COUNCIL REGULATION (EEC) No 2187/93

of 22 July 1993

providing for an offer of compensation to certain producers of milk and milk products temporarily prevented from carrying on their trade

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the proposal from the Commission (1),

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

Having regard to the opinion of the Economic and Social Committee (3),

Whereas, when the additional levy scheme was introduced in 1984 in the milk and milk products sector, Community legislation did not provide for the allocation of an individual reference quantity to producers who, as a result of an undertaking 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 (4), had not delivered or sold milk during the reference year adopted by the Member State;

Whereas, on the application of five producers, the Court of Justice, in its judgment of 19 May 1992 in Joined Cases C-104/89 and C-37/90, ordered the Community to make good the damage the said producers had suffered in so far as the original Community legislation did not in fact provide for the allocation of an individual reference quantity to them;

Whereas, in a communication published in the *Official Journal of the European Communities* on 5 August 1992 (5), the institutions undertook to comply in full with the judgment of 19 May 1992 as regards all potentially qualifying producers;

Whereas the sheer number of those potentially eligible makes it impossible to take each case into account on an individual basis and necessitates a solution based on a flat-rate approach, to be expressed in the form of an offer from the institutions to be accepted in full and final settlement or else rejected; whereas the factors on the basis of which the offer is calculated should be set out;

Whereas a direct link should be drawn between the actual resumption of milk production in full compliance with the Community provisions which permitted such resumption and the existence of an injury consisting in the fact of not having been able to resume milk production in good time, despite the wishes of the person concerned; whereas, in the same spirit and to ensure that a producer has not resumed activity with the sole aim of speculating on the supposed asset value of the reference quantity allocated to him, both the broad entitlement to compensation and the amount of that compensation should be subject to certain conditions;

Whereas, furthermore, the Court of Justice in its judgment of 19 May 1993 in Case C-81/91 ruled that the Community legislation concerned must be interpreted as meaning that, in the case of the transfer of part of a holding where the transferee agrees to observe the non-marketing undertaking made by the transferor pursuant to Regulation (EEC) No 1078/77, the special reference quantity may be divided between the transferor and the transferee on the basis of the proportion of the land transferred; whereas in the ground of its judgment the Court of Justice states that the transferor cannot legitimately expect to receive the entirety of the special reference quantity after having disposed of part of his holding;

Whereas as a result of that judgment it is necessary to take appropriate action in the present case and to provide, in the situation which is envisaged therein, that the annual quantity to be compensated in respect of a producer who has transferred part of his holding should also be reduced in proportion to the forage areas transferred;

Whereas, subject to the above, the quantity to be compensated must be calculated in accordance with the principles underlying the terms of the judgment of the Court of Justice of 19 May 1992;

Whereas in their communication of 5 August 1992 the institutions waived, for the benefit of potential beneficiaries and for the future, their right to plead the five-year time bar on claims laid down in Article 43 of the Statute of the Court of Justice; whereas it can furthermore be accepted that in the present case the injury ended only upon resumption of milk production; whereas, therefore, for the benefit of all those concerned, the period for which compensation is being offered and the circumstances under which the time bar on entitlement may once again come into effect should be stated; whereas for administrative reasons it is necessary to stipulate that if

(1) OJ No C 157, 9. 6. 1993, p. 11.
(2) Opinion delivered on 16 July 1993 (not yet published in the Official Journal).
(3) Opinion delivered on 30 June 1993 (not yet published in the Official Journal).
(4) OJ No L 131, 26. 5. 1977, p. 1. Regulation as last amended by Regulation (EEC) No 1300/84 (OJ No L 125, 12. 5. 1984, p. 3).
(5) OJ No C 198, 5. 8. 1992, p. 4.

the producer's application for compensation pursuant to this Regulation is not submitted to the competent authority by a given date, it will be rejected;

Whereas, when this Regulation is implemented the competent authorities of the Member States shall act, on behalf of the Community and the Commission by virtue of a mandate, which has to do only with the execution, in compliance with the provisions of this Regulation, of the administrative tasks necessary for its implementation;

Whereas under the terms of the Court judgment the amount of the compensation must equal the difference between, on the one hand, the income which those concerned would have received from marketing milk had they not been prevented from doing so and, on the other hand, the income which they actually obtained during the same period or could have obtained by showing reasonable diligence; whereas, however, with the intention of offering beneficiaries compensation all the elements of which have economic justification, the amounts have been calculated according to a method the objectivity of which can be appreciated by each person concerned; whereas, moreover, the global nature of the outcome has been mitigated by introducing into the calculation of the compensation per 100 kg of milk two differentiation factors, one relating to the year concerned and the other to the size of the holding;

