

COUNCIL REGULATION (EC) No 2330/98
of 22 October 1998

providing for an offer of compensation to certain producers of milk and milk products temporarily restricted in carrying out their trade

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 43 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas, when the additional levy scheme was introduced in 1984 in the milk and milk products sector, Community legislation, in establishing rules for the allocation of individual reference quantities, did not take account of the situation of producers who, as a result of an undertaking pursuant to Council Regulation (EEC) No 1078/77 of 17 May 1977 introducing a system of premiums for the non-marketing of milk and milk products and for the conversion of dairy herds ⁽⁴⁾, had not delivered or sold milk during the reference year adopted by the Member State or were restricted in the level of deliveries or sales during that year;

Whereas, following the judgment of the Court of Justice of 19 May 1992 in joined cases C-104/89 and C-37/90, the Community institutions undertook to give full effect to that ruling in respect of all concerned producers whose circumstances satisfied the conditions laid down in the judgment with regard to the liability of the Community to make good the damage the said producers had suffered insofar as the original Community legislation did not provide for the allocation of an individual reference quantity to them; whereas the producers concerned were essentially those who were entitled to apply for a special reference quantity pursuant to the provisions added 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 ⁽⁵⁾ by Regulation (EEC) No 764/89 ⁽⁶⁾ or Regulation (EEC) No 1639/91 ⁽⁷⁾; whereas Council Regulation (EEC) No 2187/93 of 22 July 1993 providing for an offer of compensation to certain producers of milk and milk products temporarily

prevented from carrying on their trade ⁽⁸⁾ introduced compensation arrangements for these producers under which an offer calculated on a flat-rate basis was made to all eligible producers who submitted applications, which could be accepted in full and final settlement or else rejected;

Whereas, on the application of two producers, the Court of First Instance, in its judgment of 9 December 1997 in joined cases T-195/94 and T-202/94, ordered the Community to make good the damage the said producers had suffered insofar as the original Community legislation establishing the additional levy scheme did not provide for the allocation of an individual reference quantity in respect of holdings subject to an undertaking pursuant to Regulation (EEC) No 1078/77 and insofar as subsequent amendments to the legislation excluded the allocation of special reference quantities to transferees of a premium granted pursuant to Regulation (EEC) No 1078/77 who had received a reference quantity by virtue of Article 2 and/or Article 6 of Regulation (EEC) No 857/84;

Whereas there is a significant number of other producers whose circumstances satisfy the conditions laid down in the judgment with regard to the liability of the Community and who have either already initiated proceedings against the Council and the Commission or addressed claims for compensation to the Community institutions; whereas the producers concerned are essentially those who were entitled to apply for a special reference quantity pursuant to Regulation (EEC) No 2055/93 ⁽⁹⁾; whereas it is therefore appropriate to adopt arrangements with a view to the settlement of these claims;

Whereas, in view of the number of potentially eligible producers it would not be possible to evaluate the claim of each producer on an individual basis; whereas it is therefore necessary to use a flat-rate approach; whereas it is appropriate to follow as far as possible the arrangements set out in Regulation (EEC) No 2187/93;

Whereas a direct link should be drawn between the acceptance of the right to a special reference quantity pursuant to Regulation (EEC) No 2055/93 and the existence of an injury consisting in the restriction in milk production contrary to the wishes of the producer

⁽¹⁾ OJ C 273, 2. 9. 1998, p. 3.

⁽²⁾ OJ C 328, 26. 10. 1998.

⁽³⁾ Opinion delivered on 15 October 1998 (not yet published in the Official Journal).

⁽⁴⁾ OJ L 131, 26. 5. 1997, p. 1. Regulation as last amended by Regulation (EEC) No 1300/84 (OJ L 125, 12. 5. 1984, p. 23).

⁽⁵⁾ OJ L 90, 1. 4. 1984, p. 13. Regulation repealed by Regulation (EEC) No 3950/92 (OJ L 405, 31. 12. 92, p. 1).

⁽⁶⁾ OJ L 84, 29. 3. 1989, p. 2.

⁽⁷⁾ OJ L 150, 15. 6. 1991, p. 35.

⁽⁸⁾ OJ L 196, 5. 8. 1993, p. 6.

