

Milk and milk products sector: contractual relations

2010/0362(COD) - 15/02/2012 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 574 votes to 97, with 18 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1234/2007 as regards contractual relations in the milk and milk products sector.

Parliament adopted its position at first reading under the ordinary legislative procedure. The amendments adopted in plenary are the result of a compromise negotiated between the European Parliament and the Council. They amend the Commission proposal as follows:

Inter-branch organisations: Member States may also recognise inter-branch organisations which have formally requested recognition and are made up of representatives of economic activities linked to the production of raw milk and linked to at least one of the following stages of the supply chain: processing of or trade in, including distribution of, products of the milk and milk products sector.

They may also recognise interbranch organisations which carry out, in one or more regions of the Union, taking into account the interests of the members of those interbranch organisations and of consumers, **one or more of the following activities:**

- improving the knowledge and the transparency of production and the market, including by publication of statistical data on the prices, volumes and durations of contracts for the delivery of raw milk which have been previously concluded, and by providing analyses of potential future market developments at regional, national and international level;
- promoting consumption of, and providing information on, milk and milk products in both internal and external markets;
- exploring potential export markets;
- drawing up standard forms of contract compatible with Union rules for the sale of raw milk to purchasers and /or the supply of processed products to distributors and retailers, taking into account the need to achieve fair competitive conditions and to avoid market distortions;
- providing the information and carrying out the research necessary to adjust production in favour of products more suited to market requirements and consumer tastes and expectations, in particular with regard to product quality and protection of the environment;
- maintaining and developing the production potential of the dairy sector, inter alia by promoting innovation and supporting programmes for applied research and development in order to exploit the full potential of milk and milk products, especially in order to create value-added products which are more attractive to the consumer;
- developing methods and instruments for improving product quality at all stages of production and marketing;
- exploiting the potential of organic farming and protecting and promoting such farming as well as the production of products with designations of origin, quality labels and geographical indications.

Recognition of producer organisations and their associations: Member States shall recognise as producer organisations in the milk and milk products sector all legal entities or clearly defined parts of legal entities applying for such recognition, provided that they meet the requirements laid down in this Regulation.

In response to an application, Member States may recognise an association of recognised producer organisations in the milk and milk products sector if the Member State concerned considers that this association is capable of carrying out effectively any of the activities of a recognised producer organisation and that it fulfils the conditions laid down in the Regulation.

Member States shall:

- decide whether to grant a recognition to a producer organisation within **four months** of the lodging of an application accompanied by all the relevant supporting evidence; this application shall be lodged with the Member State where the organisation has its headquarters;
- carry out, at intervals to be determined by them, **checks** to ascertain that recognised producer organisations and associations of producer organisations are complying with the provisions of this Chapter;
- in the event of non-compliance or irregularities in the implementation of the measures provided for in this Chapter, impose on those organisations and associations the applicable **penalties** they have laid down and decide whether, if necessary, recognition should be withdrawn;
- inform the Commission once a year, and no later than 31 March, of every decision to grant, refuse or withdraw recognition which they have taken during the previous calendar year.

Contractual negotiations: the amended text stipulates that the negotiations by the producer organisation may take place:

provided that, for a particular producer organisation: (i) the volume of raw milk covered by such negotiations does not exceed 3.5% of total Union production, and (ii) the volume of raw milk covered by such negotiations which is produced or delivered in any particular Member State does not exceed 33% of the total national production of that Member State;

provided that the raw milk is not covered by an obligation to deliver arising from the farmer's membership of a cooperative in accordance with the conditions set out in the cooperative's statutes or the rules and decisions provided for in or derived from these statutes.

Notwithstanding the conditions set out above, a producer organisation may negotiate, provided that, with regard to that producer organisation, the volume of raw milk covered by the negotiations which is produced in or delivered in a Member State having a total annual raw milk production of less than 500 000 tonnes does not exceed 45 % of the total national production of that Member State.

By way of derogation, even where the thresholds set out therein are not exceeded, the national competition authority may decide in an individual case that a particular negotiation by the producer organisation should either be reopened or should not take place at all if it considers that this is necessary in order to prevent competition being excluded or in order to avoid seriously damaging SME processors of raw milk in its territory.

Regulation of supply for cheese with a protected designation of origin or protected geographical indication: in view of the importance of protected designations of origin (PDO) and protected geographical indications (PGI), notably for vulnerable rural regions, and in order to ensure the value-added and to maintain the quality of, in particular, cheeses benefiting from PDO or PGI, and in the context of the expiring milk quota system, Member States should be allowed to apply rules to regulate the supply of such cheese produced in the defined geographical area.

The rules should cover the entire production of the cheese concerned and should be requested by an inter-branch organisation, a producer organisation or a group as defined in Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs.

Such a request should be supported by a large majority of milk producers representing a large majority of the volume of milk used for that cheese and, in the case of interbranch organisations and groups, by a large majority of cheese producers representing a large majority of the production of that cheese. Moreover, these rules should be subject to strict conditions, in particular in order to avoid damage to the trade in products in other markets and to protect minority rights. Member States should immediately publish and notify to the Commission the adopted rules, ensure regular checks and repeal the rules in case of non-compliance.

Compulsory declarations: the Regulation stipulates that **from 1 April 2015**, the first purchasers of raw milk shall declare to the competent national authority the quantity of raw milk that has been delivered to them each month.

The term “first purchaser” shall mean an undertaking or group which buys milk from producers in order to: (a) subject it to collecting, packing, storing, chilling or processing, including under a contract; (b) sell it to one or more undertakings treating or processing milk or other milk products.

Contractual relations: if a Member State decides that every delivery of raw milk in its territory by a farmer to a processor of raw milk must be covered by a written contract between the parties and/or decides that first purchasers must make a written offer for a contract for the delivery of raw milk by the farmers, **such a contract and/or such an offer for a contract shall fulfil the following conditions:**

- the price payable for the delivery, which shall: (i) be static and be set out in the contract, and/or; (ii) be calculated by combining various factors set out in the contract, which may include market indicators reflecting changes in market conditions , the volume delivered and the quality or composition of the raw milk delivered;
- the volume of raw milk which may and/or must be delivered and the timing of such deliveries;
- the duration of the contract, which may include either a definite or an indefinite duration with termination clauses;
- details regarding payment periods and procedures;
- arrangements for collecting or delivering raw milk;
- rules applicable in the event of force majeure.

Notwithstanding these conditions, two options are offered to the Member States:

1. where a Member State decides to make written contracts for the delivery of raw milk compulsory, it may establish a **minimum duration**, applicable only to written contracts between a farmer and the first purchaser of raw milk. Such a minimum duration shall be **at least six months** and shall not impair the proper functioning of the internal market; and/or
2. where a Member State decides that the first purchaser of raw milk must make a written offer for a contract to the farmer, it may provide that the offer must include a minimum duration for the contract, set by national law for this purpose. Such a minimum duration shall be at least six months and shall not impair the proper functioning of the internal market.

The Member States which make use of these options shall notify the Commission of how they are applied.

Farmers shall have the right to refuse such a minimum duration provided that he does so in writing. In this case, the parties shall be free to negotiate all elements of the contract.

Delegated acts: the Commission may adopt delegated acts as regards: (i) the conditions for recognising transnational producer organisations and transnational associations of producer organisations; (ii) rules relating to the establishment and the conditions of administrative assistance to be given by the relevant competent authorities in the case of transnational cooperation; (iii) additional rules regarding the calculation of the volume of raw milk covered by the negotiations.

The power to adopt delegated acts shall be conferred on the Commission for a period of five years from the entry into force of the Regulation.