

**Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1234/2007 on contractual relations in the milk and milk products sector’**

COM(2010) 728 final — 2010/0362 (COD)

(2011/C 218/21)

Rapporteur: **Ms Dilyana SLAVOVA**

On 22 December 2010 the Council decided to consult the European Economic and Social Committee, under Articles 42 and 43(2) of the Treaty on the Functioning of the European Union, on the

*Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1234/2007 on Contractual relations in the milk and milk products sector*

COM(2010) 728 final — 2010/0362 (COD).

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 6 April 2011.

At its 471st plenary session, held on 4 and 5 May 2011 (meeting of 4 May), the European Economic and Social Committee adopted the following opinion by 150 votes to 3 with 13 abstentions.

## **1. Conclusions and recommendations**

1.1 The EESC notes that the 2007-2009 crisis has put the dairy sector, and in particular producers, under huge strain.

1.2 The EESC notes the imbalances along the supply chain, specially the disequilibrium between retailers on the one hand and farmers and processors on the other, which stands in the way of a fairer distribution of the added value of products to milk producers. The EESC recommends to the Commission that measures be taken to ensure that transparency is applied equally throughout the dairy chain (producers – processors – distributors – retailers).

1.3 The EESC welcomes the fact that the Commission is capitalising on the recommendations issued by the High Level Expert Group on Milk (HLEG) and responding in a timely fashion to the challenges facing the dairy sector.

1.4 The EESC is convinced that optimal efficiency in the dairy supply chain is in the interests of all parties involved and emphasises that distributing the added value fairly along the chain, in particular increasing producers' bargaining power, will help boost its overall efficiency, competitiveness and sustainability.

1.5 The EESC considers that all four elements (contractual relations, bargaining power of producers, inter-professional/inter-branch organisations and transparency) are closely linked and interdependent. Thus these elements should be tackled jointly.

1.6 The EESC acknowledges that the structure of dairy production may differ considerably between Member States and therefore agrees that the use of contracts should remain voluntary. However, Member States should in principle be

allowed to make the use of the contracts compulsory on their territory, in view of the fact that the smooth functioning of the internal market should be safeguarded. It is of paramount importance to underline that the proposal is not applicable to cooperatives and to draw attention to the best practices established in some of the Member States.

1.7 The EESC agrees that such contracts should include at least the following four key aspects which should be freely negotiated between the parties: (1) the price payable/price formula at delivery, (2) the volume, (3) the timing of deliveries during the season, and (4) the duration of the contract.

1.8 The EESC encourages the establishment of producers' organisations and inter-branch organisations, especially in some of the new Member States where the fragmented dairy farming sector has very limited bargaining power. The EESC acknowledges the added value in the fruit and vegetables sector of organisations that strengthen the links between the various stakeholders within branches, given that they can improve knowledge and transparency of production and markets; considers that similar developments might improve the overall functioning of the dairy supply chain.

1.9 The EESC considers that there is need for further clarification and development of the application of EU competition rules in the dairy sector to allow primary producer organisations to benefit from improved bargaining power.

1.10 The EESC stresses that increased transparency can help the dairy chain function more smoothly, to the benefit of all actors, and in this context welcomes the recommendations of the HLEG to the Commission ensuring that transparency does not distort competition in the internal market.

1.11 The EESC welcomes the work of the Commission, whilst also highlighting the fact that the proposal will not solve all the problems in the dairy sector.

## 2. Introduction

2.1 Milk production is very important in the EU, not only from an economic point of view given its turnover and the number of jobs involved but also because of its role in terms of land use and protection of the environment. In many regions, particularly mountainous and disadvantaged ones, it is also one of the few types of production that there is a real chance of developing and maintaining.

2.2 The dairy sector plays a vital role in the quality of life in Europe because of its contribution to health and, responsible and safe nutrition for consumers and its economic importance for rural development and environmental sustainability.

2.3 The dairy producing and processing sectors vary widely between Member States. Production and processing structures are very different from one Member State to another with, at one extreme, a predominantly cooperative organisation where the cooperative also processes the milk and at the other extreme, large numbers of individual producers and a large number of private processors. In the run-up to 2015, even in the most organised environment producers will need to be able to prepare themselves adequately for the new market situation they will be dealing with once quotas are abolished. It is worth noting that, in as much as the public authorities (at EU and national level) are withdrawing from production management, stakeholders in the sector will be faced with an entirely new set of circumstances, and with new responsibilities. In these circumstances, producers need to be sure they can get a fair price from the market.

