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REPORT FROM THE COMMISSION TO THE COUNCIL

assessing progress reported by Italy to the Commission and the Council on recovery of additional levy due by milk producers for the periods 1995/96 to 2001/02

(pursuant to Article 3 of Council Decision 2003/530/EC)

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The present assessment report is made by the Commission pursuant to Article 3 of Council Decision N° 2003/530/EC of 16 July 2003 on the compatibility with the common market of an aid that the Italian Republic intends to grant to its milk producers.

Under Article 1 of that Decision, the aid, constituted by the Italian Republic itself making payment to the Union of the amount due by milk producers by virtue of the additional levy on milk for the period 1995/96 to 2001/02 and by allowing these producers to pay their debt by way of deferred payment over a number of years without interest, is exceptionally considered compatible with the common market on condition that:

– repayment by producers be in full by yearly instalments of equal size, and

– the repayment period not exceed 14 years, starting from 1 January 2004.

Under Article 2 of the Decision the grant of the aid is conditional on Italy declaring the total additional levy for the periods concerned to the EAGGF and upon Italy deducting the outstanding debt in three yearly instalments of equal size from the expenditure financed by the EAGGF for November 2003, November 2004 and November 2005 respectively.

The declaration by Italy of the total additional levy for the periods concerned was duly made under cover of a letter of 26 August 2003.

Deductions of the remaining outstanding debt were duly made from expenditure financed by the EAGGF for November 2003, 2004 and 2005.

Article 3 of the Decision requires the competent Italian authorities to report annually to the Council and the Commission on the progress made by them in recovering the amount due from producers by virtue of the additional levy for the period 1995-96 to 2001-02.

The Italian authorities presented their sixth report under this provision to the Commission under cover of a letter from AGEA dated 15 November 2010 concerning the 2009 instalment payment.

Payment of levy under instalment facility.

Of the approximately 23 200 producers in total now owing levy for the 7 periods covered by the Council Decision, but having obtained orders suspending payment by national courts pending final rulings, 15 384 opted to pay under the instalment scheme. Opting to pay under the instalment scheme implied withdrawal of all pending litigation. Furthermore the failure to make any one annual instalment payment results in exclusion from the scheme and consequently exposes producers to seizure of the entire amount due with accrued interest.

The 15 384 participating producers owed in total some € 345 million in 2004 before the first instalment was paid, representing about one fourth of the total outstanding amount of levy at producer level. It therefore appears that the greater number of producers responsible for the smaller levels of individual excess deliveries opted to enter the scheme. On the other hand, the producers with more significant individual excess deliveries (some 8000 producers to whom some € 1 billion in levy due over the seven periods is billed) have instead preferred not to enter the instalment scheme. Please note however that around 58 new applications for payment by instalments, corresponding to roughly € 1.7 million, have been received by the Italian authorities during 2009.

The sixth instalment was to be paid by 11 502 producers for a total amount of € 24 501 645.02 million before 31 December 2009. The verifications carried out by the Italian authorities show that 11 354 producers have duly paid amounts totalling € 23 580 227.82 million during 2009. This means that 99 % of the producers have paid 96,2 % of the levies in time under the sixth instalment. Timely payment of the first, second, third, fourth and fifth instalments had previously been recorded to the extent of 99,6%, 97,9%, 99,5%, 99,7 % and 96,4 of the due amounts respectively. The total levy collected under the first fifth instalments therefore amounts to some € 151 million (approximately 98 % of the total amount due).

Whilst these levels are certainly indicative of an engagement on the part of the participating producers to meet their obligations, the Commission considers that the follow-up given to cases where the payment has not been recorded within the time-limit is a prime indicator of the level of commitment on the part of the authorities to ensure correct observance of the conditions of the regime and ultimately collection in full of the levy due.

In respect of the sixth instalment, the payments have not been identified for the remaining 148 producers for a value of € 921 417.20.

