

COMMISSION OF THE EUROPEAN COMMUNITIES

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**Communication from the Council and the Commission
regarding milk and milk products**

**(following the Judgment of the Court of 19 May 1992
with regard to "SLOW" producers)**

Explanatory Memorandum

When the milk quota system was introduced in April 1984 no account was taken in the assignment of reference quantities to producers who under Regulation (EEC) No 1078/77 had taken part in the programme for non-marketing of milk or conversion of dairy herds for a duration of four years (conversion) or five years (non-marketing). These producers are known as "SLOM" producers and were some 120 000 in number.

Following the declarations of invalidity given by the Court of Justice in 1988 and 1990 the Community rules on milk quotas were amended and some 12 000 SLOM producers have received specific reference quantities, most of them from 20 March 1989 but some from 13 June 1991 only.

Five producers have again appealed to the Court of Justice, on the basis of Article 215 of the Treaty, in order to have the non-contractual liability of the Institutions upheld and obtain financial compensation for not having been able to produce milk between 2 April 1984, the date on which quotas were introduced (or the date when their undertakings under Regulation (EEC) No 1078/77 came to an end if that date was later) and the date on which they were able to resume milk production following allocation of a specific reference quantity.

The Court of Justice decided in a judgment delivered on 19 May 1992 (Cases C-104/89 and C-37/90) that the Council and the Commission must as a matter of principle make good the losses sustained by milk producers barred from producing under the quota system as a result of a commitment under Council Regulation (EEC) No 1078/77. It follows from the judgment of the Court that the obligation to make good damage suffered covers - subject to prescription of the rights of producers - the period up to the date of actual allocation of a production quota (29 March 1989 in most cases).

To date DG VI has received some 1 200 letters, more than 90% of which are from Germany. The number received has increased sharply since the judgment was handed down as a result in particular of the wide publicity given to the matter by the industry, and sometimes as many as 80 letters a day have to be answered.

Potentially the 12 000 producers who have received specific reference quantities, from March 1989 or later, can claim damages.

It is now vital to reduce this flood of claims addressed to the Commission and the utmost must be done to prevent the Court of Justice, which has already received about 200 appeals, from being overwhelmed by hundreds or even thousands of additional appeals. The financial and administrative burden on the Institutions would be enormous.

It is proposed therefore that the Commission adopt a communication to be published in the "C" series of the Official Journal of the European Communities following agreement by the Council. This would do three things:

- officially and publicly recognize that the Institutions have non-contractual liability towards all SLOM producers covered by the terms and criteria of the Court's judgment,
- suspend the legal time limit for introduction of all claims for damages not already time-barred at the date of the communication in order to forestall innumerable claims for damages,
- state that a subsequent act will notify producers of the practical details of compensation.

The Court's findings affecting assessment of the actual extent of injury are being studied and a proposal for a Regulation should be put to the Commission before the end of the year.

COMMUNICATION

FROM THE COUNCIL AND THE COMMISSION

Following the judgment delivered by the Court of Justice on 19 May 1992 in joined Cases C-104/89 (Mulder) and C-37/90 (Heinemann) the Community Institutions deem it necessary to notify the parties concerned of the following:

1. The Court of Justice has recognized the Community's non-contractual liability under Article 215 of the EEC Treaty vis-à-vis all producers as defined in Article 12(c) of Regulation (EEC) No 857/84 who have suffered reparable injury falling within the terms of the abovementioned judgment owing to their not having, as a result of their participation in the system introduced by Regulation (EEC) No 1078/77, received a milk quota in good time and who satisfy the terms and criteria of that judgment.
2. The Institutions undertake, with regard to all producers covered by point 1 and until the end of the period mentioned in point 3, not to plead that entitlement to claim is barred by lapse of time in accordance with the provisions of Article 43 of the Statute of the Court of Justice, provided that entitlement to compensation has not already been barred on grounds of time on the date of publication of this communication in the Official Journal or was not already barred on the earlier date on which the producer applied to one of the Institutions.
3. In order to give full effect to the judgment of 19 May 1992 the Institutions will adopt practical arrangements for compensating the persons concerned. Payment of interest will be dealt with in these arrangements.

The Institutions will specify to what authorities and within what period claims are to be made. Producers are assured that the possible recognition of their rights will be in no way affected if before the opening of this period they do not make an approach to the Community Institutions or the national authorities.

COST ASSESSMENT

A. INTRODUCTION

The cost of compensation will depend on the following factors:

- total annual reference quantities to which the producers concerned would have been entitled;
- the period for which compensation is due given the time limit and the date of actual allocation of a reference quantity:
 - . either under Regulation (EEC) No 764/89 of 20 March 1989 (SLOM I);
 - . or under Regulation (EEC) No 1639/91 of 13 June 1991 (SLOM II);
- the net loss of income expressed in kilograms of milk as a result of the failure to grant the reference quantities in question;
- Interest due on overdue payments.

