# COMMISSION REGULATION (EC) No 470/94

## of 2 March 1994

## amending Regulation (EEC) No 536/93 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 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], as last amended by Regulation (EEC) No 1560/93 [2], and in particular Article 11 thereof,

Whereas Commission Regulation (EEC) No 536/93 of 9 March 1993 [3], as amended by Regulation (EEC) No 1756/93 [4], lays down detailed rules on the application of the additional levy, and in particular Article 2 thereof lays down a representative fat content of milk which is associated with the individual reference quantity;

Whereas, in the event of application of Article 4 (2) of Regulation (EEC) No 3950/92, which authorizes at a duly justified application, the transfer of reference quantities for direct sales to deliveries, Article 2 (1) (a) and (b) of Regulation (EEC) No 536/93 distinguish between cases of an increase in a reference quantity from cases where the reference quantity for deliveries is established; whereas, in particular, the representative fat content of milk remains unchanged where there is an increase in the reference quantity for deliveries following a transfer of the reference quantity for direct sales; whereas the difference between the cases of increases in the reference quantity and cases where it is established was laid down for the benefit of producers in order to take better account of their individual situations; whereas applications received by the Member States show that some producers hope to take advantage of the way the regulations are worded; whereas the real situation of producers should be referred to for the purposes of applying those provisions;

Whereas, even if the Member State is able, pursuant to Article 4 (2) of Regulation (EEC) No 3950/92, to rule out unjustified applications, it appears advisable, in order to make it clearly impossible for producers to draw undue benefit from the regulations and thus avoid overloading the national authorities responsible for considering the merits of applications, to apply one and the same standard rule for the fat content whether a reference quantity is increased or is established following a transfer; whereas, however, in the interests of the producers concerned, producers who continue to be engaged in direct sales should be able to continue to benefit from the present provisions;

Whereas, for the same reasons as above, experience gained also shows the need to amend the rules governing the representative fat content of milk for producers who have recently set up in farming;

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*

The second subparagraph of Article 2 (1) of Regulation (EEC) No 536/93 is hereby replaced by the following:

'Where the individual reference quantity is changed, the following provisions shall apply:

(a) the representative fat content of milk shall remain unchanged where additional reference quantities are allocated from the national reserve;

(b) where, pursuant to Article 4 (2) of Regulation (EEC) No 3950/92, the reference quantity for deliveries is increased or established, the representative fat content associated with the reference quantity converted into deliveries shall be 3,8 %.

However, the representative fat content of the reference quantity for deliveries shall remain unchanged if the producer provides justification therefor to the satisfaction of the competent authority;

(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;

(d) in the cases referred to in the first subparagraph of (b) and (c), the resulting representative fat content shall be equal to the average of the initial and transferred or converted representative contents, weighted by the initial and transferred or converted reference quantities;

[1] OJ No L 405, 31. 12. 1992, p. 1.
[2] OJ No L 154, 25. 6. 1993, p. 30.
[3] OJ No L 57, 10. 3. 1993, p. 12.
[4] OJ No L 161, 2. 7. 1993, p. 48.

(e) in the case of producers whose entire reference quantities come from the national reserve and who have commenced production after 1 April 1992, the representative fat content of their milk shall be the average fat content of milk delivered during the first 12 months of production. However, if the representative content exceeds the average national fat content of milk collected in the Member State during the twelve-month reference period during which they commenced production :

— the producers concerned may not benefit from the negative correction provided for in the second indent of paragraph 2 unless they provide supporting evidence to the contrary,

— where Articles 6 and 7 and the fourth and fifth indents of Article 8 of Regulation (EEC) No 3950/92 are applied, the representative fat content of milk associated with the transferred reference quantity shall be reduced to the abovementioned national average content.'

*Article 2*

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 1 April 1994. However, on application by the producer, it shall apply from 1 April 1993.

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

Done at Brussels, 2 March 1994.

*For the Commission*

René STEICHEN

*Member of the Commission*