
EUROPEAN PARLIAMENT

Working Documents

1978 - 1979

13 JUNE 1978

DOCUMENT 163/78/rev.

MOTION FOR A RESOLUTION

tabled by

Mr BANGEMANN,
on behalf of the Liberal and Democratic Group

Mr SEEFELD,
on behalf of the Socialist Group

Mr KLEPSCH,
on behalf of the Christian-Democratic Group (EPP Group)

Mr RIPPON,
on behalf of the European Conservative Group

Mr MASCAGNI,
on behalf of the Communist and Allies Group

Mr de la MALENE,
on behalf of the Group of European Progressive Democrats

with request for urgent debate

pursuant to Rule 14 of the Rules of Procedure

on

/the flood disaster in Baden-Württemberg,
Bavaria and Rhineland Palatinate

02.1

The European Parliament,

- having regard to the havoc and destruction wrought by the flood disaster in Baden-Württemberg, Bavaria and Rhineland Palatinate,
- deeply concerned at the financial loss incurred particularly by individuals, small and medium-sized businesses and the agricultural community, which is provisionally estimated at between 200 and 300 million units of account,
- wishing to assist the people of the Länder concerned with the task of making good the damage,

requests the Commission of the European Communities to make arrangements for the provision of immediate aid and for those affected to receive appropriate assistance from the disaster fund.

EUROPEAN PARLIAMENT

Working Documents

1978 - 1979

13 June 1978

DOCUMENT 167/78

Report

drawn up on behalf of the Committee on Agriculture

on amended proposals from the Commission of
the European Communities to the Council
(Doc. 133/78) for a regulation amending
Regulation (EEC) No. 804/68 on the common
organization of the market in milk and milk
products

Rapporteur: Mr Michael HERBERT

1.2.1

By letter of 13 January 1978, the President of the Council of the European Communities requested the European Parliament, pursuant to Article 43 of the EEC Treaty, to deliver an opinion on the proposals from the Commission of the European Communities to the Council for

- I. a regulation amending Regulation (EEC) No. 804/68 on the common organization of the market in milk and milk products
- II. a regulation (EEC) relating to the Northern Ireland Milk Marketing Board.

The President of the European Parliament referred these proposals to the Committee on Agriculture.

At its meeting of 17 January 1978 the Committee on Agriculture appointed Mr Herbert rapporteur.

The committee considered these proposals at its meetings of 27 and 28 April 1978 and 8 May 1978 and at the latter meeting adopted the motion for a resolution by 8 votes in favour with 4 abstentions.

The European Parliament on 12 May 1978 in plenary session referred this report back to the Committee on Agriculture.

By letter of 22 May 1978 the President of the Council of the European Communities informed the European Parliament of amendments to these proposals.

The Committee on Agriculture considered these amended proposals at its meeting of 12 June 1978 and at the same meeting adopted the motion for a resolution by 12 votes in favour to 6, with 2 abstentions.

Present: Mr Kofoed, chairman; Mr Liogier and Mr Hughes, vice-chairmen; Mr Herbert, rapporteur; Mr Andersen, Mr Brégégère, Lord Brimelow, Mr Corrie, Mr Cunningham (deputizing for Mrs Dunwoody), Mr Dewulf, Mr Durand, Mr Fruh, Mr Fuchs (deputizing for Mr Klinker), Mr Hansen, Mr Hoffmann, Mr Howell, Mr Joxe, Mr L'Estrange, Mr Scott-Hopkins and Mr Wawrzik (deputizing for Mr Tolman).