Whereas the number of variables to be considered first of all in reconstituting the income from milk production and secondly in establishing alternative sources of income would lead in the end to the merits of each case being looked at separately, which cannot reasonably be expected given the sheer number of producers involved; whereas only a comprehensive estimate of the damage is thus feasible; whereas to avoid underestimating the injury, however, the various factors chosen for calculating the compensation operate as a general rule to the benefit of the applicants;

Whereas the potential revenue from marketing is calculated from the gross margin for dairy farming, which on the receipts side includes sales of milk, calves born to dairy cows and the residual value of the dairy cow, and on the expenses side deducts only the variable costs which are immediately eliminated when milk production ceases and not the fixed costs relating to land, labour and capital; whereas, however, this reasoning fails to take account of the financial capital retained pending reinvestment in livestock; whereas it is therefore necessary to take into account the likely return on such capital; whereas, moreover, the cost of amortizing the renewal of the herd is saved where there is no herd;

Whereas, in calculating the replacement income, no account was taken, *inter alia,* of the alternative income from the capital released by abandoning milk production, on the basis that the producer concerned wanted eventually to resume such production and that the options for using the capital otherwise were accordingly limited;

Whereas failure by the producer to accept the offer made by the competent authority of the Member State in accordance with the provisions of this Regulation would amount to refusal of the Community offer; whereas any legal proceedings continued or initiated thereafter by the producer would fall within the Community's juridiction,

HAS ADOPTED THIS REGULATION:

Article 1

Compensation on the terms set out in this Regulation shall be granted to those producers who have suffered loss as a result of being prevented by an undertaking given pursuant to Regulation (EEC) No 1078/77 from delivering or selling milk or milk products during the reference year selected by the Member State concerned under the additional levy scheme in the milk and milk product sector.

Article 2

An application for compensation shall be deemed eligible if it is submitted by a producer who has been allocated a definitive special reference quantity under the conditions set out in Article 3a (3) of Regulation (EEC) No 857/84 [1], either on 29 March 1991 pursuant to Regulation (EEC) No 764/89 [2] or on 1 July 1993 pursuant to Regulation (EEC) No 1639/91 [3].

Article 3

The application shall be submitted by the person to whom the reference quantity has been allocated or by his or her heir or heirs, without prejudice to the application of the provisions of Member States' national law.

Article 4

By way of derogation from Article 2, an application shall not be accepted in the producer who has received the definitive allocation of a reference quantity pursuant to Regulation (EEC) No 764/89 either did not comply with his undertaking not to take part in any programme of cessation of milk production until 31 March 1992 or sold or leased his entire holding before that date.

[1] OJ No L 90, 1. 4. 1984, p. 13.
[2] OJ No L 84, 29. 3. 1989, p. 2.
[3] OJ No L 150, 15. 6. 1991, p. 35.

Article 5

An application made by a producer who will receive the definitive allocation of the reference quantity pursuant to Regulation (EEC) No 1639/91 on 1 July 1993 shall be accepted on condition that he does not take part in any programme of cessation of milk production and that he does not sell or lease his entire holding on or before 1 July 1994.

Article 6

The competent authority referred to in Article 10 shall determine the annual quantity in respect of which compensation is due on the basis of the quantity used to calculate the premium granted pursuant to Regulation (EEC) No 1078/77, increased by 1 % and reduced by a percentage representing the reductions applied in each Member State to the reference quantities of producers established in accordance with Articles 2 and 6 of Regulation (EEC) No 857/84.

If a producer gives up part of his holding while it is subject to the provisions of Regulation (EEC) No 1078/77, the annual quantity in respect of which compensation is due as referred to in the previous subparagraph shall also be reduced in proportion to the areas under fodder given up within the meaning of Article 1 (1) (d) of Regulation (EEC) No 1391/78 (1).

The reduction referred to in the previous subparagraph shall be made in any event, irrespective of whether a special reference quantity has been allocated to the person taking over the part of the holding given up.

Article 7

If the definitive special quantity allocated pursuant to Article 3a of Regulation (EEC) No 857/84 is less than 80 % of the provisional special quantity or if the holding is sold or leased in part before 1 April 1992 or before 1 July 1994 as the case may be, the annual quantity in respect of which compensation is due shall be reduced by the quantity returned to the national reserve.

Article 8

1. Compensation shall be granted only for the period for which the right to compensation is not time-barred.

2. For the purpose of determining the period for which compensation shall be offered:

(a) the date of interruption of the five-year time bar set by Article 43 of the Statute of the Court of Justice shall be the date of the application addressed to a Community institution or, in the case of an action brought before the Court of Justice, the date on which the application is entered in its register, or at the latest the date of the communication of the institutions published in the *Official Journal of the European Communities* No C 198 of 5 August 1992;

(b) the starting date of the compensation period shall be five years before the date of interruption of the bar, but it may not fall before 2 April 1984 or before the date on which the non-marketing or conversion undertaking expired;

(c) the closing dates of the compensation period shall be 29 March 1989 for those producers who received the special reference quantity pursuant to Regulation (EEC) No 764/89 and 15 June 1991 for those producers who received the special reference quantity pursuant to Regulation (EEC) No 1639/91.

