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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.

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 fifth report under this provision to the Commission under cover of a letter from AGEA dated 23 November 2009 concerning the 2008 instalment payment.

Payment of levy under instalment facility

Of the approximately 23 300 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, 15 403 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 15 403 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 95 new applications for payment by instalments, corresponding to roughly € 3 million, have been received by the Italian authorities during 2008.

The fifth instalment was to be paid by 12 038 producers for a total amount of € 25 125 386,94 before 31 December 2008. The verifications carried out by the Italian authorities show that 11 872 producers have duly paid amounts totalling € 24 217 314,32 during 2008. This means that 98,5 % of the producers have paid 96,4 % of the levies in time under the fifth instalment. Timely payment of the first, second, third and fourth instalments had previously been recorded to the extent of 99,6%, 97,9%, 99,5% and 99,7 % of the due amounts respectively. The total levy collected under the first four instalments therefore amounts to some € 127 million (98.6 % of 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.

For the fifth instalment period 166 producers still had not paid instalments 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 in order to enforce the payment of the entire amount due (including interest).

However, in this regard the Commission notes that the fifth Italian report fails to provide any indication of the amounts of levy actually collected further to the controls and enforcement efforts made by the Italian authorities

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. 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 8 000 producers to whom levy of the order of around € 1 billion is billed and who chose not to enter the instalment scheme.

In its previous assessment reports presented to the Council, the Commission has 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 previous report from Italy, the report on the fifth instalment does not contain any information on these court proceedings.

Nevertheless, some additional information received by the Italian authorities in August 2009 shows that the Italian administration has been successful in cases corresponding to roughly € 11 million. The Commission has, however, not received information about the actual collection of these amounts. The information received in August 2009 also reveals that around € 529 million is still being contested in front of the Italian courts.

The Commission 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 (of the roughly € 529 million still pending, some € 527 million relates to court cases that are 5 - 10 years old) and, in turn, the length of the recovery of the sums where litigation has terminated (the Italian report on the fifth instalment contains no information on recovery, but previous information demonstrates that only some € 300 000 had been collected up till 2008 after successful court proceedings).

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 deplores the extremely slow progress and considers that the recovery of levies in this way needs to be improved significantly. As mentioned above, the Commission considers that it is necessary that future Italian reports contain sufficiently detailed information on the collection of the part of the outstanding levies not entered into the instalment scheme.