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from: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 27 April 2012

to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European  
Union

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Subject: 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 2003/53/EC)

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Delegations will find attached Commission document COM(2012) 191 final.

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EUROPEAN COMMISSION

Brussels, 27.4.2012  
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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)**

## **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)

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 Union 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 seventh report under this provision to the Commission under cover of a letter from AGEA dated 31 October 2011 concerning the 2010 instalment payment.

#### **Payment of levy under instalment facility.**

Of the approximately 23 140 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, 15 433 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 15 433 participating producers owed in total some € 345 million in 2004 before the first instalment was paid, representing about one fourth 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. On the other hand, the producers with more significant individual excess deliveries (some 8000 producers to whom some € 1 billion in levy due over the seven periods is billed) have instead preferred not to enter the instalment scheme. Please note however that around 69 new applications for payment by instalments, corresponding to roughly € 1.2 million, have been received by the Italian authorities during 2010.

The seventh instalment was to be paid by 11 406 producers for a total amount of € 24 331 454.59 before 31 December 2010. The verifications carried out by the Italian authorities show that 10 802 producers have duly paid amounts totalling € 22 040 163.61 during 2010. This means that 95 % of the producers have paid 90,5 % of the levies in time under the seventh instalment. Timely payment of the first, second, third, fourth, fifth and sixth instalments had previously been recorded to the extent of 99,6%, 97,9%, 99,5%, 99,7%, 96,4% and 96,2% of the due amounts respectively. The total levy collected under the first seven instalments therefore amounts to some € 175 million (approximately 98 % of the 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.

In respect of the seventh instalment, the payments have not been identified for the remaining 604 producers for a value of € 2 291 279.38.

For the sixth instalment period 148 producers failed to make payment corresponding to € 921 417.20 at the end of 2009. According to the information received from the Italian authorities all these cases were notified by the central authorities to the relevant regional authorities to enforce the payment of the entire amount due with interest rate outside the instalment facility scheme.

Out of the 148 producers first thought not to have paid it later showed that only 23 of them had actually not paid. This resulted in the revocation of the possibility to pay by instalments for these producers and the launching of the enforced recovery procedures.

The Commission also started a State aid procedure against Italy<sup>1</sup>, in relation to *decreto-legge* No 225 of 29 December 2010, approved with amendments by law No 10 of 26 February 2011, which postponed the deadline for the payment of the levies for the 1995-1996 and

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<sup>1</sup> SA.33726

2001-2002 campaigns (due in principle for the 31<sup>st</sup> December 2010 according to the 2003 scheme approved by Council Decision n°2003/530/EC) until the 30<sup>th</sup> June 2011 (see art. 2, paragraph 12-duodecies). Such postponement is indeed in conflict with article 1, first indent of Council Decision N° 2003/530/EC, according to which the instalments shall be paid on a yearly basis and therefore constitutes new and illegal State aid within the meaning of Article 108 paragraph 3 TFEU.

### **Levy due for periods 1995-96 to 2001-02 not entered into the instalment payment scheme**

Reference has been made to the relatively low uptake of the instalment payment facility in terms of the amount of levy entered. Approximately three-fourths of the overall outstanding amounts of unpaid levies for the concerned period have not been entered into the instalment facility scheme. The levy not covered by the 2003 scheme corresponds (according to the last available figures from April 2010) to € 767 million and about 91 % of this amount, roughly € 701 million, is instead being contested before the Italian courts.

In its previous assessment reports presented to the Council, the Commission expressed the view that 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 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.

However, the report on the seventh instalment does not contain any information on these court proceedings

Nevertheless, some additional information received in April 2010 by the Italian authorities in response to a Commission request shows that the Italian administration has been successful in cases corresponding to roughly € 13 million. The actual collection of these amounts corresponds to € 6.8 million, and around € 580 million is still being contested in front of the Italian courts. Regrettably, the Italian authorities failed to provide in their communication of 02 February 2011 updated figures on these court proceedings. As regards to the system introduced in 2009 of reimbursing levies due with an interest rate equal to a reference rate for the Union increased by several percentage points, 332 debtors have opted for it (for a total of € 90.5 million), while 1774 debtors have not opted for it (for a total of € 535 million).

The Commission strongly regrets the slow progress in collection of the part of the levy which was not entered into the instalment payment facility and the level of information provided by the Italian authorities, which is not sufficient. The slow progress relates both to the length of court proceedings and, in turn, the length of the recovery of the sums where litigation has terminated (the Italian report on the seventh instalment contains no information on recovery, but previous information submitted in response to a Commission request demonstrates that only some € 6.8 million had been collected up till 2010 after successful court proceedings). Moreover, the figures representing the collection of levy which had never in fact been contested, and therefore immediately recoverable, reflect a deficiency in the actual collection process (about € 18 million out of € 66 million levy never contested has up till 2010 not been collected).

The Commission has been continuing to closely follow the recovery process in Italy, particularly the recovery of levy not covered by the instalment facility scheme. The Commission services 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 milk levy and the behaviour of the Italian authorities in front of the Italian courts.

## **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 relatively adequate management thereof. However, the Commission services have also noticed that timely payment of the seventh instalment has been recorded to the extent of 90,5%, which is the lowest among all seven instalments (timely payment of the first, second, third, fourth, fifth and sixth instalments had previously been recorded to the extent of 99,6%, 97,9%, 99,5%, 99,7%, 96,4% and 96,2% of the due amounts respectively). Moreover, the Commission deplors that in the absence of any indication of amounts actually collected from participating producers who failed to make instalment payments and who were thereby excluded from further participation, it is not in a position to assess the diligence employed or the progress made in the collection of the corresponding levy. The Commission requests, as already expressed in its previous assessment reports, that it is indispensable that future reports from the Italian authorities contain sufficiently detailed information on such collection.

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 has already stated, in its assessment reports presented to the Council in 2010 and 2011, its dissatisfaction with the extremely slow progress in recovering milk quota levies and considered that the recovery of levies in this way needs to be improved significantly.

In the lack of sufficiently detailed information provided by the Italian authorities, as mentioned above, the Commission 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. However, some limited information received in February 2012 from the Italian authorities shows that – despite some improvements – no major new developments are to be noticed and the effectiveness of EU law in this case is far from being achieved with such large amount of levies being unpaid over such a long period of time. The Commission expects - as already requested in its previous assessment reports - future annual reports to document the evolution of the litigation pursued for the periods 1995/96 to 2001/02 and 2003/04 - 2008/09, and execution of final judgements confirming levy due.