COMMISSION REGULATION (EEC) No 1371/84

of 16 May 1984

laying down detailed rules for the application of the additional levy referred to in Article 5c of Regulation (EEC) No 804/68

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organization of the market in milk and milk products [1], as last amended by Regulation (EEC) No 856/84 [2], and in particular Article 5c (7) thereof,

Having regard to Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector [3], and in particular Article 2 (2), the last subparagraph of Article 3 (3), Articles 6 (3), 7 (1), 9 (3) and 11 (a) and (b), and the second paragraph of Article 13 thereof,

Having regard to Council Regulation (EEC) No 1223/83 of 20 May 1983 on the exchange rates to be applied in agriculture [4], as last amended by Regulation (EEC) No 855/84 [5], and in particular Article 4 (3) thereof,

Whereas Article 5c of Regulation (EEC) No 804/68 introduced an additional levy payable by the producers or purchasers of cows' milk with a view to curbing the growth in milk production ; whereas detailed rules for the application of this levy should be adopted in the light of the provisions of Regulation (EEC) No 857/84 ;

Whereas provision should be made for the distribution of the Community reserve referred to in Article 5c (4) of Regulation (EEC) No 804/68, which has been fixed at 335 000 tonnes for the period 2 April 1984 to 31 March 1985 ; whereas, in line with the purposes for which this reserve was intended, further quantities should be covered by guarantee in those countries where implementation of the additional levy scheme poses particular problems for supply or production structures ; whereas in Ireland and the region of Northern Ireland, the contribution which the dairy industry makes directly or indirectly to the gross national product is very substantially greater than the average for the other regions of the Community ; whereas the scope for developing alternatives to milk production is very limited in these regions ; whereas implementation of the new scheme could also be facilitated in Luxembourg by the granting of an additional quantity over the period in question ;

Whereas, in order that the Member States may make use of the option referred to in Article 2 (2) of Regulation (EEC) No 857/84, whereby the reference quantities allocated to producers and buyers may be adjusted to take account of certain special situations, conditions should be laid down for the application of the said provisions ; whereas provision should be made so that Member States may adjust the reference quantities by defining the categories of person liable in terms of the annual quantities delivered by the latter and in relation to the average annual deliveries per holding in the Member State concerned ; whereas the categories of person liable could also be defined in terms of the trend in deliveries over a given period, in relation to the average trend in the Member State concerned ; whereas it is appropriate to provide that the Member States may adjust the reference quantities by region where the trend in deliveries differs substantially from the average trend recorded in the Member State concerned ;

Whereas, for the purposes of applying Article 6 of Regulation (EEC) No 857/84 as regards the determination of the reference quantities to be allocated to producers selling for direct consumption, and in particular for the purposes of reconciling the requirements laid down in paragraphs 1 and 2 of that Article, provision should be made so that Member States may correct, by a uniform percentage, the reference quantities obtained in accordance with paragraph 1 and thus comply with the provisions of paragraph 2 of the said Article ;

Whereas, with a view to determining the reference quantities for producers holding very few dairy cows and selling for direct consumption, provision should be made, for administrative reasons and in the interests of the said producers themselves, so that Member States may determine reference quantities on a standard basis ;

Whereas the development of milk production structures should be encouraged as far as possible by enabling persons liable for the levy to move more easily between the categories defined in Article 5c (1) and (2) of Regulation (EEC) No 804/68, provided that the provisions of the said Regulation are observed ;

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(1) OJ No L 148, 28. 6. 1968, p. 13.
(2) OJ No L 90, 1. 4. 1984, p. 10.
(3) OJ No L 90, 1. 4. 1984, p. 13.
(4) OJ No L 132, 21. 5. 1983, p. 33.
(5) OJ No L 90, 1. 4. 1984, p. 1.

Whereas, as provided for in Article 11 (c) of Regulation (EEC) No 857/84, the characteristics of the milk considered to be representative, and in particular the fat content level, should be determined so that the quantities of milk delivered or purchased may be established ; whereas, in order to ensure the equivalence of the results obtained by applying formula B, differentiated characteristics should be established for deliveries made to a purchaser ;

Whereas, as regards the arrangements for declarations of deliveries or sales on the one hand and the payment of the additional levy on the other, it is justifiable to make special provision for certain regions of the Community to take account of their particular production structures and the administrative problems confronting them ;

Whereas the Management Committee for Milk and Milk Products has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION :

Article 1

For the period 2 April 1984 to 31 March 1985, the Community reserve referred to in Article 5c (4) of Regulation (EEC) No 804/68 shall be distributed as follows :

— Ireland :	245 000 tonnes,
— Luxembourg :	25 000 tonnes,
— United Kingdom (for the region of Northern Ireland) :	65 000 tonnes.