Article 9

If production was resumed before allocation of the provisional special quantity the quantity in respect of which compensation is due shall be reduced for the period concerned by the quantities delivered or sold directly which exceed the reference quantity which could be available to the producer, if appropriate, before the above-mentioned allocation, excluding those referred to in the second subparagraph of Article 3a (2) of Regulation (EEC) No 857/94.

Article 10

1. Each application for compensation must be addressed to the competent authority designated for that purpose in each Member State, using a form drawn up in accordance with the procedure laid down in Article 30 of Regulation (EEC) No 804/68 (2).

2. The producer shall send his application to the competent authority. The application for production shall reach the competent authority, subject to rejection, by 30 September 1993 at the latest.

The limitation period pursuant to Article 43 of the Statute of the Court shall start to run afresh for all producers on whichever of the two dates referred to in the first subparagraph is appropriate if the application referred to in that subparagraph has not been made by that date save where the limitation period has been interrupted by an application to the Court of Justice made in accordance with the same Article 43.

Article 11

The competent authority referred to in Article 10 shall check the accuracy of the information provided by the producer and shall calculate the amount of the compensation on the basis of the quantity and the period in respect of which compensation is due, using the amounts specified in the Annex.

Article 12

The amount of the compensation shall be increased by default interest of 8 % per year until the compensation is paid.

(1) Commission Regulation (EEC) No 1391/78 of 23 June 1978 laying down amended rules for the application of the system of premiums for the non-marketing of milk and milk products and for the conversion of dairy herds (OJ No L 167, 24. 6. 1978, p. 45). Regulation as last amended by Regulation (EEC) No 84/83 (OJ No L 13, 15. 1. 1993, p. 5).

(2) Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organization of the market in milk and milk products (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).

Article 13

The total amount of the compensation shall be converted into national currency using the agricultural conversion rate applicable on the date on which this Regulation enters into force.

Article 14

Within four months on receipt of an application the competent authority referred to in Article 10 shall, in the name and on behalf of the Council and the Commission, make an offer of compensation to the producer, accompanied by a receipt in full and final settlement.

Where the producer derives his right to a special reference quantity:

— from Regulation (EEC) No 764/89, the compensation shall be paid on receipt of the returned receipt, duly approved and signed by the producer,

— from Regulation (EEC) No 1639/91, the compensation shall be paid, on condition that the receipt has been returned duly approved and signed by the producer, after 1 July 1994, so as to allow the competent authority to check that Articles 5 and 7 have been complied with, unless the producer lodges with that authority a security amounting to 115 % of the compensation fixed before the application of the aforementioned Articles, as a guarantee of compliance with the conditions set out in those Articles.

Failure to accept the offer within two months of its receipt shall mean that it shall not be binding in the future on the Community institutions concerned.

Acceptance of the offer by the return to the competent authority of the duly approved and signed receipt shall imply the relinquishment of any claim of whatever nature against Community institutions in respect of any loss within the meaning of Article 1.

Article 15

Detailed rules for the application of this Regulation, and in particular the provisions regarding payment of the costs of producers' agents incurred before 5 August 1992, shall be adopted by the Commission in accordance with the procedure laid down in Article 30 of Council Regulation (EEC) No 804/68.

Article 16

The financing of the payments made pursuant to this Regulation shall be deemed to be intervention within the meaning of Article 3 of Regulation (EEC) No 729/70 [1].

Expenditure shall be committed against 1993 appropriations on the basis of information notified by the Member States, the total amount of which shall be communicated to the Commission no later than 30 September 1993. The paying agencies must effect the payments before 15 October 1994.

Article 17

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, 22 July 1993.

For the Council

The President

M. OFFECIERS-VAN DE WIELE

[1] Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy (OJ No L 94, 28. 4. 1970, p. 13). Regulation as last amended by Regulation (EEC) No 2048/88 (OJ No L 185, 15. 7. 1988, p. 1).

ANNEX

Compensation to be offered pursuant to Article 11
(green ecus per 100 kg of milk)

Year	Farm size in terms of milk production		
	< 50 000 kg	< 120 000 kg	> 120 000 kg
1990/91	7,9	8,8	9,7
1989/90	8,8	9,7	10,7
1988/89	8,3	9,2	10,2
1987/88	6,5	7,4	8,3
1986/87	6,2	7,1	8,0
1985/86	6,9	7,8	8,7
1984/85	5,7	6,6	7,6