Commission Regulation (EC) No 595/2004 of 30 March 2004 laying down detailed rules for applying Council Regulation (EC) No 1788/2003 establishing a levy in the milk and milk products sector

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1788/2003 of 29 September 2003 establishing a levy in the milk and milk products sector[(1)], and in particular Article 24 thereof,

Whereas:

(1) The scheme for a levy in the milk and milk products sector has been extended in accordance with Regulation (EC) No 1788/2003 for a further 11 consecutive 12-month periods from 1 April 2004. Detailed rules should be laid down to take account of the new provisions of that Regulation. Those detailed rules should also incorporate, to a great extent, provisions of Commission Regulation (EC) No 1392/2001 of 9 July 2001 laying down detailed rules for applying Council Regulation (EEC) No 3950/92 establishing an additional levy on milk and milk products[(2)]. Regulation (EC) No 1392/2001 should therefore be repealed.

(2) Rules should be laid down making it possible to divide the national quantities between deliveries and direct sales for each Member State. To that end, the new definitions of ‘deliveries’ and ‘direct sales’ in Article 5(f) and (g) of Regulation (EC) No 1788/2003 should be taken into consideration by the Member States, which should inform the producers affected by those new definitions.

(3) This Regulation should also specify the additional factors necessary for the final calculation of the levy payable for deliveries and that for direct sales, the measures to ensure payment of the levy in good time by the Member State to the European Agricultural Guidance and Guarantee Fund (EAGGF) Guarantee Section, and lastly, the rules on checks to ensure that contributions to the payment of the levy have been correctly collected.

(4) The way the fat content of milk is to be taken into account when drawing up the definitive statement of quantities delivered should be specified. Special provisions are needed to cover cases where the reference quantity for deliveries is amended or where reference quantities are allocated from the national reserve.

(5) As Regulation (EC) No 1788/2003 has fixed the reference fat content rates for each Member State, rules for adjusting the individual reference rates whenever necessary should be laid down.

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EC) No 595/2004. (See end of Document for details)*

(6) It is vital, on the one hand, to check that the data communicated by purchasers and producers are accurate and, on the other hand, to ensure that the burden of the levy actually falls on the producers responsible for the overrun of the national reference quantities. To that end, Member States should play a greater role in the controls and penalties they are required to introduce to ensure that contributions to the payment of the levy are collected correctly. In particular, Member States should draw up a national control plan for each 12-month period on the basis of risk analysis and should carry out controls at farm level, at transport level and at purchaser level with the aim to combat possible irregularities and frauds. It is also necessary to specify the deadlines and number of checks needed to allow verification within a given time limit that the arrangements have been complied with by all the parties involved. Penalties are also needed where those basic requirements are not met.

(7) It is also necessary for Member States to approve the purchasers operating in their territory and for detailed rules to be laid down for cases where purchasers fail to comply with this Regulation.

(8) Communications to the Commission play an important part in the administration of the scheme and should therefore be increased. In particular, communications on the division between deliveries and direct sales and replies to an annual questionnaire are essential for the Commission's administration of the scheme. Compliance with the dates laid down is also a factor promoting its effective management. It is also appropriate for the Commission to be informed in detail of implementation at national level so as to have a better knowledge of the various systems used in the Member States.

(9) This Regulation should apply from the same date as Regulation (EC) No 1788/2003.

(10) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Scope

This Regulation lays down detailed rules for applying Regulation (EC) No 1788/2003 as regards the division of national reference quantities between deliveries and direct sales, the calculation and payment of the levy, control measures and communications from the Member States.

***Changes to legislation:** There are currently no known outstanding effects for the Commission Regulation (EC) No 595/2004. (See end of Document for details)*

Article 2

Division of national reference quantities between deliveries and direct sales

Each year, after the receipt of the communications referred to in **[**[F1]Article 25**]**, the Commission shall divide the national reference quantity laid down for each Member State in Annex I of Regulation (EC) No 1788/2003 between deliveries and direct sales in accordance with Article 1(2) of that Regulation.

The division shall be published in the *Official Journal of the European Union*.

Textual Amendments

F1 Substituted by Commission Regulation (EC) No 258/2009 of 26 March 2009 amending Regulation (EC) No 595/2004 laying down detailed rules for applying Council Regulation (EC) No 1788/2003 establishing a levy in the milk and milk products sector.

Article 3

Conversions

Conversions referred to in Article 6(2) of Regulation (EC) No 1788/2003 may be temporary or definitive.

Temporary conversions of individual reference quantities are conversions where, for a specific 12-month period, the producer requests to convert a quantity of milk from one reference quantity to the other.