## 3. Background

3.1 In October 2009, in light of the difficult market situation for milk, a High Level Expert Group on Milk (‘HLG’) was set up with the purpose of discussing mid-term and long-term arrangements for the milk and milk products sector, working on a regulatory framework and helping stabilise the market and producers’ income.

3.2 The HLG obtained oral and written input from major European stakeholder groups in the dairy supply chain representing farmers, dairy processors, dairy traders, retailers and consumers. Furthermore, the HLG received contributions from invited academic experts, third-country representatives, national competition authorities and the Commission.

3.3 A dairy stakeholder conference was also held on 26 March 2010 allowing a wider range of actors in the supply chain to express their views. The HLG delivered its report on 15 June 2010; this contained an analysis of the current situation in the dairy sector and a number of recommendations.

3.4 The HLG found major imbalances in the supply chain (producers – processors – distributors – retailers), and an

uneven distribution of the added value. This situation is caused by a lack of transparency, rigidities and problems of price transmission in the supply chain.

3.5 The report and recommendations issued by the HLG were examined by the Council and Presidency conclusions were adopted at the meeting of 27 September 2010. Those conclusions urge the Commission to submit its response to the first four recommendations of the HLG (contractual relations, bargaining power of producers, inter-branch organisations and transparency) by the end of the year.

3.6 The present Commission proposal addresses all four elements (contractual relations, bargaining power of producers, inter-branch organisations and transparency) to the extent that the existing provisions relating to them need to be amended.

3.7 As regards relations between milk producers and dairies, the concentration of supply is often much lower than concentration at processing level. This results in an imbalance in bargaining power between these levels. The proposal provides for optional written contracts to be drawn up in advance for deliveries of raw milk by a farmer to a dairy, which would include the key aspects of price, the timing and volume of deliveries, and the duration of the contract. Member States have the option of making the use of contracts compulsory on their territory. Cooperatives, owing to their specific nature, are not required to have contracts if their statutes contain similar provisions.

3.8 In order to rebalance bargaining power in the supply chain, the proposal plans to allow farmers to negotiate contracts collectively through producer organisations. It sets appropriate quantitative limits to the volume of this negotiation which should place farmers on an equal footing with the major dairies while maintaining adequate competition in raw milk supply. The limits are set at 3,5 % of global EU production and 33 % of national production, with specific safeguards also provided to avoid serious prejudice in particular to SMEs. Such producer organisations should therefore also be eligible for recognition under Article 122 of Regulation (EC) No 1234/2007. The Commission should be empowered to adopt delegated acts in accordance with Article 290 TFEU in respect of the conditions for approval of associations of producer organisations.

3.9 The proposal also sets out specific EU rules for inter-branch organisations covering all parts of the chain. These organisations can potentially play useful roles in research, improvement of quality, promotion and dissemination of best practice in production and processing methods.

3.10 It is proposed to apply the rules of existing inter-branch organisations in the fruit and vegetables sector, with appropriate adaptations, to the dairy sector.

3.11 The inter-branch organisations would contribute to improving knowledge and transparency of production and the market, including by publishing statistical data on the prices, volume and duration of contracts for the delivery of raw milk which have been concluded, and by providing analyses of potential future market trends at regional or national level.

3.12 The proposal gives the Commission the power to adopt delegated acts in accordance with Article 290 TFUE in order to supplement or amend certain non-essential elements of measures set out in this Regulation. The elements for which that power may be exercised should be defined, as well as the conditions to which that delegation is to be subject.

3.13 In order to guarantee the uniform application of measures set out in this Regulation in all Member States, the Commission should be empowered to adopt implementing acts in accordance with Article 291 TFUE.

#### 4. General comments

4.1 The proposal aims to boost the position of the dairy producer in the dairy supply chain and to prepare the sector for a more market oriented and sustainable future.

4.2 It provides for written contracts between milk producers and processors, the possibility of negotiating contract terms collectively via producer organisations in such a way as to balance the bargaining power of milk producers relative to major processors, specific EU rules for inter-branch organisations and measures to enhance transparency in the market. The measures are proposed to be valid until 2020 with two intermediate reviews. Appropriate size limits for collective negotiations and other specific safeguard measures should ensure the achievement of the objectives of strengthening the bargaining power of milk producers while safeguarding competition and the interests of SMEs.

4.3 Each Member State may decide how it will approach contractual relations. Each Member State has the freedom, within its own contract law system, to decide whether to make the use of contracts between farmers and processors compulsory. Given the diversity of situations across the EU in this context, in the interests of subsidiarity, such a decision should remain within the remit of the Member States.