For the fifth instalment period 166 producers failed to make payment corresponding to € 908 072,62 at the end of 2008. According to the information received from the Italian authorities all these cases were notified by the central authorities to the relevant regional authorities to enforce the payment of the entire amount due with interest rate outside the instalment facility scheme.

Out of the 166 producers first though not to have paid it later showed that only 54 of them had actually not paid. This resulted in the revocation of the possibility to pay by instalments for these producers and the launching of the enforced recovery procedures.

Levy due for periods 1995-96 to 2001-02 not entered into the instalment payment scheme

Reference has been made to the relatively low uptake of the instalment payment facility in terms of the amount of levy entered. Approximately three-fourths of the overall outstanding amounts of unpaid levies for the concerned period have not been entered into the instalment facility scheme. The levy not covered by the 2003 scheme corresponds to € 767 million and about 91 % of this amount, roughly € 701 million, is instead being contested before the Italian courts.

In its previous assessment reports presented to the Council, the Commission expressed the view that annual reports presented by Italy should specifically address litigation pertaining to the seven periods concerned and provide details confirming payment by producers whose litigation had failed. Without such indications the Commission is not in a position to correctly

monitor progress in collection of that part of the levy which was not entered into the instalment payment facility.

However, unlike the report from Italy on the fourth instalment, the reports on the fifth and the current sixth instalment do not contain any information on these court proceedings.

Nevertheless, some additional information received by the Italian authorities in response to a Commission request shows that the Italian administration has been successful in cases corresponding to roughly € 13 million. The actual collection of these amounts corresponds to € 6.8 million. The information received in May 2010 also reveals that around € 580 million is still being contested in front of the Italian courts. In April 2009, Italy adopted a law providing for a system of reimbursing levies due with an interest rate equal to a reference rate for the Union increased by several percentage points. In July 2010, the carrying forward of payments due by virtue of this law was adopted. It was envisaged to grant this carry-forward in the context of a 'de minimis' regime.

The Commission strongly regrets the slow progress in collection of the part of the levy which was not entered into the instalment payment facility and the level of information provided by the Italian authorities, which is not sufficient. The slow progress relates both to the length of court proceedings and, in turn, the length of the recovery of the sums where litigation has terminated (the Italian report on the sixth instalment contains no information on recovery, but previous information submitted in response to a Commission request demonstrates that only some € 6.8 million had been collected up till 2010 after successful court proceedings). Moreover, the figures representing the collection of levy which had never in fact been contested, and therefore immediately recoverable, reflect a deficiency in the actual collection process (about € 18 million out of € 66 million levy never contested has still not been collected).

The Commission has been continuing to closely follow the recovery process in Italy, particularly the recovery of levy not covered by the instalment facility scheme. The Commission services have on several occasions brought their observations (including negative remarks) to the attention of the Italian authorities and requested detailed information on different aspects concerning the recovery of milk levy.

Conclusion

The Commission considers that the progress made by the Italian authorities in recovering the amount due from producers who opted to enter the instalment regime approved by the Council in 2003 for the periods 1995-96 to 2001-02 demonstrates adequate management thereof. The Commission deplores however that in the absence of any indication of amounts actually collected from participating producers who failed to make instalment payments and who were thereby excluded from further participation, it is not in a position to assess the diligence employed or the progress made in the collection of the corresponding levy. The Commission considers it indispensible that future reports from the Italian authorities contain sufficiently detailed information on such collection.

As to the amounts of levy which were not entered into the instalment regime, and regarding which litigation is being carried out in front of the Italian courts, the Commission has already expressed, in its assessment report presented to the Council in 2010, its dissatisfaction with the extremely slow progress in recovering milk quota levies and considered that the recovery of levies in this way needs to be improved significantly. However, the figures show that no

major new developments are to be noticed and the effectiveness of EU law in this case is far from being achieved with such large amount of levies being unpaid over such a long period of time.

The Commission expects future annual reports to document the evolution of the litigation pursued for the periods 1995/96 to 2001/02 and execution of final judgements confirming levy due.