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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. The report provides the Commission's assessment of the progress reported by the Italian authorities for 2012 in recovering the additional levy for both the periods covered by the Council Decision and those not covered by it.

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), now the European Agricultural Guarantee Fund (EAGF), 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 ninth report to the Commission by letter from the AGEA (*Agenzia per le Erogazioni in Agricoltura*, Italian Agricultural Payments Agency) dated 28 October 2013 concerning payment of the 2012 instalment.

Payment of the levy under the 2003 instalment scheme

The Council Decision authorising Italy to itself make payment to the Community 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 22 249 for 2012.

Of all the reported producers subject to the levy for the seven periods covered by the Council Decision, 15 431 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 levy due from the producers. 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. It should, nevertheless, be pointed out that 53 new applications to pay by instalments, corresponding to roughly EUR 1.2 million, were received by the Italian authorities in 2011. Similarly, 255 new applications to pay under the scheme were submitted in 2012, corresponding to roughly EUR 13 million in total.

The ninth yearly instalment totalling EUR 25 812 027.25 was to be paid by 11 430 producers before 31 December 2012. The checks carried out by the Italian authorities show that 11 145 producers duly paid amounts totalling EUR 25 025 344.42 during 2012, which means that 98 % of the producers paid 96.9 % of the amounts due under the ninth instalment within the time limit. Timely payment of the first, second, third, fourth, fifth, sixth, seventh and eighth instalments had previously been recorded for 99.6 %, 97.9 %, 99.5 %, 99.7 %, 96.4 %, 96.2 %, 90.5 % and 98.3 % of the due amounts respectively. The total levy collected under the first nine instalments therefore amounts to some EUR 238.4 million (approximately 97 % of the total amount due under these yearly instalments).

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

As regards the ninth instalment, no information is available for the payments for the remaining 285 producers for a sum of EUR 786 682.83.

With regard to the eighth instalment period, 143 producers failed to make payment corresponding to EUR 419 638.26 at the end of 2011. 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 143 producers first thought not to have paid, it later emerged that 106 of them had in fact paid. By contrast, the 37 producers which had not actually paid the eighth 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.

Nine years on from the start of the 2003 scheme for payment by instalments, a total of 498 holdings have had the right to pay by instalments revoked for a total debt, broken into instalments, of EUR 18 531 964.41, of which EUR 4 543 929.20 had been paid by instalments before the right was revoked.

EUR 2 822 001.34 was recovered after the revocation, meaning that the total outstanding remaining debt is EUR 11 118 742.39 and relates to 192 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 have had to renounce their legal actions before the Italian courts in order to be entitled 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.

Under 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, this aid amounted to failure to respect the conditions laid down in Council Decision No 2003/530/EC, and created, for those who benefited from it, new state aid, unlawful within the meaning of Article 1(f) of Council Regulation No 659/1999 and also incompatible with the internal market.

The Commission directed Italy to arrange to have the incompatible aid, together with interest, refunded by the beneficiaries of the deferral of payment.

Italy has initiated the administrative procedures necessary to recover the aid. However, it has brought an action against the Commission Decision before the General Court (Case T-527/13). The case is still pending.

Additional levy due for the period 2002/2003

For the periods 1995 to 2002, Italy itself made payment to the Community 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 Community 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, the Italian milk producers responsible for that overrun owed EUR 227.88 million to the EU budget for the period 2002/2003.

Of this amount, EUR 54.95 million has been paid to the EU budget, with EUR 1.19 million being paid under the 2009 instalment scheme and EUR 53.76 million being paid outside the scheme.

EUR 47.48 million has been declared irrecoverable by a court decision or following the bankruptcy of the producer liable for payment.

On 31 December 2012, the milk producers still owed EUR 125.45 million to the EU budget by virtue of the additional levy for the period 2002/2003. Of this amount, EUR 5.04 million is covered by the 2009 instalment scheme.

Levy due which is not covered by the 2003 instalment scheme or the 2009 reimbursement system

Reference has been made to 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.

Thus, the total amount of levy to be recovered for the periods 1995/96 to 2008/09 is EUR 2.264 billion. Of this amount, EUR 455 million was recovered by Italy between 2003 and 2012.

Of the remaining amount, that is, EUR 1.808 billion:

- a small part (EUR 228 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 158 million has been declared irrecoverable following bankruptcy of the producer or annulment by court;

- there remains EUR 1.423 billion of debt due from the producers who have refused to join the instalment schemes, most of whom have contested the additional levy before the Italian courts.

Thus, around 86 % of the overall amounts still due by virtue of the levy for the periods 1995/96 to 2008/09 (EUR 1.650 billion) are not covered by the 2003 and 2009 instalment schemes.

Furthermore, the total amount of levy collected outside the instalment schemes amounts so far to just EUR 268.43 million (out of the total amount originally due of EUR 1.8 billion). According to the report submitted by the Italian authorities, this extremely low rate could be due to the large number of court cases brought by the producers who are liable for payment of the levy and who had the recovery process suspended.

In its previous assessment reports presented to the Council, the Commission expressed the view that annual reports submitted by Italy should specifically describe the situation concerning the pending court cases and provide details confirming payment by producers whose oppositions to payment were rejected in court. Without such details, the Commission was not previously in a position to correctly monitor progress in the collection of the part of the levy not included in the instalment scheme.

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

However, the figures provided by the Italian administration show that insignificant progress has been made in collecting the amounts not included in the instalment schemes. In particular, insignificant progress has been made in recovering the enforceable amounts which were never contested or which were contested but confirmed by the relevant court, or for which cases are ongoing but suspension orders were not issued.

On 31 December 2012, EUR 130 million of these enforceable amounts had actually been collected, while the amount still outstanding was EUR 790 million.

For all the periods from 1995/96 to 2008/2009, 22.5 % of the amounts demanded and currently enforceable have actually been collected. As regards the periods covered by the

Council Decision, the amounts collected correspond to 29 % of the amounts currently enforceable.

Within the enforceable amounts, a distinction should be made between

- the amounts which were not contested: of the enforceable EUR 196.41 million, EUR 130.38 million has been recovered, which corresponds to a recovery rate of 66 %;

- the amounts which were the subject of a legal dispute, but for which no order was issued to suspend recovery: of the enforceable EUR 355.43 million, only EUR 54.78 million (15 %) has been recovered;

- the amounts which were confirmed by court: of the enforceable EUR 468.37 million, only EUR 44.68 million (9.5 %) has been recovered.

The Commission not only underlines the extremely poor progress made in recovering the last two categories of amounts, but also notes that even for the amounts which were never contested and therefore could be recovered immediately, there is still EUR 66 million to be recovered. With regard to the levy due for the periods 1995/96 to 2001/02, this means that EUR 21 million has remained unrecovered for over ten years.

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.

On 20 June 2013, the European Commission ordered Italy, under Article 258 TFEU, to submit its observations on the insufficient action taken to address the shortcomings identified in the recovery of the additional levy for the periods 1995 to 2009.

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 assessment reports presented to the Council in 2010, 2011, 2012 and 2013, and then in the letter of formal notice sent to Italy on 20 June 2013, its dissatisfaction with the lack of significant progress in recovering the milk quota levy.

The Commission takes note of the fact that Italy has initiated administrative procedures to recover the aid declared incompatible by Commission Decision C(2013) 4046 final of 17 July 2013.

However, according to the information provided by the Italian authorities in their report on the ninth 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. This has led the Commission to launch infringement proceedings under Article 258 TFEU.