⁽⁹⁾ OJ L 187, 29. 7. 1993, p. 8.

concerned; whereas in order to ensure that a producer cannot benefit by obtaining a special reference quantity for the sole purpose of speculating on the supposed asset value of the reference quantity allocated, account should be taken of the subsequent actions of the producer during the restricted period laid down in Regulation (EEC) No 2055/93;

Whereas it is necessary to determine in the case of transferees of part of a holding subject to an undertaking pursuant to Regulation (EEC) No 1078/77 the basis on which the annual quantity should be calculated; whereas the annual quantity will generally be determined by reference to the area of land transferred as a proportion of the total area of the original holding; whereas, however, as a result of the judgment of the Court of Justice of 16 October 1997 in Case C-165/95, where the original holding was a mixed holding, the determination should be made, where the necessary proofs exist, in proportion to the part of the holding directly or indirectly given over to dairy production at the time when the undertaking was entered into pursuant to Regulation (EEC) No 1078/77; whereas the same principles should be applied in the case where the transferee of the whole of a holding subject to such an undertaking, or the transferee of part of such a holding, subsequently gave up a part of the holding prior to the allocation of a special reference quantity;

Whereas, subject to the above, the quantity to be compensated must be calculated in accordance with the principles enunciated in the grounds of the judgments of the Court of Justice of 19 May 1992 and of the Court of First Instance of 9 December 1997;

Whereas the period for which compensation is to be offered should be indicated; whereas the damage suffered by the producers concerned can, in accordance with the abovementioned principles be considered to have ended at the date of adoption of Regulation (EEC) No 2055/93, or, if earlier, the date of allocation of a special reference quantity; whereas the provisions of Article 43 of the Statute of the Court of Justice laying down the five-year time bar on claims must be applied; whereas in response to applications from producers received after the date of the judgment of the Court of First Instance of 9 December 1997, the institutions have temporarily waived their right to invoke the time bar provisions; whereas therefore it is necessary to stipulate the circumstances in which the limitation period shall start to run again;

Whereas for administrative reasons it is necessary to fix a time limit for the submission of applications for compensation by producers to the competent authorities in order to be admissible, as well as the time limits for the transmission of offers and their acceptance; whereas the Commission should be empowered to extend the time

limit for the transmission of offers in appropriate circumstances;

Whereas, for the purposes of the implementation of this Regulation, the Member States shall carry out the necessary administrative tasks in accordance with its provisions, by virtue of a specific mandate limited to the execution of those tasks; whereas, given that a condition of acceptance of an offer must be the relinquishment of all claims against the Community arising out of the failure to allocate reference quantities, the offer of compensation to the producer should be made by the competent authority of the Member State in the name and on behalf of the Council and the Commission;

Whereas Regulation (EEC) No 2187/93 sets out the amounts of compensation in ecus per 100 kg of milk for each of the years 1984/85 to 1990/91 differentiated according to farm size in terms of milk production; whereas these amounts represent the global estimate per year and farm size of the difference between the income which the producers concerned would have received from marketing milk had they not been restricted from doing so and the income which they obtained, or could have obtained, by showing reasonable diligence during the same period; whereas, in the light of the experience of the application of that Regulation, it can be concluded that the objectivity of the method used for the calculation of the amounts has been demonstrated and that they constitute an acceptable assessment of the losses sustained by the producers;

Whereas it is therefore appropriate to retain the same amounts for the purposes of the compensation arrangements for producers under this Regulation; whereas, however, the differentiation according to farm size is not relevant to producers who are transferees of a non-marketing premium or of part of a holding subject to a non-marketing undertaking; whereas it can be accepted that in general such producers were operating on holdings on which the milk production was expanding and with reference quantities which were above the average; whereas it is therefore appropriate to use the figures relating to the largest farm size; whereas it is necessary to fix amounts also for the years 1991/92 to 1993/94; whereas these amounts can be calculated on the basis of the amounts for the preceding years with adjustments to take account of fluctuations in the milk price in the Member States on whose territory the majority of the producers concerned have their holdings;

Whereas failure by the producer to accept the offer made by the competent authority of the Member State in accordance with the provisions of this Regulation would constitute a refusal of the Community offer; whereas any legal proceedings continued or initiated thereafter by the producer would fall within the Community's jurisdiction;

Whereas the experience of the implementation of Regulation (EEC) No 2187/93 has shown the advisability of providing for a power to authorise the transmission of compensation offers to producers who fail to comply with certain conditions set out in the arrangements fixed in the Regulation, but whose circumstances nevertheless satisfy the conditions laid down in the judgments of the Court of Justice or Court of First Instance with regard to the liability of the Community,

HAS ADOPTED THIS REGULATION:

Article 1

Compensation on the terms set out in this Regulation shall be granted to those producers who were transferees of the whole or part of a holding subject to an undertaking given pursuant to Regulation (EEC) No 1078/77 ('SLOM holding') and who have suffered loss as a result of a restriction in levels of deliveries or sales of milk or milk products by virtue of that undertaking during the reference year selected by the Member State concerned under the additional levy scheme in the milk and milk product sector.

