COMMISSION OF THE EUROPEAN COMMUNITIES

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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 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[1].

Under Article 1 of that Decision, the aid, constituted by the Italian Republic itself making payment to the Community 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 third report under this provision to the Council and the Commission under cover of a letter from AGEA dated 31 October 2007; it concerns the 2006 instalment payment.

PAYMENT OF LEVY UNDER INSTALMENT FACILITY

Of the 25 000 producers in total owing levy for the seven periods covered by the Council Decision, but having obtained orders suspending payment by national courts pending final rulings, approximately 15 200 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 15 200 participating producers owed some €345 million, representing about one third of the total outstanding amount of levy at producer level. It thus appears that the greater number of producers responsible for the smaller levels of individual excess deliveries opted to enter

[1] OJ L 184, 23.7.2003, p. 15.

the scheme. On the other hand, the producers with more significant individual excess deliveries (10 000 producers to whom some €695 million in levy due over the seven periods is billed) have instead preferred to pursue their litigation before the Italian courts.

The third instalment was to be paid by 12 426 producers for a total amount of €25 110 128 before 31 December 2006. A slight increase in the figures for the third instalment compared to those forecast in previous reports is due to some increased participation in the regime in 2006 further to the reopening of time limits to apply on condition of immediate payment of the first three instalments and withdrawal of all litigation. 0n the other hand the reduction in the number of producers paying the third instalment compared to the 15 200 producers who originally participated in the regime is due to the decision of some 2 500 producers to pay all of their outstanding levy in the first and second instalment years.

Timely payment was recorded for 99,5% of the amount due under the third instalment, on the part of 99,4% of the producers concerned.

Timely payment of the first and second instalments had previously been recorded to the extent of 99,6% and 97,9% of the due amounts respectively. The total levy collected under the first three instalments amounts to some €78,6 million.

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 this regard the Commission notes that the third report fails to provide any indication of the amounts of levy actually collected further to controls and enforcement procedures for the first two instalment years in respect of the relatively few producers who had failed to make payments. Given that such producers are thereby excluded from further participation in the 14-year scheme and that all of their outstanding levy for the seven periods covered by the Council Decision therefore falls due for immediate collection with accrued interest, such information is to be considered necessary for the purposes of the annual reports.

LEVY DUE FOR PERIODS 1995/96 TO 2001/02 NOT ENTERED INTO THE INSTALMENT PAYMENT SCHEME AND STILL CONTESTED BEFORE THE ITALIAN COURTS

Reference has been made to the relatively low uptake of the instalment payment facility in terms of the amount of levy entered. This implies that the impediment to immediate collection constituted by the suspension of payment orders granted by Italian courts pending final judgement persisted for some 10 000 producers to whom levy of the order of €695 million is billed and who chose to pursue their litigation. The relatively low uptake of the option to join the regime in 2006 did not significantly mitigate this situation.

In its assessment report presented to Council in February 2006, the Commission expressed the view that future 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 it 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.

In response to this request the Italian report provides a listing of litigated amounts of levy pertaining to the seven periods concerned in respect of which Italian courts found in favour of the administration in the course of 2005 and 2006, for a total of €1 681 000, of which payment of just €231 700 would appear to have been recorded at the date of the report. It is

indicated that procedures for enforced recovery have been instigated for the greater part of the amounts pertaining to 2005 judgements.

The Commission considers the information thus provided to be too limited to put it in a position to assess whether progress in collection of that part of the levy which was not entered into the instalment payment facility and for which litigation has terminated is optimal. With regard to judgements handed down in the course of 2005, it would appear anomalous that the greater part of the confirmed debt had not been recovered in October 2007. In the light of this, the general reference to the instigation of enforced recovery proceedings should be expanded upon with details pertaining to the current status of the cases involved.

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 for payment of the additional levy for the periods 1995/96 to 2001/02 demonstrates adequate management thereof. The Commission would however point out that in the absence of any indication of amounts actually collected from the few 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.

As to the amounts of levy which were not entered into the instalment regime, and regarding which litigation has culminated in final judgements favourable to the administration, the Commission considers the information provided to be too limited to put it in a position to assess whether progress with recovery is optimal. It therefore requests that future annual reports provide the necessary detail on such cases.