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COMMISSION REGULATION (EEC) No 536/93
of 9 March 1993
laying down detailed rules on the application of the additional levy on milk and milk products

(OJ L 57, 10.3.1993, p. 12)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Commission Regulation (EEC) No 1756/93 of 30 June 1993	L 161	48	2.7.1993

Corrected by:

►**C1** Corrigendum, OJ L 273, 16.11.1995, p. 54 (536/93)

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COMMISSION REGULATION (EEC) No 536/93

of 9 March 1993

laying down detailed rules on the application of the additional levy on milk and milk products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3950/92 of 28 December 1992 establishing an additional levy in the milk and milk products sector [1], and in particular Article 11 thereof,

Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy [2], and in particular Article 1 thereof,

Whereas the application of the arrangements regarding the additional levy on milk and milk products were extended in accordance with Regulation (EEC) No 3950/92 for a further seven consecutive 12 month periods from 1 April 1993; whereas that Regulation repeals the previous provisions concerned and replaces them; whereas new detailed rules for the application of Regulation (EEC) No 3950/92 should accordingly be laid down and the detailed rules which the Commission adopted under the previous arrangements should be repealed;

Whereas this Regulation concerns firstly the additional factors necessary for the final calculation of the levy payable by producers, secondly the measures to ensure payment of the levy in good time and lastly the rules on checks permitting verification of proper collection of the levy;

Whereas the characteristics of milk which are considered to be representative and in particular the way its fat content is to be taken into account when the final quantities is based on a reference fat content, which must, like the individual reference quantity to which it is related, be that available on 31 March 1993; whereas special provisions must cover cases where the reference quantity for deliveries is increased or established by converting a reference quantity for direct sales; whereas the experience gained demonstrates the need for very specific rules applicable to milk producers beginning production;

Whereas it is necessary to make it quite clear that under no circumstances can individual downward corrections relating to the fat content of delivered milk result in a deduction from the levy payment of any quantity in excess of the guaranteed total quantity in a Member State;

Whereas experience gained has shown that major delays in both the transmission of figures on collections or direct sales and payment of the levy, have prevented the arrangements from being fully effective; whereas, therefore, lessons should be learned from the past and the necessary conclusions drawn by laying down strict requirements as regards notification and payment deadlines and providing for penalties where deadlines are not met;

Whereas pursuant to Article 2 (4) of Regulation (EEC) No 3950/92 the Commission is responsible for laying down criteria for determining which priority categories of producer are to benefit from reimbursement of the levy where the Member State has decided not to fully reallocate unused quantities in its territory; whereas a Member State may only be authorized to use other criteria, in agreement with the Commission, in the event that the criteria laid down by the Commission cannot be fully applied in that Member State;

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[1] OJ No L 405, 31. 12. 1992, p. 1.
[2] OJ No L 387, 31. 12. 1992, p. 1.

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Whereas under Regulation (EEC) No 3950/92 purchasers bear chief responsibility for the correct implementation of the arrangements; whereas it is therefore essential that Member States approve the purchasers operating in their territory;

Whereas, lastly, the Member States must have suitable means of conducting ex-post checks to verify whether and to what extent the levy has been collected in accordance with the provisions in force; whereas such checks must involve at least a certain number of measures which should be specified;

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

HAS ADOPTED THIS REGULATION:

Article 1

For the purposes of calculating the additional levy introduced by Regulation (EEC) No 3950/92:

1. within the meaning of Article 2 (1) of that Regulation 'quantities of milk or milk equivalent marketed' in a Member State means all quantities of milk or milk equivalent which leave any holding in the territory of that Member State.

   Quantities presented by producers for treatment or processing under contract shall be deemed deliveries;

2. the equivalence formulae to be used shall be:

   — 1 kg cream = $\frac{26{,}3 \text{ kg milk} \times \% \text{ fat content of cream}}{100}$

   — 1 kg butter = 22,5 kg milk.

   In the case of cheese and all other milk products, Member States may determine equivalences using the dry-extract content and the fat content of the types of cheese or products concerned or fix the quantities of milk equivalent on a flat-rate basis by reference to the number of dairy cows held by the producer and an average milk yield per cow representative of the herd.

   If the producer can provide proof to the satisfaction of the competent authority of the quantities actually used for the manufacture of the products in question, the Member State shall use such proof in place of the abovementioned equivalences;

3. where wholly or partly skimmed milk is delivered, the producer must prove to the satisfaction of the competent authority that the fat content of the milk has been used to calculate the levy. In the absence of such proof, deliveries of such milk shall be treated as whole milk when the levy is calculated;

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4. the target price shall be that applying on the last day of the 12 month period concerned.

