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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 period 1995/1996 to 2001/2002

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

This assessment report has been drawn up 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: 'the 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 period 1995/1996 to 2001/2002.

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 period 1995/1996 to 2001/2002 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 made 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) 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 period 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 marketing years 1995/96 to 2001/02.

Under that provision, the Italian authorities presented their twelfth report to the Commission by letter from the AGEA (Agenzia per le Erogazioni in Agricoltura, Italian Agricultural Payments Agency) dated 7 November 2017 concerning payment of the 2016 instalment. Since the first two instalments (2004 and 2005) were covered by a single report (document COM(2007) 34 final of 30 January 2007), this report concerns the thirteenth instalment.

The report provides the Commission's assessment of the progress reported by the Italian authorities for 2016 in recovering the additional levy both for the seven years covered by the Council Decision and for those not covered by it.

Payment of the levy under the 2003 deferred payment scheme

The Council Decision authorising Italy to itself make payment to the European Union budget of the additional levy due from its milk producers concerned 25 123 producers in 2005, the year of the first report to the Council. This figure fell to 21 123 for 2016.

Of all the producers reported on who were subject to the levy for the seven marketing years covered by the Council Decision, 15 431 initially opted to pay under the 2003 deferred payment scheme. In 2004, before the first yearly instalment was paid, the 15 431 producers that had opted to pay under the deferred payment scheme owed EUR 345 million in total, which represented about one quarter of the total outstanding amount due from the producers that had refused to opt into the schemes for deferred payment. It seems that the producers opting to pay under the deferred payment scheme were mostly those with the lowest levels of excess production. On the other hand, producers with higher levels of excess production (some 8 000 producers owing around EUR 1 billion in levies for the seven years) preferred not to participate in the deferred payment scheme. Nevertheless, it should be pointed out that, every year, the Italian authorities receive new applications to be included in the scheme. In 2016, 39 new applications were submitted, corresponding to EUR 4.2 million in total. As at 31 December 2016 the total amount covered by the 2003 deferred payment scheme is EUR 372 361 million.

The thirteenth yearly instalment, totalling EUR 25 574 104.06, was to be paid by 10 395 producers before 31 December 2016. The checks carried out by the Italian authorities show that 10 186 producers duly paid amounts totalling EUR 24 968 791.58 in 2016, which means that 97.9 % of the producers paid 97.63 % of the amounts due under the thirteenth instalment within the time limit. As regards the twelve previous instalments, timely payment had been recorded for 99.6 %, 97.9 %, 99.5 %, 99.7 %, 96.4 %, 96.2 %, 90.5 %, 98.3 %, 96.9 %, 98.2, 95.9 % and 95.7 % of the due amounts, respectively. The total levy collected under the thirteen instalments therefore amounts to EUR 358 326 million euro (just above 96 % of the total amount due under these yearly instalments).

Whilst these levels are certainly indicative of a commitment on the part of the producers participating in the deferred payment scheme to meet their obligations, the Commission considers that the follow-up given to cases where the payment has not been made within the time limit is a prime indicator of the level of commitment on the part of the Italian authorities to ensure full compliance with the conditions of the scheme and ultimately collection in full of the levy due.

As regards the thirteenth instalment, no information is yet available regarding payment by the remaining 209 producers for a sum of EUR 563 317.82. (This information will be included in the next review.)

With regard to the twelfth instalment, the previous report stated that payment had not been made by 31 December 2015 by 258 producers, corresponding to EUR 1 089 857. 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 interest, outside the deferred payment scheme. Of the 258 producers first thought not to have paid, it later emerged that 124 of them had in fact paid. By contrast, the 134 producers who had not actually paid the twelfth instalment lost their entitlement to deferred payment and enforced recovery procedures were initiated against them.

Based on the information provided by the Italian authorities for 2016, the conditions for applying the deferred payment scheme approved by Council Decision 2003/530/EC appear to have been met, and the scheme appears to have been managed in a satisfactory manner given

the progress made in recovering the amount owed by the producers participating in the scheme for the period 1995/1996 to 2001/2002.

Holdings for which the possibility of deferred payment has been revoked

Failure to pay any one yearly instalment results in exclusion from the deferred payment scheme and consequently makes producers liable to seizure of the entire amount still outstanding with accrued interest.

Thirteen years on from the start of the 2003 deferred payment scheme, a total of 991 holdings have had their right to make deferred payments revoked for a total debt, to be paid by instalments, of EUR 33 954 483.57.

However, of this amount, EUR 15 608 713.05 was paid before the right was revoked and EUR 5 042 636.22 was recovered after the revocation; this latter amount includes EUR 2 678 653.30 paid by 256 holdings that thereby managed to clear their debt. The total outstanding debt is therefore EUR 13 314 672.82, relating to 735 holdings.

These figures show that the diligence shown by the Italian administration in collecting the levy from producers who have been excluded from the deferred payment scheme after failing to pay an instalment is far from satisfactory. Moreover, the milk producers had to renounce any legal action before the Italian courts in order to be included in the deferred payment 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 impact on State aid

Pursuant to Article 2(12)(k) of Italian Decree-Law No 225 of 29 December 2010, which was converted, with amendments, into 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 deferred payment scheme approved by Council Decision 2003/530/EC.

In 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, it considered that this aid had entailed a breach of the conditions laid down in Council Decision 2003/530/EC, and had created – for those who benefited from it and thus had gone beyond the framework established by the Council – new State aid that was unlawful within the meaning of Article 1(f) of Regulation (EC) No 659/1999 and also incompatible with the internal market.