Article 2

1. Member States which make use of the option indicated in the second sentence of Article 2 (2) of Regulation (EEC) No 857/84 to vary the percentage applied to determine the reference quantities for producers and/or purchasers for the application of formula A and/or B shall take account of one of the following factors :

(a) the level of deliveries of certain categories of persons liable for the levy ; these categories shall be defined in terms of annual deliveries and in relation to average deliveries per holding in the Member State ;

(b) the trend of deliveries in certain regions between 1981 and 1983, if the difference between the trend of deliveries in these regions and the average trend of deliveries in the Member State is greater than 2 % ;

(c) the trend between 1981 and 1983 in deliveries of certain categories of persons liable for the levy as defined in terms of the said trend and, where appropriate, in accordance with subparagraph (a) above in relation to the average trend of deliveries in the Member State.

2. Member States which make use of the option referred to in paragraph 1 shall notify the Commission of the arrangements that they adopt.

Article 3

The list of special situations justifying the use of a different reference calendar year under Article 3 (3) of Regulation (EEC) No 857/84 shall also include :

— compulsory appropriation of a considerable part of the utilizable agricultural area of the producer's holding, resulting in a temporary reduction of the fodder area of the holding,

— if the producer runs the holding himself, occupational incapacity of long duration,

— theft or accidental loss of all or part of the dairy herd, where this has had a significant effect on the milk production of the holding.

Article 4

1. Before a date fixed by the Member State, producers of milk and/or milk products to whom Article 5c (2) of Regulation (EEC) No 804/68 applies shall send to the competent authority designated by the Member State an application for registration accompanied by a statement listing the products and quantities of these products sold by direct sale during the 1981 calendar year.

However, the abovementioned date shall be not later than 1 September 1984.

2. Producers who began the direct sale of milk and milk products from 1 January 1981 but before 1 April 1984 or who have greatly altered their operations since 1 January 1981 shall in the statement accompanying their application for registration list the products and quantities of these products sold by direct sale in their last 12 months of operation, expressed where appropriate in terms of milk equivalent.

If their operations cover less than 12 months they shall list the products and quantities of these products sold during the actual selling period.

3. By way of derogation from the provisions of paragraphs 1 and 2, Member States may provide that producers with fewer than four dairy cows shall have the option of stating merely the number of dairy cows which they have ; Member States may also make it compulsory to state the nature of the products marketed.

4. Member States shall, within the limits of the quantities referred to in Article 6 (2) of Regulation (EEC) No 857/84 and fixed in the Annex thereto, assign :

(a) to producers to whom paragraph 1 applies, a reference quantity corresponding to their direct sales in the 1981 calendar year plus 1 % and corrected where appropriate by a uniform percentage in order to comply with the abovementioned Article 6 (2) ;

(b) to producers to whom paragraph 2 applies, a reference quantity corresponding to their sales in their last 12 months of operation before 1 April 1984, weighted by a percentage where appropriate. In the case of producers who have been conducting operations for less than 12 months, Member States shall determine an annual sales quantity on the basis of actual sales and assign to such producers a reference quantity in accordance with the provisions set out above.

However, Member States shall assign to producers having recourse to the derogation provided for in paragraph 3 a reference quantity fixed at a standard rate, account being taken of the number of dairy cows held by the producer, the average milk yield per cow for the region and, where appropriate, the average percentage of milk marketed and any deliveries to purchasers.

5. Producers who have obtained a reference quantity by application of paragraph 4 and who cease direct sales totally or in part may deliver their milk and milk products to a purchaser, with formula A or B applying, provided that the Member State can grant them a reference quantity from the guaranteed quantity specified in Article 5c of Regulation (EEC) No 804/68.

6. Producers who hold a reference quantity in application of formula A or formula B and who cease their deliveries to purchasers may obtain a reference quantity under Article 6 of Regulation (EEC) No 857/84 provided that the Member State can grant them one from the quantity referred to in Article 6 (2) of that Regulation and fixed in the Annex to that Regulation.

7. Member States may, within the limits of the quantities made available by application of paragraph 5 and by cessation of activity, grant additional reference quantities or specific quantities to producers who sell for direct consumption provided that the terms of Articles 3 and 4 (1) (b) and (c) of Regulation (EEC) No 857/84 are observed.