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Article 2

1. The characteristics of milk, including fat content, considered representative within the meaning of Article 11 of Regulation (EEC) No 3950/92 shall be those associated with the individual reference quantity available on 31 March 1993.

Where the individual reference quantity B amended the following provisions apply:

(a) the representative fat content of milk shall not change where additional reference quantities are allocated from the national reserve or where the reference quantity is increased pursuant to Article 4 (2) of Regulation (EEC) No 3950/92;

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(b) where, pursuant to Article 4 (2) of Regulation (EEC) No 3950/92, the reference quantity for deliveries is established by converting the reference quantity for direct sales, the representative fat content for the reference quantity for deliveries shall be 3,8 %;

(c) where Articles 6 and 7 and the third, fourth and fifth indents of Article 8 of Regulation (EEC) No 3950/92 are applied, the representative fat content shall be transferred with the reference quantity with which it is associated.

In such cases, the resulting representative fat content shall be equal to the average of the initial and transferred representative contents, weighted by the initial and transferred reference quantities;

(d) in the case of producers whose entire reference quantity comes from the national reserve and who commenced production after 1 April 1992, the representative fat content of milk shall be the average fat content of milk delivered during the first 12 months of production. However, the representative content may not exceed the average national fat content of milk collected in the Member State during the 12-month reference period except where the producer provides proof each year that his herd includes dairy breeds which call for a higher content to be taken into account. In the absence of such proof, the representative fat content shall be fixed at the level of the average national fat content of the milk collected in the Member State during the 12-month reference period.

2. In order to draw up the definitive statement for purposes of the levy as referred to in Article 3 for each producer, the average fat content of the milk and/or milk equivalent he has delivered shall be compared with the representative fat content of his production:

— if the difference is positive, the quantity of milk or milk equivalent delivered shall be increased by 0,18 % per 0,1 gram of additional fat per kilogram of milk,

— if the difference is negative, the quantity of milk or milk equivalent delivered shall be reduced by 0,18 % per 0,1 gram of fat lacking per kilogram of milk.

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

3. If the quantity of milk collected in a Member State is greater than the quantity as corrected in accordance with paragraph 2, the levy shall be payable on the difference between the quantity collected and the guaranteed total quantity of deliveries available in the Member State.

Article 3

1. At the end of each of the periods referred to in Article 1 of Regulation (EEC) No 3950/92, the purchaser shall establish a statement for each producer showing, opposite the producer's reference quantity and the representative fat content of his production, the quantity and fat content of the milk and/or milk equivalent which he has delivered during the period.

In the case of leap years, the quantity of milk or milk equivalent shall be reduced by one sixtieth of the quantities delivered in February and March.

2. Before 15 May each year, the purchasers shall forward to the competent authority of the Member State a summary of the statements drawn up for each producer or, where appropriate, by decision of the Member State, the total quantity, the quantity corrected in accordance with Article 2 (2) and average fat content of the milk and/or milk equivalent delivered to it by producers and the sum of the individual reference quantities and the average representative fat content of such producers' production.

Where that time limit is not observed, the purchaser shall be liable to a penalty equal to the amount of the levy due for a 0,1 % overrun on the quantities of milk and milk equivalent delivered to them by producers. Such penalty may not exceed ECU 20 000.

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3. Member States may provide that the competent authority shall notify the purchaser of the levies payable by him after reallocating, or not, by decision of the Member State, all or part of the unused reference quantities either directly to the producers concerned or to purchasers with a view to their subsequent allocation among the producers concerned.

4. Before 1 September each year, the purchaser liable for levies shall pay the competent body the amount due in accordance with rules laid down by the Member State.

Where the time limit for payment is not met, the sums due shall bear interest at a rate per annum fixed by the Member State and which shall not be lower than the rate of interest which the latter applies for the recovery of wrongly paid amounts.

Article 4

1. In the case of direct sales, at the end of each of the periods referred to in Article 1 of Regulation (EEC) No 3950/92, the producer shall make a declaration summarizing by product the quantities of milk and/or other milk products sold directly for consumption and/or to wholesalers, cheese maturers and the retail trade.

In the case of leap years, the quantity of milk or milk equivalent shall be reduced by $1/_{60}$ of the quantities sold directly in February and March or by ►C1 $1/_{366}$ ◄ of the quantities sold directly in the 12-month period in question.

2. Before 15 May each year, the producer shall forward declarations to the competent authority of the Member State.

Where that time limit is not observed, the producer shall be liable to the levy on all the quantities of milk and milk equivalent sold directly in excess of his reference quantity or, where there is no overrun, to a penalty equal to the amount of levy due for a 0,1 % overrun of his reference quantity. Such penalty may not exceed ECU 1 000.

Where a declaration is not submitted before 1 July, the second paragraph of Article 5 of Regulation (EEC) No 3950/92 shall apply 30 days after the Member State has served notice.

