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

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 a report under this provision to the Council and the Commission concerning the 2004 instalment payment under cover of a letter from the Minister for Agriculture dated 3 October 2005. That report did not contain sufficiently updated data to permit the Commission to come to an assessment with regard to control and in particular to the follow up given in cases where the payment deadline had not been met. A report providing required updated data on the 2004 instalment and concerning the 2005 instalment was presented under cover of a letter from the Minister for Agriculture dated 5 October 2006.

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

**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 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.

It emerges from the breakdown of payments due under the 14 annual instalments provided in Annex 3 to the report of the Italian authorities that of the producers participating, some 2 280 opted to pay all of their outstanding levy debt in a single instalment, which accounts for the total due of the first instalment exceeding that of the second by some € 3 million.

Timely payment of the first and second instalments was recorded to the extent of 99,6% and 97,9% of the due amounts respectively, amounting to actual collection of approximately €53,5 million. It may be expected, on the basis of experience with the first instalment, that the definitive payment percentage for the second instalment will be higher than currently indicated after verification controls have taken place.

Whilst these levels are certainly indicative of a general 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. The relatively low number of unrecorded payments should moreover contribute to a rapid conclusion of controls and instigation where appropriate of seizure procedures.

The Commission is not entirely satisfied in this regard with the indication that the results of inquiries pursued by the competent regional authorities with a view to verifying the payment status of the first instalment which was due by 31 December 2004, were not yet reported in 32 of a total of 269 instances. Information does not appear to be available as to the precise stage of completion of the inquiries to verify the payment status in the outstanding cases of the second instalment.

**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.

As the producers who did opt for the instalment facility represented in excess of 37 000 levy bills[2] litigated over the different periods, the volume of litigation which has thus been abandoned is however significant. This should be expected to contribute to a speedier passage of the remaining litigation through the courts.

The abandonment of litigation as a precondition to enter the instalment scheme took place in 2004. Annex 18 to the second report indicates that in the course of 2005, judgements were made in favour of the administration regarding contested levy of the order of €191 million. This contrasts with judgements or provisional suspensions in favour of producers of the order of €37 million. These judgements largely concern levy periods later than the seven concerned by the Council Decision.

The Commission would expect future reports to specifically address litigation pertaining to the seven periods concerned and to provide details confirming payment by producers whose litigation has 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.

**MISCELLANEOUS**

Further elements are raised by the reports which do not as such concern progress in the collection of the levy for the periods covered by the Council Decision but are advanced as indications of a generally improved system. Reference is made notably to a drastic reduction in the number of producers registering excess production, falling from some 12 000 in 2002/03 to 920 (of a total of some 48 000 producers) in 2005/06. This positive development is offset by the lack of any sustained decrease in production, which after a period of some decline is up by 230 000 tonnes in 2005/06 compared with 2004/05.

The Commission notes the importance of the legislation introduced on 25 June 2005 restricting from that date litigation concerning the additional levy to the sphere of competence of the administrative courts. According to information provided to the Commission by the Italian authorities, the bulk of the interim suspension orders granted in the past emanated from civil courts or Justices of the peace. Henceforth, a significantly reduced amount of litigation – notably a consequence of the drop in numbers of producers owing levy – is exclusively channelled through the administrative courts, thus ensuring that the administration is party to every case.

**CONCLUSION**

The Commission considers that the progress made by the Italian authorities in recovering the amount due from producers by virtue of the additional levy for the period 1995/96 to 2001/02 demonstrates adequate management of the instalment payment scheme subject to ensuring that all verification controls of cases of non payment are completed by the regional authorities with the required diligence. The Commission recalls that the evolution of the litigation pursued for the periods 1995/96 to 2001/02 and execution of final judgements confirming levy due should be documented in future annual reports.

[2] Information obtained independently from Italian authorities.