In Decision C(2013) 4046 final, the Commission ordered Italy to arrange to have the incompatible aid, together with interest, refunded by the beneficiaries of the deferral of payment.

The Italian authorities have initiated the administrative procedures necessary to recover the aid. However, on 8 November 2013, Italy brought an action against the Commission Decision before the General Court (Case T-527/13). On 24 June 2015, the General Court delivered a judgment partially annulling the Commission Decision. It confirmed the Commission's approach as regards the aid inherent in deferring the payment of the instalment due by 31 December 2010, but rejected the Commission's conclusions concerning the new aid created for those who benefited from the deferral and thus had gone beyond the framework of the Council Decision. The Commission referred the judgment of the General Court to the Court of Justice of the European Union (Case C-467/15 P). In its judgment in this case

delivered on 25 October 2017, the Court of Justice confirmed the validity of Commission Decision C(2013) 4046 final, which the General Court had partially annulled in its judgment of 24 June 2015 (Case T-527/13). The Italian authorities have therefore been invited to adopt and implement the national measures required to enforce Decision C(2013) 4046 final, until the aid disbursed under the scheme has been recovered in full.

Additional levy due for 2002/2003

For the periods 1995-2002, Italy itself made payment to the European Union budget of the additional levy due from the producers pursuant to Council Decision 2003/530/EC.

Since 2004, Member States have paid the additional levy directly into the EU budget pursuant to Council Regulation (EC) No 1788/2003 of 29 September 2003.

However, the marketing year 2002/2003 is not covered either by the Council Decision or by the new scheme set up in 2004. The Italian milk producers responsible for the overrun of the national quota allocated to Italy owed EUR 227.76 million to the EU budget for 2002/2003.

Of that amount, the milk producers concerned still owe EUR 118.4 million to the EU budget due to the additional levy.

Levy charged for the period 1995/1996 to 2008/2009 and not covered by the 2003 deferred payment scheme or the 2009 reimbursement scheme

As has been pointed out in previous reports, only a small part of the levy to be recovered, i.e. EUR 407 million, or 17 % of the recoverable amount, is actually covered by the 2003 deferred payment scheme and by the reimbursement in instalments scheme set up by Italy in 2009 (with an interest rate equal to a EU reference rate increased by several percentage points). As at 31 December 2016, a total of EUR 368 million has been recovered under the 2003 deferred payment scheme and the 2009 reimbursement scheme. This means that only a small fraction of the total amount to be reimbursed, i.e. 39 million euro, still pertains to the two schemes.

In truth, of the EUR 2 303 billion corresponding to the total amount of the levy charged, as notified by Italy, for the period 1995/1996 to 2008/2009, by far the largest part falls outside the two schemes.

While the information provided in the report from the Italian authorities on the thirteenth instalment shows that the current situation as regards recovery of the levy under the deferred payment scheme set up in 2003 is satisfactory overall, the same cannot be said of the collection of recoverable amounts not subject to the deferred payment or reimbursement scheme (EUR 1 268 billion), in particular with respect to the recovery of amounts subject to enforcement (EUR 803 million).

In its successive assessment reports to the Council since 2010, the Commission has repeatedly expressed its dissatisfaction with the lack of significant progress in recovering the repayable additional milk levy not covered by the deferred payment or reimbursement scheme.

According to the information provided by the Italian authorities in their report on the thirteenth instalment, there are no major new developments in the actual collection of the levy not covered by the instalment-based schemes. The Italian authorities point out that EUR 798 million will be recovered through legal action (enforced recovery proceedings) still pending, but this has not produced any tangible results to date.

In view of the large amount of the levy that has not been paid and the length of time it has gone unrecovered, it must be concluded that the Italian authorities have not been able, either now or in the past, to ensure the efficiency and effectiveness of EU law.

That is why action was brought by the Commission before the Court of Justice of the European Union under Article 258 of the TFEU for failure to fulfil an obligation (Case C-433/15).

In its judgment of 24 January 2018 the Court of Justice of the European Union upheld the action brought by the Commission, stating that the Italian Republic has failed to fulfil the obligations imposed on it by failing to ensure that the additional levy payable in respect of quantities produced in Italy in excess of the national quota, from the first year in which the additional levy was in fact applied in Italy (1995/1996) until the last year in which there was surplus production in Italy (2008/2009),

– was in fact allocated to the individual producers which had contributed to each of the production overruns and

– was paid at the appropriate time, upon their being given notification of the amount payable, by the purchasers or the producers in the case of direct sales, or

– where the levy was not paid within the period prescribed, was registered and, where possible, recovered by way of enforcement from those purchasers or producers.

Conclusion

The Commission considers that the deferred payment scheme approved by the Council in 2003 has been managed in a satisfactory manner insofar as the conditions for applying the scheme have been met, as demonstrated by the progress made by the Italian authorities in recovering the amounts due from the producers who opted to pay under that scheme for the period 1995/1996 to 2001/2002.

As for the amounts not subject to either the deferred payment or the reimbursement scheme, it needs to be underlined that, by its judgment of 24 January 2018, the Court of Justice of the European Union has confirmed the failings of the Italian Republic pointed out by the Commission. The Italian authorities must now take the necessary measures to comply with the judgment of the Court of Justice, as required by Article 260 TFEU, in particular by promptly putting into place effective arrangements for recovering the outstanding amounts capable of producing real and measurable results in terms of reducing the amount due.