3. The Member State may provide that the competent authority shall notify the producer of the levies payable by him after reallocating, or not, by decision of the Member State, all or part of the unused reference quantities to the producers concerned.

4. Before 1 September each year, the producer shall pay the amount due to the competent body in accordance with rules laid down by the Member State.

Where the time limit for payment is not met, the sums due shall bear interest at a rate por annum fixed by the Member State and which shall not be lower than the rate of interest which the latter applies for the recovery of amounts wrongly paid.

Article 5

1. Where appropriate, Member States shall determine the priority categories of producers as referred to in Article 2 (4) of Regulation (EEC) No 3950/92 on the basis of one or more of the following objective criteria, in order of priority:

(a) formal acknowledgement by the competent authority of the Member State that all or part of the levy has been wrongly charged;

(b) the geographical location of the holding, and primarily mountain areas as defined in Article 3 (3) of Council Directive 75/268/EEC [1];

[1] OJ No L 128, 19. 5. 1975, p. 1.

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(c) the maximum stocking density on the holding for the purposes of extensive livestock production;

(d) the amount by which the individual reference quantity is exceeded;

(e) the volume of the producer's reference quantity.

Where the financial resources available for a given period are not used up after the abovementioned criteria have been applied, the Member State may adopt other objective criteria with the agreement of the Commission.

2. Member States shall take any additional measures necessary to ensure payment of levies due to the Community within the time limit laid down.

Where the set of documents referred to in Article 3 (5) of Commission Regulation (EEC) No 2776/88 ([1]), which the Member States must transmit to the Commission each month, shows that this time limit has not been met, the Commission shall reduce advances on entry in the accounts of agricultural expenditure in proportion to the amount due or an estimate thereof.

Interest paid pursuant to Article 3 (4) and Article 4 (4) shall be deducted by the Member States from expenditure on milk and milk products.

Article 6

Reference quantities not or no longer allocated to individuals shall be included in the national reserve referred to in Article 5 of Regulation (EEC) No 3950/92. Reference quantities for deliveries and those for direct sales shall be recorded separately.

Article 7

1. Member States shall take all the verification measures necessary to ensure payment of the levy on quantities of milk and milk equivalent marketed in excess of any of the quantities referred to in Article 3 of Regulation (EEC) No 3950/92. To that end:

(a) all purchasers operating in the territory of a Member State must be approved by that Member State.

Purchasers shall be approved only where they:

— provide proof of their status as dealers from the viewpoint of national laws,

— have premises in the Member State concerned where the stock accounts, registers and other documents referred to in (c) may be consulted by the competent authority,

— undertake to keep up to date the stock accounts, registers and other documents referred to in (c),

— undertake to forward the declarations provided for in Article 3 (2) to the competent authority of the Member State concerned.

Approval shall be withdrawn where the abovementioned provisions are not observed; it may be withdrawn where it is ascertained that the purchaser has repetedly failed to comply with any other obligation under Regulation (EEC) No 3950/92 or this Regulation;

(b) producers shall be required to ensure that purchasers to whom they deliver are approved;

(c) purchasers shall keep available to the competent authority of the Member State for at least three years stock accounts per 12-month period with details of the name and address of each producer, the reference quantity available at the beginning and at the end of each period, the quantities of milk or milk equivalent which he has delivered per month or four-week period, the representative and average fat contents of his deliveries, together with the commercial documents, correspondance and other information referred to in

([1]) OJ No L 249, 8. 9. 1988, p. 9.

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Council Regulation (EEC) No 4045/89 [1] permitting such stock accounts to be verified;

(d) purchasers shall be responsible for recording under the additional levy arrangements all quantities of milk and/or other milk products delivered to them; to that end they shall keep available to the competent authority for at least three years the list of purchasers and undertakings treating or processing milk and/or other milk products supplying them with milk or other milk products and, per month, the quantities delivered by each supplier;

(e) on collection at holdings, milk and/or other milk products shall be accompanied by a document identifying the delivery. In addition, purchasers shall keep recors of each individual delivery for at least three years;

(f) producers with reference quantities for direct sales shall keep available to the competent authority of the Member State for at least three years stock accounts by 12-month period with details of the quantities, per month and per product, of milk and/or milk products sold directly for consumption and/or to wholesalers, cheese maturers and the retail trade, together with registers of livestock held on holdings and used for milk production, in accordance with Article 4 (1) of Council Directive 92/102/EEC [2], and supporting documents enabling such stock accounts to be verified.

2. The Member States shall take any further measures necessary to:

— verify cases of total or partial abandonment of milk production and/or reference quantities in accordance with Article 8 of Regulation (EEC) No 3950/92 where relevant provisions thereof are applied,

— ensure that the parties concerned are aware of the penal or administrative sanctions to which they are liable where they fail to comply with the provisions of Regulation (EEC) No 3950/92 and this Regulation.

