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 N° 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 fourth report under this provision to the Commission under cover of a letter from AGEA dated 3 October 2008 concerning the 2007 instalment payment. This report was subsequently updated by the Italian authorities, which led to changes in a number of elements relevant to this report.

Payment of levy under instalment facility.

Of the 23 460 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, 15 355 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 and consequently exposes producers to seizure of the entire amount due with accrued interest.

The 15 355 participating producers owed in total some € 345 million in 2004 before the first instalment was paid, representing about one third 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 n the other hand, the producers with more significant individual excess deliveries (some 8000 producers to whom some € 680 million in levy due over the seven periods is billed) have instead preferred to pursue their litigation before the Italian courts. Please note however that 150 new applications for payment by instalments, corresponding to roughly € 3 million, have been received by the Italian authorities during 2007.

The fourth instalment was to be paid by 12 426 producers for a total amount of € 25 074 413,99 before 31 December 2007. The verifications carried out by the Italian authorities show that 12 183 producers have duly paid amounts totalling € 25 006 160,19 during 2007. This means that 98 % of the producers have paid 99.7 % of the levies in time under the fourth instalment. Timely payment of the first, second and third instalments had previously been recorded to the extent of 99,6%, 97,9% and 99,5% of the due amounts respectively. The total levy collected under the first four instalments therefore amounts to some € 103 million (99.2 % 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 fourth instalment period 63 producers still had not paid instalments corresponding to € 68 253.80 at the end of 2007. 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 fourth Italian report fails as last year to provide any indication of the amounts of levy actually collected further to the controls and enforcement efforts made by the Italian authorities. Nevertheless, some additional information received by the Italian authorities in December 2008 shows that € 1 204 511,18 (i.e. 15 % of the total outstanding amount) has been collected so far in regard to levies of producers that did not pay their instalments on time during one of the four first instalments. These producers therefore had to pay their entire outstanding debt with accrued interest and were excluded from further participation in the 14-year scheme. This means that € 6 878 274,31 (i.e. 85 % of the total outstanding amount) still has to be collected in relation to producers that have been excluded from the instalment-scheme due to late payment.

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 8 000 producers to whom levy of the order of € 680 million is billed and who chose to pursue their litigation.

In its assessment reports presented to the Council in 2006 and 2007, 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 the Commission was not previously 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 provided 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 € 1 533 584,36, of which payment of just € 346 833,70 would appear to have been recorded at the date of the report. After requesting some more information on this topic the Commission received complementary information in December 2008 corresponding also to court judgments delivered in 2007 and 2008. This later information shows that in total levies amounting to € 4 108 523,39 (including the € 1 533 584,36 mentioned above) had been decided in favour of the administration during 2005-2008 (i.e 0,6 % of the total outstanding amount). However, only € 314 960,15 seem to have been collected by the Italian authorities in December 2008 (i.e. 7,7 % of the amount decided in favour of the administration).

After additional explanations from the Italian authorities it has also been clarified that the amount of levies decided in favour of the administration mentioned above includes cases where an appeal is possible. This can partly explain why the collected amounts are fairly low. The Commission expresses the view that future annual reports presented by Italy should specify the amount of levies that has ultimately been decided in favour of the administration in order to give a clearer picture of the progress made in this regard. In the view of the Commission it would also be welcomed to receive figures of the cases, if any, where the milk producers contesting the levies have been successful in front of the Italian courts.

The Commission takes note of the slow progress in collection of the part of the levy which was not entered into the instalment payment facility. This relates both to the length of court proceedings (only some € 4 million out of € 680 million have been decided so far) and, in turn, the length of the recovery of the sums where litigation has terminated (only some € 300 000 of € 4 million). With regard to, above all, judgements handed down in the course of 2005 and 2006, it would appear anomalous that the greater part of the confirmed debt had not been recovered in December 2008.

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 would however point out that the indication of amounts actually collected from the few participating producers who failed to make instalment payments and who were thereby excluded from further participation, show that the diligence employed or the progress made in the collection of the corresponding levy needs to be improved.

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 regrets the slow progress and considers that the recovery of levies in this way is not satisfactory.