Article 2

An application for compensation shall be deemed eligible if it is submitted by a producer who has been allocated a special reference quantity pursuant to Article 1(1) of Regulation (EEC) No 2055/93, or who, pursuant to Article 1(2) of that Regulation, has been allocated a share of a special reference quantity previously allocated by virtue of Article 3a of Regulation (EEC) No 857/84, or an equivalent quantity emanating from the national reserve referred to in Article 5 of Council Regulation (EEC) No 3950/92 of 28 December 1992 establishing an additional levy in the milk and milk products sector⁽¹⁾ where a Member State has decided pursuant to Article 1(2), third subparagraph of Regulation (EEC) No 2055/93 to fulfil the rights of the transferee in that way.

Article 3

The application shall be submitted by the person to whom the special reference quantity referred to in Article 2 has been allocated or by his or her heir or heirs, without prejudice to the application of the provisions of Member States' national law.

Article 4

By way of derogation from Article 2, an application shall not be accepted if the producer who received the special reference quantity pursuant to Regulation (EEC) No

2055/93 participated before 1 October 1996 in any measure regarding the definitive abandonment of reference quantities or sold or leased the whole of his holding before that date.

Article 5

1. The competent authority referred to in Article 9 shall determine the annual quantity in respect of which compensation is due on the basis of the quantity used to calculate the premium granted pursuant to Regulation (EEC) No 1078/77, increased by 1 % and reduced by a percentage representing the reductions applied in each Member State to the reference quantities of producers established in accordance with Articles 2 and 6 of Regulation (EEC) No 857/84.

2. For producers who were transferees of the whole of a SLOM holding the annual quantity shall be that calculated in accordance with paragraph 1 reduced, where appropriate, in accordance with paragraph 4.

3. For producers who were transferees of a part of a SLOM holding, the annual quantity shall be that calculated in accordance with paragraph 1 reduced in proportion to the area of the original SLOM holding which was not transferred. Where the original SLOM holding was a mixed holding, the reduction shall be calculated on the basis of the areas of the original SLOM holding which were used directly or indirectly for milk production provided that such use can be established to the satisfaction of the competent authority. The resulting quantity shall be further reduced, where appropriate, in accordance with paragraph 4.

4. If the producer has given up a part of the SLOM holding, or of the part of the SLOM holding transferred to him, prior to the allocation of a special reference quantity pursuant to Regulation (EEC) No 2055/93 including the period of the non-marketing undertaking, the annual quantity in respect of which compensation is due as referred to in paragraphs 2 and 3 respectively shall be reduced in proportion to the area given up. Where the original SLOM holding was a mixed holding, the reduction shall be calculated taking account only of the areas which were used directly or indirectly for milk production provided that such use can be established to the satisfaction of the competent authority.

Article 6

If part of the holding of the producer was sold or leased after the allocation of the special reference quantity and before 1 October 1996, the annual quantity in respect of which compensation is due, determined in accordance with Article 5, shall be reduced by the amount of the special reference quantity returned to the national reserve.

⁽¹⁾ OJ L 405, 31. 12. 1992, p. 1. Regulation as last amended by Commission Regulation (EC) No 903/98 (OJ L 127, 29. 4. 1998, p. 8).

Article 7

1. Compensation shall only be offered for the period for which the right to compensation is not time-barred.
2. For the purpose of determining the period for which compensation shall be offered:
 - (a) the date of interruption of the five-year time bar laid down by Article 43 of the State of the Court of Justice shall be the earliest of the following events:
 - in the case of an action brought before the Court of Justice or the Court of First Instance, the date on which the application is entered in its register,
 - in the case of an application addressed to a Community institution, the date of reception of such application by the Council or the Commission (whichever was the earlier) provided either that the applicant subsequently brought an action before the Court of First Instance within the two-month delay stipulated in Article 43 of the Statute of the Court of Justice, or that the Community institution accepted in writing that such application interrupted the time bar;
 - (b) the starting date of the compensation period shall be five years before the date of interruption of the time bar, but not before 2 April 1984 nor before the date on which the non-marketing or conversion undertaking expired;
 - (c) the closing date of the compensation period shall be 1 August 1993 or the date when the producer received a special reference quantity if earlier.

Article 8

If during the compensation period, and prior to the allocation of the special reference quantity, production was increased by the producer in excess of the reference quantity available to him, the quantity in respect of which compensation is due shall be reduced for the period concerned by the quantities delivered or sold directly which exceed that reference quantity. The quantities delivered or sold directly, and the reference quantity available, for a part of a twelve month period, shall be determined as a proportion of the total deliveries or direct sales, and the reference quantity available, for the whole of the twelve month period. The reference quantities referred to in the second subparagraph of Article 2 of Regulation (EEC) No 2055/93 are not taken into account for the purposes of determining the reference quantity available.

Article 9

Each application for compensation must be addressed to the competent authority designated for that purpose in each Member State concerned using a form drawn up in

accordance with the procedure laid down in Article 30 of Regulation (EEC) No 804/68⁽¹⁾. It must be received by the competent authority by 31 January 1999 at the latest in order to be admissible.