Article 5

For the purposes of applying Article 7 (1) of Regulation (EEC) No 857/84 and without prejudice to Article 7 (3) of the same Regulation, the following rules shall apply to the transfer of reference quantities granted to producers and purchasers in application of formulas A and B and of reference quantities granted to producers selling for direct consumption :

1. Where an entire holding is sold, leased or transferred by inheritance, the corresponding reference quantity shall be transferred in full to the producer who takes over the holding.

2. Where one or several parts of a holding is sold, leased or transferred by inheritance, the corresponding reference quantity shall be distributed among the producers operating the holding in proportion to the areas used for milk production or according to other objective criteria laid down by Member States. Member States may disregard transferred parts the area of which used for milk production is less than a minimum size which they shall determine.

3. The provisions of subparagraphs 1 and 2 above shall also be applicable in other cases of transfer which, under the various national rules, have comparable legal effects as far as producers are concerned. Member States may apply the provisions of subparagraphs 1 and 2 in respect of transfers taking place during and after the reference period.

Article 6

1. Where formula B is applied, purchasers' reference quantities shall be adjusted to take account of :

(a) additional quantities assigned to producers under Articles 3 and 4 of Regulation (EEC) No 857/84 ;

(b) quantities granted under Article 4 (5) of this Regulation ;

(c) transfers as referred to in Article 5 of this Regulation ;

(d) replacements as referred to in Article 7 (2) of Regulation (EEC) No 857/84, including changes by producers from one purchaser to another.

2. In cases where persons liable to pay the levy have commenced operations after the beginning of the reference period, Member States may, for the purpose of applying formulas A and B, assign them reference quantities on the same basis as indicated in Article 4 (4) (b).

Article 7

Member States which make use of the option provided for in Article 8 of Regulation (EEC) No 857/84 shall notify the Commission in advance of their proposed measures. At the end of each 12-month period, they shall also provide the Commission with a statement of the quantities reallocated pursuant to such measures.

Article 8

The equivalences to be used for calculating the levy applicable to deliveries of cream and butter shall be :

(a) 1 kilogram of cream =

$$\frac{26{,}3 \text{ kilograms of milk} \times \% \text{ fat content of the cream}}{100}$$

(b) 1 kilogram of butter = 22,5 kilograms of milk.

For cheeses, Member States may either determine equivalences on the basis of the dry matter and fat contents of the types concerned, or fix standard milk equivalents on the basis of the number of dairy cows held by the producer and the average milk yield per cow for the region.

Article 9

1. For the purposes of Article 11 (c) of Regulation (EEC) No 857/84, the characteristics of the milk considered to be representative shall be those recorded for the milk delivered or purchased during the preceding 12-month period.

2. If, when the final account for each person liable is calculated in accordance with Article 9 (1) (b) of Regulation (EEC) No 857/84, it is found that the average fat content of the milk delivered or purchased during the 12-month period concerned is more than 1 gram per kilogram of milk in excess of the average recorded for the preceding 12 months, the quantity of milk used as the basis for calculating the levy shall be increased by 2,6 % for each gram of additional fat per kilogram of milk.

Where formula B is applied, the levy shall be increased by the abovementioned percentage if the fat content is more than 0,6 g in excess of the 12-month average.

These provisions shall not be applied if the person liable to pay the levy can provide evidence satisfying the competent authority of the Member State that this excess is a normal result of production conditions.

Article 10

For the purposes of applying Articles 9 and 10 of Regulation (EEC) No 857/84, Member States may decide to use three four-week periods instead of quarters and to use periods of 52 weeks instead of 12-month periods. In this case the first 52-week period shall commence on the Sunday or Monday following 2 April 1984.

Article 11

For the purposes of applying formulas A and B, purchasers shall hold at the disposal of the competent authority of the Member State records covering the previous three years and showing on a quarterly basis for each producer :

(a) his name and address ;

(b) the quantities of milk purchased during the quarter concerned and during the corresponding quarter of the reference calendar year adopted by the Member State ;

(c) the corresponding reference quantities, including any granted under Articles 3, 4 and 7 of Regulation (EEC) No 857/84 ;

(d) the quantities of milk and/or milk equivalent purchased during the quarter concerned which are in excess of the aggregate reference quantity calculated at the end of the corresponding quarter of the reference calendar year adopted by the Member State.

For the first two 12-month periods, the records referred to in the first subparagraph shall be kept :

— in Greece : for the entire country,

— in Italy : for the mountain areas defined pursuant to Article 3 (3) of Council Directive 75/268/EEC (1) and in the areas listed in the Annex to Commission Decision 77/711/EEC (2).