Definitive conversions are conversions where, for a 12-month period and for the subsequent 12-month periods, the producer requests to convert a quantity of milk from one reference quantity to the other.

Article 4

Information about new definitions of deliveries and direct sales

1 Member States shall inform the producers concerned of the new definitions of the terms ‘deliveries’ and ‘direct sales’ as introduced by Article 5(f) and (g) of Regulation (EC) No 1788/2003.

2 A definitive conversion from one reference quantity to the other by reason of the definitions referred to in paragraph 1 shall be done on the request of the producer in accordance with Article 6(2) of Regulation No 1788/2003.

Article 5

Communication of individual reference quantities

Member States shall notify to the producers each new allocation or modification of their individual reference quantity by the means they consider the most appropriate, provided

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that it ensures that the producers have an effective knowledge of the reference quantity allocated.

CHAPTER II

CALCULATION OF THE LEVY

SECTION 1

General Rules

Article 6

Method for the calculation of the levy

Milk or milk products marketed within the meaning of Article 5(h) of Regulation (EC) No 1788/2003 shall be taken into account for calculating the levy at the moment they leave any holding on the territory of the Member State or are used at the holding for commercial purposes.

Where milk or milk products leave the holding for the purpose of destruction in application of sanitary measures pursuant to a decision of the competent authority of the Member State, the quantities concerned shall not be taken into account as deliveries or direct sales.

Milk which leaves the holding for treatment or processing under contract shall be deemed deliveries.

Article 7

Amendments to the individual reference fat content

1 Where additional reference quantities are allocated from the national reserve, the reference fat content referred to in Article 9 of Regulation (EC) No 1788/2003 shall remain unchanged.

2 Where the reference quantity for deliveries is increased or established on the basis of conversions under Article 6(2) of Regulation No 1788/2003, the reference fat content associated with the reference quantity converted into deliveries shall be 3,8 %.

However, the reference fat content of the reference quantity for deliveries shall remain unchanged if the producer provides justification therefore to the satisfaction of the competent authority.

3 In cases referred to in Articles 16, 17 and 18(1)(d), (e) and (f) of Regulation (EC) No 1788/2003, the reference fat content shall be transferred together with the reference quantity with which it is associated.

4 In cases referred to in Article 18(1)(b) and (c) of Regulation (EC) No 1788/2003, the overall reference fat content of the reference quantities allocated or transferred shall not be increased in relation to that of the quantities released. Without prejudice to Article 6(5) of Regulation No 1788/2003, the quantity of milk available for reallocation or transfer may be

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recalculated at a given reference fat content or, conversely, the reference fat content may be recalculated at a given available quantity of milk.

5 In the cases referred to in the first subparagraph of paragraph 2 and in paragraphs 3 and 4, the resulting reference fat content shall be equal to the average of the initial and transferred or converted reference rates, weighted by the initial and transferred or converted reference quantities.

6 In the case of producers whose entire reference quantity comes from the national reserve and who commenced production after 1 April 2004, the reference fat content shall be equal to the national reference fat content laid down in Annex II to Regulation (EC) No 1788/2003.

SECTION 2

Deliveries

Article 8

Statement of deliveries

1 At the end of each 12-month period, purchasers shall draw up a statement for each producer showing at least the quantity and fat content of the milk delivered by the latter during that period.

In the case of leap years, the quantity of milk shall be reduced by 1/60 of the quantities delivered in February and March.

2 Before 15 May each year, purchasers shall forward to the competent authority of the Member State a declaration summarising the statements referred to in paragraph 1, showing at least the total quantity and the average fat content of the milk delivered to them and, where so required by decision of the Member State, for each producer, the reference quantity and the representative fat content, the quantity corrected in accordance with Article 10(1), the sum of the individual reference quantities and the corrected quantities and the average fat content of those producers' production.

Where applicable, purchasers shall declare that they have received no deliveries during the period concerned.

3 The Member State shall require purchasers who fail to comply with the time limit referred to in paragraph 2 to pay an amount equal to the levy due for a 0,01 % overrun of the quantities of milk delivered to them by producers for each calendar day of delay. Where those quantities are not known because no declaration has been made, they shall be estimated by the competent authority. That amount may not be less than EUR 100 nor more than EUR 100 000.

[[F2]4 Where no declaration is submitted before 15 June, Member States shall within 15 working days give formal notice to the purchaser to submit such declaration within 15 days. Where no declaration is submitted at the end of that period, Member States shall either withdraw approval or require payment of an amount in proportion to the volume of milk involved and the seriousness of the irregularity.

Paragraph 3 shall continue to apply during the period of notice.**]**