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REPORT FROM THE COMMISSION TO THE COUNCIL

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

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

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This assessment report has been produced pursuant to Article 3 of Council Decision 2003/530/EC of 16 July 2003 on the compatibility with the common market of aid that the Italian Republic intends to grant to its milk producers (hereinafter: 'Council Decision'), in accordance with which the competent Italian authorities must 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 periods 1995/96 to 2001/02.

Under Article 1 of the Council Decision, the aid the Italian Republic grants to milk producers, by itself making payment to the European Union budget of the amount due from them to the EU by virtue of the additional levy on milk and milk products for the periods 1995/96 to 2001/02 and by allowing these producers to repay their debt by way of deferred payment over a number of years without interest, is exceptionally considered to be compatible with the common market on condition that:

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

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

Under Article 2 of the Council Decision, the granting of the aid is conditional upon Italy declaring the total additional levy for the periods concerned to the European Agricultural Guidance and Guarantee Fund (EAGGF) and upon it 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 by letter of 26 August 2003. Deductions of the outstanding debt were duly made from expenditure financed by the EAGGF for November 2003, 2004 and 2005.

Article 3 of the Council 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 periods 1995/96 to 2001/02.

Under that provision, the Italian authorities presented their eleventh report to the Commission by letter from the AGEA (Agenzia per le Erogazioni in Agricoltura, Italian Agricultural Payments Agency) dated 4 November 2016 concerning payment of the 2015 instalment (corresponding to the twelfth instalment).

The report provides the Commission's assessment of the progress reported by the Italian authorities for 2015 in recovering the additional levy both for the seven periods covered by the Council Decision and for those not covered by it.

Payment of the levy under the 2003 instalment scheme

The Council Decision authorising Italy to itself make payment to the European Union budget of the additional levy due from its milk producers related to 25 123 producers in 2005, the date of the first report to the Council. This figure fell to 21 189 for 2015.

Of all the reported producers subject to the levy for the seven periods covered by the Council Decision, 15 431 initially opted to pay under the 2003 instalment scheme. In 2004, before the first yearly instalment was paid, the 15 431 producers which had opted to pay under the instalment scheme owed EUR 345 million in total, which represented about one quarter of the total outstanding amount due from the producers which had refused to opt into the instalment schemes. The producers responsible for the lowest levels of excess production therefore mostly opted to pay under the instalment scheme. However, the producers with greater levels of excess production (some 8 000 producers to whom around EUR 1 billion in levy due over the seven periods is billed) instead preferred not to pay under the instalment scheme. Nevertheless, it should be pointed out that, every year, the Italian authorities receive new applications to pay by instalments. In 2015, 22 new applications were submitted, corresponding to EUR 3.4 million in total. The total amount covered by the 2003 instalment scheme is EUR 372.33 million.

The twelfth yearly instalment totalling EUR 25 390 665.74 was to be paid by 10 540 producers before 31 December 2015. The checks carried out by the Italian authorities show that 10 282 producers duly paid amounts totalling EUR 24 300 792.83 during 2015, which means that 97.55 % of the producers paid 95.7 % of the amounts due under the twelfth instalment within the time limit. As regards the eleven previous instalments, timely payment had been recorded for 99.6 %, 97.9 %, 99.5 %, 99.7 %, 96.4 %, 96.2 %, 90.5 %, 98.3 %, 96.9 %, 98.2 % and 95.9 % of the due amounts respectively. The total levy collected under the twelve instalments therefore amounts to EUR 333 357 062 (almost 97 % of the total amount due under these yearly instalments).

Whilst these levels are certainly indicative of a commitment on the part of the producers participating in the instalment scheme 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 Italian authorities to ensure correct observance of the conditions of the scheme and ultimately collection in full of the levy due.

As regards the twelfth instalment, no information is yet available for the payments for the remaining 258 producers for a sum of EUR 1 089 857. (The Italian authorities will present the progress made with those payments in the next annual report).

With regard to the eleventh instalment period, the previous report stated that payment had not been made by 31 December 2014 by 268 producers, corresponding to EUR 1 035 351. According to the information received from the Italian authorities, all these cases were notified by the central authorities to the relevant regional authorities in order to enforce payment of the entire amount due with an interest rate outside the instalment scheme. Of the 268 producers first thought not to have paid, it later emerged that 143 of them had in fact paid. By contrast, the 125 producers who had not actually paid the eleventh instalment lost their entitlement to pay by instalments and enforced recovery procedures were initiated against them.

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

The failure to pay any one yearly instalment results in exclusion from the scheme and consequently makes producers liable to seizure of the entire amount still outstanding with accrued interest.

