establishes that he has taken over and observed the undertaking not to market milk or to convert dairy herds made by the transferor in respect of the acquired holding or part of holding taken over,

— the said undertaking expired after 31 December 1982,

— he has not, as at the date of the application, transferred all of or part of the holding taken over,

— he establishes in support of his application, on the basis of criteria to be determined, that he is able to increase production on his holding by the amount of the special reference quantity applied for.

2. Where, in the case of a holding part of which has been taken over while the holding was subject to Regulation (EEC) No 1078/77, a reference quantity has been allocated pursuant to Article 3a of Regulation (EEC) No 857/84 on the basis of the quantity for which the premium entitlement pursuant to Regulation (EEC) No 1078/77 has been preserved or acquired, that reference quantity shall be shared between the transferor and the part transferee:

— at the latter's request, provided he fulfils the definition in Article 9 (c) of Regulation (EEC) No 3950/92 and the conditions laid down in the third, fourth and fifth indents of paragraph 1,

— in proportion to the areas under forage referred to in Article 1 (1) (d) of Regulation (EEC) No 1391/78 and transferred in accordance with the provisions of Article 7 of Regulation (EEC) No 3950/92.

If, following transfers effected in accordance with the relevant provisions, such sharing proves impossible or insignificant, from the point of view of the rights of transferees, paragraph 1 shall apply.

By way of derogation from the first subparagraph, Member States may, however, fulfil the rights of the transferee by quantities emanating from the national reserve referred to in Article 5 of Regulation (EEC) No 3950/92, to the extent that the necessary are available.

Article 2

The special reference quantity referred to in Article 1 (1) shall be established by the Member State in accordance with objective criteria in proportion to the area under forage referred to in Article 1 (1) (d) of Regulation (EEC) No 1391/78 which the producer was using on the date of his application and on the basis of the quantity in respect of which the premium was calculated, less a percentage representing all the reductions applied to the reference quantities fixed pursuant to Article 2 of Regulation (EEC) No 857/84, including in all cases a basic reduction of 4,5 %, or to Article 6 of that Regulation.

Where a producer has already has already obtained a reference quantity in respect of the holding, on the basis of Article 3 (1) and (2) and/or and (c) of Regulation (EEC) No 857/84 or of Article 5 (4) and/or Article 9 (2) of Regulation (EEC) No 1546/88, or on the basis of Article 2 of Regulation (EEC) No 857/84 if the Member State did not apply the aformentioned Article 9 (2), and/or Articles 3b and 3c of Regulation (EEC) No 857/84 and/or Article 2 (45) (c) of Regulation (EEC) No 1637/91, the special reference quantity referred to in the first paragraph shall be reduced by the same amount.

Article 3

The quantities required for the allocation of the special reference quantities to the producers referred to in Article 1 (1) shall be taken from the reserve referred to in Article 5 of Regulation (EEC) No 3950/92.

In the case referred to in Article 1 (2) first subparagraph and if the transferor is unable to continue milk production on his holding as a result of the special reference quantity being shared, quantities drawn on the national reserve may be allocated to him. To this end, the Member States shall determine the criteria to be taken into consideration.

Article 4

Until 31 December 1997, where Member States authorize the producers defined in Article 1 to make temporary transfers as referred to in Article 6 (1) of Regulation (EEC) No 3950/92, the special reference quantity shall be transferred to for the duration of the period concerned to the national reserve.

If the event of participation before 1 October 1996 in any measure regarding the definitive abandonment of reference quantities the special reference quantity shall revert to the national reserve referred to in Article 5 of Regulation (EEC) No 3950/92, and compensation shall be paid for the quantity transferred less the said special quantity.

Where all or part of the holding formed by the holding acquired plus the other production units operated by the producer is sold or leased before 1 October 1996, the special reference quantity concerned shall revert to the national reserve referred to in Article 5 of Regulation (EEC) No 3950/92, in proportion to the area sold or leased.

Article 5

A producer who has received a special reference quantity pursuant to this Regulation shall not be liable for the additional levy for quantites produced before 1 April 1993 which do not exceed the reference quantity he possesses already plus the said special reference quantity.

The producer whose special reference quantity has been reduced pursuant to Article 1 (2), shall not be liable for the levy in respect of milk quantities marketed before 1 April 1994 which do not exceed the quantity which the possessed as at 1 April 1993.

Article 6

The provisions of this Regulation shall likewise apply if the holding concerned has been obtained by the producer referred to in Article 1 by way of inheritance or similar means.

Article 7

Producers shall submit an application for the allocation of a special reference quantity to the competent authority in the Member State before 1 November 1993.

Article 8

Detailed rules for the application of this Regulation shall be adopted in accordance with the procedure laid down in Article 30 of Regulation (EEC) No 804/68.

Article 9

This Regulation shall enter into force on the third day following 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, 19 July 1993.

For the Council

The President

A. BOURGEOIS