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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

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

The present assessment report is made pursuant to Article 3 of Council Decision No 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, according to which the competent Italian authorities report annually to the Council and the Commission on the progress made by them in recovering the amount due from the producers by virtue of the additional levy for the period 1995/96 to 2001/02. The present report provides the Commission's assessment of the progresses reported by the Italian authorities, for 2011, for both the recovery of the claims covered by Council Decision No 2003/530/EC and the recovery of claims not covered by the said Decision.

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 including the marketing years from 1995/96 to 2001/02.

The Italian authorities presented their eighth report under this provision to the Commission under cover of a letter from AGEA dated 05 November 2012 concerning the 2011 instalment payment.

Payment of levy under the 2003 instalment facility

Of the reported 22.893 producers in total now owing levy for the seven periods covered by the Council Decision, but having obtained orders suspending payment by national courts pending final rulings, 15.431 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 15.431 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 8.000 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 53 new applications for payment by instalments, corresponding to roughly € 1,2 million, have been received by the Italian authorities in 2011.

The eighth instalment was to be paid by 11.296 producers for a total amount of € 24.339 082,69 before 31 December 2011. The verifications carried out by the Italian authorities show that 11 153 producers have duly paid amounts totalling € 23.919.444,43 during 2011. This means that 98 % of the producers have paid 98,3 % of the levies in time under the eighth instalment. Timely payment of the first, second, third, fourth, fifth, sixth and seventh instalments had previously been recorded to the extent of 99,6%, 97,9%, 99,5%, 99,7%, 96,4%, 96,2% and 90,5 of the due amounts respectively. The total levy collected under the first eight instalments therefore amounts to some € 200 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 eighth instalment, the payments have not been identified for the remaining 143 producers for a value of € 419.638,26.

For the seventh instalment period 604 producers failed to make payment corresponding to € 2.291.279,38 at the end of 2010. 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 604 producers first though not to have paid it later showed that only 59 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.

Holdings for which the possibility of payment in instalments has been revoked

Eight years on from the start of the 2003 scheme for payment in instalments, a total of 457 holdings have had the right to pay in instalments revoked, for a total debt broken into instalments of € 17.304.432,75, of which € 3.928.355,38 had been paid in instalments before the right was revoked.

€ 1.936.037,85 was recovered after the revocation, meaning that the total outstanding debt of the remaining 307 holdings is € 11.460.765,30.

The figures show that the diligence employed by the Italian administration in the collection of the corresponding levy is far from being satisfactory. Moreover, milk producers had to renounce their legal actions in front of the Italian courts in order to be entitled to enter the instalment scheme. Bearing in mind this fact, the lack of recovery seems not to be deriving from the eventual length of court proceedings, but rather it could be based on the incapacity of the Italian administration to effectively recover those amounts.

State aid implication

On 11 January 2012, the Commission decided to initiate the formal investigation procedure[1], pursuant to Article 4(4) of Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC treaty[2], in relation to the Italian *decreto-legge* No 225 of 29 December 2010, converted with amendments into law No 10 of 26 February 2011, which postponed the deadline for the payment of the levies for the 1995/96 to 2001/02 marketing years (due in principle for the 31st December 2010 according to the 2003 scheme approved by Council Decision No 2003/530/EC) until the 30th June 2011 (see art. 2, paragraph 12-duodecies). Such postponement is allegedly a misuse of the aid authorised by Council in accordance with Article 1, first indent of Council Decision No 2003/530/EC, according to which the instalments shall be paid on a yearly basis and therefore constitutes new State aid, illegal within the meaning of Article 1(f) of Regulation (EC) No 659/1999.

Levy due which did not entered into the 2003 instalment payment scheme or the 2009 system of reimbursing levies

Reference has been made to the relatively low uptake of the 2003 instalment payment facilitiy and the 2009 system of reimbursing levies (with an interest rate equal to a reference rate for the Union increased by several percentage points) in terms of the amount of levy entered. The total amount of levy which entered into the 2003 and 2009 schemes accounts for € 432 million, while approximately three-fourths of the overall outstanding amounts of unpaid levies for the period 1995/96-2008/09 (corresponding to € 1,831 billion) have not been entered into the instalment facilities schemes. The major part of the levy not covered by the 2003 and 2009 schemes is instead being contested before the Italian courts. The total levy collected outside the instalment schemes amounts so far to € 205 million (out of the € 1,831 billion total levy due).

In its previous assessment reports presented to the Council, the Commission expressed the view that annual reports presented by Italy should specifically describe the situation of the

[1] OJ C 37, 10.2.2012, p. 30.
[2] OJ L 83, 27.3.1999, p. 1.

pending litigations pertaining to the seven periods concerned and provide details confirming payment by producers whose oppositions to payment were rejected. 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.

The Commission welcomed the information contained in the report of the Italian authorities on the eighth instalment as regards the current overall levy situation.

The figures provided by the Italian administration show however that insignificant progress was made in collecting the levy that was enforceable. In fact, the levy sums that have been challenged but confirmed by the court, or for which cases are ongoing but suspension orders have not been issued correspond to roughly € 764 million. The actual collection of these enforceable amounts corresponds to around € 81 million and the amount still outstanding is € 683 million. For the period covered by the Council Decision, it can be seen that around 11% of the sums demanded and currently enforceable have actually been collected. The same percentage is also to be observed for the whole period 1995/96-2008/09.

The Commission strongly regrets the slow progress in collection of the part of the levy which was not entered into the 2003 instalment payment facility and the 2009 system of reimbursing levy. 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 (only some € 34 million had been collected out of € 372 million subject to 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 (for the milk quota period 1995/96-2001/02 about € 25 million out of € 76 million levy never contested has still to be collected, thus uncollected levy are already more than 10 years overdue). In the apparent absence of any significant evolution in this matter, the question of negligence in the performance of duty necessarily arises.

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 and the attitude of the Italian administraton relative to pending proceedings before the Italian courts.

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.

As to the amounts of levy which were not entered into the instalment regimes, and regarding which litigation is being carried out in front of the Italian courts, the Commission has already stated, in its assessment reports presented to the Council in 2010, 2011 and 2012, its dissatisfaction with the extremely slow progress in recovering milk quota levies and considers that the recovery of levies needs to be improved significantly.

The information provided by the Italian authorities in their report on the eighth instalment shows that – despite some improvements – no major new developments are to be noticed in the collection of the levy which was not entered into the instalment payment facilities 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.