Twelve years on from the start of the 2003 scheme for payment by instalments, a total of 855 holdings have had the right to pay by instalments revoked for a total debt, broken into instalments, of EUR 30 073 846.37.

However, of this amount, EUR 12 338 942.12 had been paid by instalments before the right was revoked and EUR 4 596 600.31 was recovered after the revocation, enabling the amount owed by 238 holdings to be paid off completely. The total outstanding debt is therefore EUR 13 149 255.86 and relates to 617 holdings.

These figures show that the diligence shown by the Italian administration in collecting the levy from the producers who were excluded from the scheme after failing to pay an instalment is far from satisfactory. Moreover, milk producers had to renounce their legal action before the Italian courts in order to be able to pay under the instalment scheme. The lack of recovery therefore seems to be due not to the potential length of court proceedings, but rather to the incapacity of the Italian administration to effectively recover those amounts.

Six-month deferral of payment and its consequences for State aid

Pursuant to Article 2(12)(k) of Italian Decree-Law No 225 of 29 December 2010, which, after amendments, became Law No 10 of 26 February 2011, Italy authorised the deferral, until 30 June 2011, of the 2010 instalment due, in principle, by 31 December 2010 under the 2003 instalment scheme approved by Council Decision 2003/530/EC.

In Commission Decision C(2013) 4046 final of 17 July 2013, the Commission declared that the deferral of the payment of the milk levy instalment due by 31 December 2010 constituted aid incompatible with the internal market. Furthermore, it considered that this aid had entailed a breach of the conditions laid down in Council Decision No 2003/530/EC, and had created – for those who benefited from it and thus had gone beyond the framework established by the Council – new State aid that was unlawful within the meaning of Article 1(f) of Council Regulation (EC) No 659/1999 and incompatible with the internal market as well.

In Commission Decision C(2013) 4046 final, the Commission directed Italy to arrange to have the incompatible aid, together with interest, refunded by the beneficiaries of the deferral of payment.

The Italian authorities have initiated the administrative procedures necessary to recover the aid. However, on 8 November 2013, Italy brought an action against the Commission Decision before the General Court (Case T-527/13). On 24 June 2015, the General Court delivered a judgment partially annulling the Commission Decision. It confirmed the Commission's approach as regards the aid inherent in deferring the payment of the instalment due by 31 December 2010, but rejected the Commission's conclusions concerning the new aid created for those who benefited from the deferral and thus had gone beyond the framework of the Council Decision. The Commission has referred the judgment to the Court of Justice (case C-467/15 P). A decision by the Court is still pending.

Additional levy due for the period 2002/2003

For the periods 1995 to 2002, Italy itself made payment to the European Union budget of the additional levy due from the producers, pursuant to Council Decision No 2003/530/EC.

Since 2004, Member States have paid the additional levy directly to the EU budget, pursuant to Council Regulation (EC) No 1788/2003 of 29 September 2003.

However, the period 2002/2003 is covered neither by the Council Decision nor by the new scheme established in 2004. Given the overrun of the national quota allocated to Italy, the Italian milk producers responsible for that overrun owed EUR 227.76 million to the EU budget for the period 2002/2003.

Of this amount,

- EUR 16.58 million has been cancelled by decision of a court of law;

- EUR 5.67 million is covered by the 2009 reimbursement system (of which EUR 2.12 million has already been paid);

- EUR 60.70 million has been recovered outside the instalment scheme; and

- EUR 24.39 million has become irrecoverable.

EUR 120.42 million in additional levy is therefore still due to the European Union budget for the period 2002/2003 corresponding to the additional levy from milk producers who opted out of the 2009 instalment scheme.

Levy charged for the periods 1995/1996 to 2008/2009 and not covered by the 2003 instalment scheme or the 2009 reimbursement system

Reference has already been made in previous reports to the low uptake of the 2003 instalment scheme and the 2009 reimbursement system (with an interest rate equal to a reference rate for the European Union increased by several percentage points) in terms of the amount of levy to be recovered.

In fact, the total amount of levy charged for the periods 1995/96 to 2008/09, as notified by Italy, is EUR 2.303 billion. Of this amount, EUR 671.8 million was recovered by Italy between 2003 and 2015: EUR 333 357 062 under the 2003 instalment scheme, EUR 6.81 million under the 2009 reimbursement system and EUR 331.65 million outside the instalment schemes.

Of the remaining amount, that is, EUR 1.63 billion:

- a small part (EUR 71.77 million) is covered by the instalment schemes established by Italy in 2003 and 2009, which some milk producers liable for payment of the levy have opted into;

- EUR 276.46 million has been declared irrecoverable following bankruptcy of the producer or cancellation of the levy by court;

- there remains EUR 1.28 billion due from the producers who have refused to opt into the instalment schemes, most of whom have contested the additional levy before the Italian courts.