2. For the purposes of intra-Community trade in milk products falling within tariff subheadings 04.01 A II and 04.01 B, the Member States shall adopt the necessary measures and provide for the appropriate controls to ensure that such products are duly and accurately accounted for as required by Regulation (EEC) No 857/84.

At the time of the completion of customs formalities, the exporter shall enter on the export declaration the words 'Accounted for as required by Regulation (EEC) No 857/84 by Mr .....'

Article 12

1. Purchasers shall, within 30 days of the end of each quarter at the latest, transmit to the competent authority a statement indicating :

(1) OJ No L 128, 19. 5. 1975, p. 1.
(2) OJ No L 292, 16. 11. 1977, p. 15.

— in cases where formula A is applied, the quantities of milk or milk equivalent in excess of each producer's reference quantity, together with the amount of the corresponding levies,

— in cases where formula B is applied, the quantities of milk or milk equivalent from all producers that are in excess of the purchaser's quantity, together with the amount of the corresponding levies.

However, the first statement, relating to the first two quarters of the scheme's implementation, shall be provided before 1 November 1984.

2. Purchasers as referred to in paragraph 1 shall, within 45 days of the end of each quarter, pay the competent authority the amount of any levy due.

Member States may provide that at the end of each quarter overpayments shall be refunded in cases where the levy paid in respect of the preceding quarter(s) has exceeded the amount actually due since the beginning of the 12-month period concerned.

3. Member States may allow the statement referred to in paragraph 1 and the payment referred to in paragraph 2 to be made at the same time within the 45-day limit specified in paragraph 2.

4. If the final account referred to in Article 9 (1) (b) of Regulation (EEC) No 857/84 shows a difference between the sum of the quarterly payments on account and the levy amount actually due, the competent authority shall refund, or the liable person shall pay, this difference before 1 July following the end of the 12-month period concerned.

Article 13

1. Every producer of milk and/or milk products to whom Article 5c (2) of Regulation (EEC) No 804/68 applies shall, within two months of the end of each 12-month period, forward to the competent agency designated by the Member State a statement indicating the quantities of milk and/or milk products sold during that period and during the reference calendar year.

2. Each producer as referred to in paragraph 1 shall, within three months of the end of each 12-month period, pay the competent authority the amount of any levy due.

3. By way of derogation from paragraph 2, Member States may specify that their competent agency shall notify interested parties of the amount of the levy due and collect it within four months of the end of the 12-month period.

Article 14

The conversion rate to be used:

— for the calculation of the quarterly payments on account referred to in Article 9 (1) (a) of Regulation (EEC) No 857/84 shall be the representative rate applicable on the first day of the quarter concerned,

— for the balance given by the final account referred to in Article 9 (1) (b) of the abovementioned Regulation shall be the representative rate applicable on the last day of the 12-month period concerned,

— for the calculation of the levy referred to in Article 9 (3) of the abovementioned Regulation shall be the representative rate applicable on the last day of the 12-month period concerned.

Article 15

1. By way of derogation from Article 12:

(a) for the first two 12-month periods Member States are hereby authorized in respect of the mountain areas defined pursuant to Article 3 (3) of Directive 75/268/EEC, Greece is hereby authorized in respect of its entire territory and Italy is hereby authorized in respect of the regions listed in the Annex to Decision 77/711/EEC to collect the levy within 45 days of the end of each 12-month period;

(b) for the first 12-month period Italy is hereby authorized in respect of the regions other than those referred to in paragraph 1 to collect the levy within 45 days of the end of that period;

(c) Member States other then Italy or Greece are hereby authorized to collect the levy for the first two quarters of the scheme's implementation within 45 days of 30 September 1984.

2. The conversion rate to be used:

— for the purposes of applying paragraph 1 (a) and (b) shall be the representative rate applicable on the last day of the 12-month period concerned,

— for the purposes of applying paragraph 1 (c) shall be the representative rate applicable on 2 April 1984.

Article 16

1. Member States shall adopt whatever additional measures are required :

(a) to ensure collection of the levy, in particular inspection measures and measures ensuring that interested parties are aware of the penal or administrative sanctions to which they will be subject if they fail to comply with the provisions of this Regulation ;

(b) to deal with cases where milk production is definitively discontinued under Article 4 (1) (a) of Regulation (EEC) No 857/84, should the provisions thereof be applied.

2. Member States shall notify the Commission before 1 October 1984 of measures taken pursuant to paragraph 1.

Article 17

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities.*

However, Article 11 (2) shall apply from the 14th day following its publication.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 16 May 1984.

For the Commission

Poul DALSAGER

Member of the Commission