3. Member States shall physically verify the accuracy of the accounting with regard to the quantities of milk and milk equivalent marketed and, to that end, shall check milk transport during collection at farms and shall, in particular, check:

(a) at the permises of the purchasers, the statements referred to in Article 3 (1), the credibility of stock accounts and supplies as referred to in paragraph 1 (c) and (d) with regard to the commercial documents and other documents proving now the collected milk and milk equivalent have been used;

(b) at the permises of the producers with a reference quantity for direct sales, the credibility of the declaration referred to in Article 4 (1) and the stock accounts referred to in paragraph 1 (f).

The checks shall be determined by the Member States on the basis of a risk analysis. The number of checks per year may not be less than:

— 40 % of the number of purchasers, in the case of (a),

— 5 % of the number of producers concerned, in the case of (b).

Article 8

Member States shall notify the Commission of:

— the measures adopted for the application of Regulation (EEC) No 3950/92 and this Regulation, and any amendments thereto, within one month following their adoption,

— their duly reasoned decisions where recourse 13 had to Article 6 (2) of Regulation (EEC) No 3950/92,

[1] OJ No L 388, 30. 12. 1989, p. 18.
[2] OJ No L 355, 5. 12. 1992, p. 32.

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— before 1 March each year, the quantities transferred in accordance with the second subparagraph of Article 4 (2) of Regulation (EEC) No 3950/92,

— before 1 September each year, the duly completed questionnaire as set out in the Annex. Where that time limit is not observed, the Commission shall make a flat-rate reduction to advances on the entry of agricultural expenditure in the accounts,

— the results and information necessary to evaluate measures implemented pursuant to the first and second indents of Article 8 of Regulation (EEC) No 3950/92.

Article 9

Commission Regulation (EEC) No 1546/88 ([1]) is hereby repealed.

However, it shall continue to apply to ensure the fulfilment of obligations regarding the implementation of the additional levy scheme for the ninth period and, if necessary, previous periods.

To ensure the continuity of the national measures enforcing compliance with the additional levy scheme, references to Article 5c of Council Regulation (EEC) No 804/68 ([2]), to Regulation (EEC) No 857/84 ([3]) or to Regulation (EEC) No 1546/88 may, during a transitional period, be treated as reference to Regulation (EEC) No 3950/92 and this Regulation.

Article 10

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

It shall apply from the 12-month period commencing on 1 April 1993.

However, in the event of administrative difficulties, the Member States concerned may postpone application of Article 7 (1) (a), (b) and (e) until 31 December 1993.

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

([1]) OJ No L 139, 4. 6. 1988, p. 12.
([2]) OJ No L 148, 28. 6. 1968, p. 13.
([3]) OJ No L 90, 1. 4. 1984, p. 13.

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ANNEX

Annual questionnaire on the application of the arrangements on additional levies on milk and milk products introduced by Regulation (EEC) No 3950/92

PERIOD OF APPLICATION : MEMBER STATE :

1. **Deliveries**	
1.1. Number of purchasers	
of which groups of purchasers	
1.2. Sum of individual reference quantities allocated for deliveries (tonnes)	
1.3. Number of procedure	
of which producers with reference quantities for direct sales also	
1.4. Number of request for application of Article 4 (2) of Regulation (EEC) No 3950/92	
and quantities concerned (tonnes)	
1.5. Average representative fat content (g/kg)	
1.6. Quantity of deliveries of milk and milk equivalent (tonnes)	
of which milk products in milk equivalent (tonnes)	
1.7. Average real fat content of deliveries (g/kg)	
1.8. Adjustment of deliveries to representative fat content (tonnes)	
1.9. Number of temporary transfers of reference quantities recorded at 31 December	
and quantities concerned (tonnes)	
1.10. Unused reference quantities before possible reallocation (tonnes)	
1.11. Number of producers by category benefiting under Article 2 (4) of Regulation (EEC) No 3950/92	
amounts redistributed by category of producers (national currency)	
amounts allocated to finance measures under the first indent of Article 8 of Regulation (EEC) No 3950/92 (national currency)	
2. **Direct sales**	
2.1. Sum of individual reference quantities allocated for direct sales (tonnes)	
2.2. Number of producers	
2.3. Quantities covered by direct sales of milk and milk equivalent (tonnes)	
of which milk products in milk equivalent (tonnes)	
of which — cream and butter	
— cheese	
— yoghurt	
— other	
2.4. Unused reference quantities before possible reallocation (tonnes)	
2.5. Amount of levies collected allocated for measures under the first indent of Article 8 of Regulation (EEC) No 3950/92 (national currency)	