The Commission welcomed the information contained in the Italian authorities' report on the twelfth instalment as regards the current overall situation concerning recovery of the levy under the instalment scheme established in 2003.

However, the figures provided by the Italian administration show that insignificant progress has been made in collecting the amounts from outside the instalment schemes (EUR 1.28 billion) which represent 94.7 % of the overall amounts still due by virtue of the levy for the periods 1995/96 to 2008/09 (EUR 1.35 billion). In particular, insignificant progress has been made in recovering the enforceable amounts as they were never contested or were contested but confirmed by the relevant court, or were contested but not covered by a suspension order.

On 31 December 2015, EUR 331.65 million had actually been collected – outside of the instalment schemes – while the enforceable amount still outstanding was EUR 799.38 million. The Commission would further point out that, of the EUR 1.28 billion still due for the period 1995/96-2008/09 outside of the instalment schemes, EUR 484 million is not yet enforceable

as it is the subject of a legal dispute and a court order has been issued for recovery to be suspended. However, it will have to be recovered once judgments have been returned in favour of the administration.

By again examining the amounts due outside of the instalment scheme, in particular those due for the period covered by the Council Decision (1995/96 to 2001/02), 34 % of enforceable amounts were found to have been recovered to date (EUR 110.37 million out of EUR 324.17 million). As regards the enforceable amounts due for the periods 1995/96-2008/09, only 25.8 % of the amounts have actually been collected (EUR 278.04 million out of EUR 1.077 billion).

Within the enforceable amounts due for the entire period, a distinction should be made between

- the amounts which were not contested: of the enforceable EUR 168.66 million, EUR 96.05 million has been recovered, which corresponds to a recovery rate of 57 %;

- the amounts which were the subject of a legal dispute, but for which no order was issued to suspend recovery: of the enforceable EUR 178.57 million, only EUR 19.29 million (10.8 %) has been recovered;

- the amounts which were confirmed by court: of the enforceable EUR 730.20 million, EUR 162.71 million (22.3 %) has been recovered.

The Commission underlines the extremely poor progress made in recovering the last two categories of amounts. Likewise, from the EUR 168.66 million which was never contested and therefore could be recovered immediately, there is still EUR 72.62 million to be recovered.

The Commission greatly regrets the slow progress made in recovering the part of the levy which was not covered by the 2003 instalment scheme or the 2009 reimbursement system.

The Commission has been continuing to closely follow the recovery process in Italy, particularly the recovery of the levy not covered by the instalment scheme. The Commission departments 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 the milk levy.

Nevertheless, in spite of numerous repeated requests by the Commission, the majority of the amounts due have still not been recovered by the Italian authorities.

The Commission sent Italy a letter of formal notice concerning the matter in June 2013, followed by a reasoned opinion in July 2014. As Italy's replies did not indicate that any significant progress had been made with the recovery, the Commission decided on 26 February 2015 to bring action before the Court of Justice of the European Union under Article 258 of the TFEU for failure to fulfil an obligation. On 6 August 2015, the Commission therefore brought action against Italy for failing to fulfil its obligation to take sufficient measures to guarantee the effective and efficient recovery of levies on surplus from milk producers who overran their individual quotas during the years in which Italy exceeded its national milk quota (case C-433/15).

Conclusion

The Commission considers that, insofar as the conditions for the implementation of the instalment scheme approved by the Council in 2003 are met, the progress made by the Italian authorities in recovering the amount due from the producers who opted to pay under the

instalment scheme for the periods 1995/96 to 2001/02 demonstrates that the scheme has been managed in a satisfactory manner.

As for the amounts of levy not covered by the instalment schemes, the Commission has already expressed – in its successive assessment reports to the Council since 2010, then in the letter of formal notice sent to Italy on 20 June 2013, and in the reasoned opinion issued on 10 July 2014 – its dissatisfaction with the lack of significant progress in recovering the milk quota levy.

According to the information provided by the Italian authorities in their report on the twelfth instalment, in this case, no major new developments can be reported in the actual collection of the levy not covered by the instalment schemes. In view of the large amount of the unpaid levy and the length of time it has gone unrecovered, it must be concluded that the efficiency and effectiveness of EU law is and has been far from ensured by the Italian authorities.

That is why on 6 August 2015 action was brought by the Commission before the Court of Justice of the European Union under Article 258 of the TFEU for failure to fulfil an obligation (Case C-433/15). The Court has not yet ruled on the matter.