Milk and milk products sector: contractual relations

2010/0362(COD) - 14/03/2012 - Final act

PURPOSE: to propose new measures to improve future stability in the dairy sector.

LEGISLATIVE ACT : Regulation (EU) No 261/2012 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.

CONTENT: following agreement at first reading, the European Parliament and the Council adopted a regulation aiming to improve the functioning of the EU milk sector. The Luxemburg delegation voted against the adoption of the Regulation and the Netherlands, Denmark and Ireland delegations abstained.

The provisions on contractual relations in the milk sector and milk products are a response to the deep crisis which affected this sector in 2008 and 2009, but these measures should also be seen in the context of abolition of the milk quotas regime from 2015.

The main elements of the Regulation include:

- a reinforcement of the bargaining power of milk producers by allowing them to set up producer organisations that on their behalf negotiate collectively contracts for the deliveries of milk ;

- Member States may introduce on their territory: (a) an obligation for formal written contracts for the supply of milk and/or (b) an obligation for the first purchaser of milk to present a written contract offer to the producer, who will be able to accept or reject that offer.

All elements of the contracts should be freely negotiated between the parties. However Member States may determine the minimum duration of contracts between the first purchasers and the producers on their territory (at least 6 months). The producer may reject such a minimum duration and negotiate freely all elements of the contract.

Improving transparency of the EU milk production market: the Regulation introduces an obligation for first purchasers to send monthly declarations on the quantities of milk bought by them. The purpose of this requirement is to monitor the volume of milk collected and developments on the market after the milk quota regime expires.

Management of cheeses with PDO/PGI: Member States may under specific conditions, lay down binding rules on supply management of cheeses with Protected designation of origin / Protected geographical indication (PDO / PGI) in order to adapt the production of PDO/PGI cheeses to the actual demand. 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 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 notify to the Commission the adopted rules, ensure regular checks and repeal the rules in case of non-compliance.

Interbranch organisations: Member States may also recognise interbranch 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;

- are formed on the initiative of all or some of the representatives;

- 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 activities specified in the text, including improving the knowledge and the transparency of production and the market, and promoting consumption of milk and milk products in both internal and external markets.

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. The text sets out the time limits and obligations for Member States.

Contractual negotiations: the Regulation 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 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.

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:

- 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

- 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.

Member States that 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 they do so in writing. In this case, the parties shall be free to negotiate all elements of the contract.

Implementing acts: implementing powers are conferred on the Commission relating to (i) the implementation of conditions for the recognition of producer organisations and their associations and interbranch organisations, (ii) the notifications by those organisations of the volume of raw milk covered by negotiations, (iii) the notifications to be made by the Member States to the Commission concerning those organisations and the rules for the regulation of supply of cheese benefiting from a PDO or a PGI, (iv) detailed rules concerning agreements, decisions and concerted practices in the milk and milk products sector, (v) the content, format and timing of compulsory declarations in that sector, (vi) certain aspects of contracts for the delivery of raw milk by farmers and (vii) the notification, to the Commission, of options taken by the Member State in this respect.

ENTRY INTO FORCE: 02/04/2012.

APPLICATION: 02/04/2012, with the exception of certain provisions which apply from 03/10/2012.

DELEGATED ACTS: the Commission has the power to adopt delegated acts in respect of (i) the conditions for the recognition of transnational producer organisations and transnational associations of producer organisations; (ii) the rules on the establishment and the conditions of administrative assistance in the case of transnational cooperation and (iii) the calculation of the volume of raw milk covered by negotiations by a producer organisation.

The power to adopt delegated acts shall be conferred on the Commission for a period of 5 years from 2 April 2012. The Commission shall draw up a report in respect of the delegation of power not later than 9 months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than 3 months before the end of each period. Delegated acts shall enter into force only if no objection has been expressed either by the European Parliament or the Council.