Article 10

The competent authority referred to in Article 9 shall check the accuracy of the information provided by the producer and shall calculate the amount of the compensation on the basis of the quantity and the period in respect of which compensation is due, using the amounts specified in the Annex.

Article 11

Interest shall be added to the amount of the compensation at the rate of 6 % per year from 9 December 1997 to the date of payment of the compensation. However, in the event that payment of compensation is delayed because of a failure by the producer to provide information or documents relating to the application for compensation requested by the competent authority, or the proof of the withdrawal of the proceedings referred to in Article 13(3) second subparagraph, interest shall not be paid for the period of the delay.

Article 12

The total amount of compensation shall be converted into national currency using the agricultural conversion rate applicable on the date on which this Regulation enters into force.

Article 13

1. Within four months of receipt of an application for compensation, the competent authority referred to in Article 9 shall transmit an offer of compensation calculated in accordance with this Regulation to the applicant, accompanied by a receipt in full and final settlement. This period may be extended by the Commission in accordance with the procedure referred to in Article 16 at the duly justified request of a Member State. The offer shall be made in the name and on behalf of the Council and the Commission.

2. Where the applicant is the transferee of part of a SLOM holding and the special reference quantity allocated pursuant to Articles 1(1) or 1(2) of Regulation (EEC) No 2055/93 is subject to re-assessment by the national authorities, the time limit in paragraph 1 shall be four months from the date of the final decision of the national authorities on the re-assessment of the special reference quantity, where that decision is later than the receipt of the application for compensation.

⁽¹⁾ Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organisation of the market in milk and milk products (OJ L 148, 28. 6. 1968, p. 13). Regulation as last amended by Regulation (EC) No 1587/96 (OJ L 206, 16. 8. 1996, p. 21).

3. The offer shall be accepted by the return to the competent authority of the duly signed receipt. It must be received by the competent authority not later than three months following the date of transmission of the offer in order to be binding.

The compensation shall be paid on acceptance of the offer. However, in the case of producers who have instituted proceedings against the Community institutions, proof of the withdrawal of the proceedings must also be presented to the competent authority before payment of the compensation.

Failure to accept the offer within the time limit laid down shall mean that it shall cease to be binding on the Council and Commission.

Acceptance of the offer shall imply the relinquishment of any claim of whatever nature against the Community in respect of any loss within the meaning of Article 1, including interest and costs.

Article 14

The limitation period pursuant to Article 43 of the Statute of the Court of Justice shall start to run again from 1 February 1999 for all producers referred to in Article 1 who have not presented an application for compensation in accordance with Article 9 unless it was interrupted by the institution of proceedings which are still pending.

For producers who have received an offer of compensation by virtue of Article 13(1) or (2), the limitation period shall start to run again on the day following the expiry of the period for acceptance of the offer set out in Article 13(3) unless it was interrupted by the institution of proceedings which are still pending.

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

Done at Luxembourg, 22 October 1998.

For the Council

The President

W. MOLTERER

Article 15

The Commission may decide in accordance with the procedure referred to in Article 16 to authorise the transmission of offers of compensation to producers whose circumstances are such as to satisfy the requirements for establishing the liability of the Community, but who have not obtained compensation pursuant to Regulation (EEC) No 2187/93 or under the preceding provisions of this Regulation. The amount of compensation offered shall be calculated in accordance with the provisions of Regulation (EEC) No 2187/93 or of this Regulation or in accordance with the criteria which may be laid down in the judgment on damages by the Court of Justice in joined cases C-104/89 and C-37/90, as appropriate. The rate of interest to be added and the period for which it is to be calculated may be adapted to take account of specific circumstances. The necessary time limits relating to the offers of compensation and their acceptance shall also be fixed.

Article 16

Detailed rules for the application of this Regulation, and in particular the provisions regarding payment of the costs of producers' agents, shall be adopted by the Commission in accordance with the procedure laid down in Article 30 of Council Regulation (EEC) No 804/68.

Article 17

The financing of the payments made pursuant to this Regulation shall be deemed to be intervention within the meaning of Article 3 of Regulation (EEC) No 729/70⁽¹⁾.

Article 18

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

⁽¹⁾ Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy (OJ L 94, 28. 4. 1970, p. 13). Regulation as last amended by Regulation (EC) No 1287/95 (OJ L 125, 8. 6. 1995, p. 1).

*ANNEX***COMPENSATION TO BE OFFERED PURSUANT TO ARTICLE 10**

(ecus per 100 kg of milk)

Year	Amount
1984/1985	9,2
1985/1986	10,5
1986/1987	9,7
1987/1988	10,0
1988/1989	12,3
1989/1990	12,9
1990/1991	11,7
1991/1992	11,8
1992/1993	12,4
1993/1994	12,4