B. ASSUMPTIONS

1. The total annual reference quantities concerned

It should be remembered that quantities made available for allocation to SLOM producers following the adoption of Regulation (EEC) No 764/89 (SLOM I) amounted to 602 000 tonnes, corresponding to 60% of quantities in respect of which premiums were paid under Regulation (EEC) No 1078/77, i.e. approximately 836 000 tonnes. The latter quantity must be increased by 1% (with in addition, in the case of Ireland, Northern Ireland and Luxembourg, the impact of allocations from the Community reserve) and then reduced by a rate of reduction representative of the rates of reduction applicable to comparable producers. The average reduction could be estimated at 5%.

On this basis the annual quantity for which SLOM producers who received an original reference quantity under Regulation (EEC) No 764/89 have to be compensated for amounts to around 800 000 tonnes.

There remain producers who have become recipients of a "SLOM" reference quantity for the first time pursuant to Regulation (EEC) No 1639/91 (SLOM II)(1).

(1) These are persons inheriting a holding qualifying for a premium and producers whose non-marketing period expired in 1983.

Since the reference quantities of this category of producers will only be definitively established from 1 July 1993, the total quantity concerned is difficult to forecast at present but should not exceed 200 000 tonnes.

As a result the annual sum of reference quantities to be compensated for could be around 1 million tonnes.

2. The period in respect of which compensation is due

The period covered in theory by the non-contractual liability of the Institutions falls between the date on which the commitment entered into under Regulation (EEC) No 1078/77 terminated (or 2 April 1984, the date of commencement of the quota arrangements if the commitment expired before 2 April 1984) and the date on which the prejudice ceased, i.e. in most cases 29 March 1989, the date of entry into force of Regulation (EEC) No 764/89 (SLOM I). The theoretical period thus represents about five years.

However, the Institutions will be able to reduce that theoretical period by pointing out to producers the time limit on claims for damage suffered prior to a fixed five-year period commencing on the date of the individual application or the date of publication of the communication where no individual application was made.

Thus, assuming that the communication is published on 1 August 1992, the damage affected by prescription will be that suffered prior to 1 August 1987, whatever the date of the end of the commitment. Financial compensation will only be due from 1 August 1987 to 29 March 1989, the date on which the prejudice ceases, i.e. barely two years.

On a flat-rate basis that two-year period may be used to assess the damage since only 10% of the SLOM producers (1 200 out of 12 000) have already made applications and the great majority of the 1 200 applicants made their applications in 1992, which prescribes all damage prior to 1987 with a fixed final date on which producers may claim for damage (29 March 1989 in most cases).

3. Net loss of income

The damage to be compensated for should correspond to the loss arising from the non-delivery of milk which the parties concerned would have made if they had obtained the reference quantities to which they were entitled. The gross margin recorded among comparable dairy producers gives an initial indication of the loss; it represents the difference between the gross income from dairying and the variable costs necessarily linked with dairy production, e.g. the cost of animal feedingstuffs. Income which the SLOM producers would have drawn from replacement activities should also be deducted.

Such income must be understood as covering not only that which the SLOM producers actually drew from replacement activities but also income which they could have enjoyed if they had been sensible and engaged in such activities.

Given these factors and in the light of an examination of the accounting results of dairy holdings in Germany (the country accounting for most claims for damages received to date), the annual damage to be compensated for may be estimated at approximately ECU 75/t.

That amount, which represents approximately 30% of the price for milk for the period concerned, exceeds the corresponding amount of the non-marketing premium granted to SLOM producers under Regulation (EEC) No 1078/77 (approximately ECU 242/t over five years, i.e. around ECU 48/t/year, for small producers producing up to 30 000 kilograms of milk and a lower average premium for the largest producers; e.g. an average premium of ECU 168/t over five years, i.e. approximately ECU 34/t/year, for a producer producing 200 000 kg).

4. Interest due on overdue payments

The annual interest rate is 8%. The moratory period could extend over two years. In that case, the damages should be increased by 16%.

C. ASSESSMENT OF FINANCIAL IMPACT

On the basis of the factors and assumptions set out above, the total cost of damages may be estimated as follows:

	ECU million
Damages: 1 million tonnes x 2 years x ECU 75/t x 1.145 (DR) =	172
Interest: ECU 172 million x 16%	= 28
Total damages	<hr/> 200

It should be stressed that the ECU 75/t used to assess the income loss may vary considerably depending on the size of the holdings and their location. As a consequence, the expenditure stated, which is the result given by an average, is subject to revision.

This expenditure should be incurred during the period covered by the 1993 and 1994 financial years.