4.4 The EESC agrees that there is a need to strengthen the bargaining power of producers; but the different situations and national characteristics would also have to be taken into account.

4.5 As regards the duration of delegation for delegated acts, the EESC believes that this must always be for a specific period of time (mandate). Furthermore, delegated acts should be reserved for areas where decisions need to be taken quickly.

4.6 Implementing acts should be used in cases where it would be better for Member States to harmonise their implementation.

4.7 The EESC believes firmly in the consultation of stakeholders during the preparation of EU legislation. Thus, it is important for the Member States' experts to be consulted in the effort to better regulate the volatile dairy market. In this respect it is very important to ensure that such volatility will not have an irreversibly damaging impact on producers in the EU dairy sector. In that context, it is clear that more transparent and equal distribution of the added value between market players will have to be considered as will, in particular, the need for increased bargaining power for producers.

4.8 Inter-branch organisations currently exist in a few Member States and carry out these roles in compliance with EU law. Their efficiency is limited by the imbalances of the dairy chain.

4.9 However, it is clear to the EESC that the Commission's proposals would not solve all of the milk market's problems and do not apply to dairy cooperatives, which make up some 58 % of milk production. EESC regrets that these proposals do not encompass either the dairy industry or major retailers which play a key role in balancing the dairy market and in setting prices.

4.10 The EESC considers that the planned limits may prove to be overly restrictive, given the structure of the dairy sector at national level, particularly in the smaller Member States. The EESC calls for the EC, in certain exceptional cases, to allow all producers supplying a single dairy to group together, making it possible to set up groups of producers in relation to the size of the purchaser.

4.11 Given that the Commission is planning to withdraw from managing milk production and hand the responsibility over to operators on the ground, it is vital for those operators to have the most complete and up-to-date information possible on developments in the market, which must be transparent. The EESC therefore considers it vital for an effective monitoring instrument to be established at European level, as a requisite for allowing a degree of guidance over production.

4.12 Finally, the new circumstances make it essential to retain market management tools (such as intervention, private storage, export refunds), which need to be effective, on the one hand and quick and easy to implement on the other.

#### 5. Specific comments

5.1 The EESC recognises the special effort of the Commission to propose a draft regulation to the Parliament and the Council amending Council Regulation (EC) No 1234/2007 on contractual relations in the milk and milk products sector. The EESC considers this act to be both positive and timely as regards meeting the major challenges facing this specific agricultural sector.

5.2 Nonetheless the EESC stresses that the proposal will not be able to solve all the problems the dairy sector is facing. In order to further improve the smooth functioning of the dairy chain, monitoring should ensure transparency throughout the whole dairy chain (producers – processors – distributors – retailers).

5.3 A successful EU dairy sector after 2015 will require very efficient milk production from dairy units of adequate economic size and with a high level of human capital. Restructuring efforts should therefore be continued, both in agricultural holdings and in dairies: it is vital for agricultural producers to have access to effective, competitive and innovative dairies that can make the most of market opportunities. Particular attention should be paid here to disadvantaged areas, where dairies also often have to deal with less advantageous geographical circumstances and are therefore at a comparative disadvantage. In this context, particular attention needs to be given to transparent, efficient, regional production that ensures low environmental impact, information to consumers and quality, by reducing the number of middlemen. The dairy industry as a whole should focus on producing high-quality, high-value-added products for which the domestic market is growing and where export opportunities are good.

5.4 The EESC considers that the Member States concerned may establish regulations in order to improve and stabilise the operation of the market of dairy products marketed under a protected designation of origin or protected geographical indication under regulation (EC) No. 510/2006.

5.5 There is greater disparity among the Member States' dairy sectors than in the other EU agricultural sectors; this requires more flexibility in the implementation of EU policies. The EESC foresees a need for the implementation of specific measures for dairy farmers and processors with a view to restructuring and modernising the dairy sector in the Member States.

5.6 The EESC calls for the Commission to react more rapidly and flexibly to crises. In 2011 the dairy market is extremely volatile, reflecting the climate challenges, and it is possible that there might be a repeat of the 2007-2009 crisis cycle. The EESC therefore proposes that the Commission should continue to monitor the dynamics of the dairy sector in order to do as much as possible to prevent a future devastating dairy crisis.

Brussels, 4 May 2011.

*The President*  
*of the European Economic and Social Committee*  
Staffan NILSSON

---