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The Committee on Agriculture hereby submits to the European Parliament the following motion for a resolution together with explanatory statement :

MOTION FOR A RESOLUTION

embodying the opinion of the European Parliament on the amended proposals from the Commission of the European Communities to the Council for regulations amending Regulation (EEC) No 804/68 on the common organization of the market in milk and milk products

The European Parliament,

- having regard to the amended proposals from the Commission of the European Communities
 - having been consulted by the Council pursuant to Article 43 of the EEC Treaty (Doc.133 /78),
 - having regard to the Report of the Committee on Agriculture (Doc.167 /78),
 - whereas the Common Agricultural Policy must seek to stabilize markets and seek a balance between production and consumption,
 - whereas it is in the interest of the Community to maintain and increase consumption of milk and milk products,
 - whereas the Community must assure the free circulation of agricultural produce within the Community,
 - whereas producer organizations provide an important means of increasing the efficiency of agricultural production and marketing,
1. Considers that the milk marketing boards, in so far as they have helped to channel a major proportion of milk produce in the United Kingdom towards direct human consumption, have contributed to improving the Community's market balance in the dairy sector;
 2. Considers at the same time that careful attention should be paid to ensuring that the United Kingdom's marketing boards are compatible with Community law and the provisions of the Treaty, and do not obstruct Community trade,
 3. Notes the deep concern expressed in a number of Member States that the milk marketing boards may hinder free trade, either directly through the boards' monopoly position or indirectly by means of the differentiation in prices;

4. Stresses, however, that United Kingdom imports of dairy produce from other Member States have more than doubled since 1973, while there is no evidence that the special powers granted to the milk marketing boards will in any way restrict imports;
5. Points out, further, that the modified proposals include provisions to ensure that differentiation of milk prices according to intended use will not cause any distortion in competition between the United Kingdom and other Member States, and that, to that end, no United Kingdom milk selling price may be below the lowest price of milk products imported into the United Kingdom;
6. Requests that for all Member States there be provided the possibility for the setting up of comparable organizations and likewise conferring special rights in all the Member States, taking into account the structure of the market in the State concerned;
7. Requests the Council, therefore, to take account of the views expressed above when adopting these proposals.

EXPLANATORY STATEMENTPART ONE ; INTRODUCTIONThe purpose of the Commission's proposal

1. The purpose of the Commission's proposal is to provide for the basic Regulation No 804/68 on the milk and milk products sector to be amended on a general basis, but in such a way so as to allow the five marketing boards in the United Kingdom to continue their operations on condition that they abandon certain rights presently enjoyed.

The Commission justifies its proposal on the grounds that it is in the common economic interest of the Community to maintain the marketing boards, since they have contributed to maintaining a high level of liquid milk consumption in the United Kingdom, so limiting the necessity for costly intervention.

2. During the discussions in the Council, the Commission's original proposals were modified to take into account various concerns expressed in the Council.

The majority of Member States required guarantees ensuring that the differentiation of prices between the human consumption and the manufacturing sectors would not lead to an indirect subsidization of British butter and cheese production.

Such guarantees have been provided in the associated proposed regulation applying the provisions in the United Kingdom (and on which the Parliament is not consulted) which states that price differentiation may not lead to a distortion in competition on the United Kingdom market or between local and imported dairy products, and that, to obviate that risk, the U.K. selling price for manufacturing milk will not be fixed at levels which would undercut the lowest offer prices of the corresponding Community products.

On the other hand, the United Kingdom was concerned to avoid the possibility that an over-rigid rule concerning the proportion of milk, going to direct human consumption, required for authorization might lead to a review of the marketing boards in the event of a decline in United Kingdom consumption of milk and fresh products.

At the same time, the following products were classified as fresh rather than manufactured : semi-skimmed milk, skimmed milk, buttermilk, cream and yoghurt.

Purpose and operation of the Milk Marketing Boards

3. The milk marketing boards in the United Kingdom were established under the Agricultural Marketing Acts of 1931 and 1933 which allowed producers - by a majority vote - to establish associations intended to establish greater market stability.

The marketing boards, which became the most highly developed in the milk sector, can be seen, therefore, as compulsory producer cooperatives, intended to act for producers through elected representatives with the aim of maintaining stable incomes.

4. The tasks of the five milk marketing boards in the United Kingdom consist principally in negotiating the price of milk with manufacturers and so acting as book-keeper and treasurer for milk producers, while ensuring that milk is put to the most efficient use.

The main feature of the marketing boards is that only producers registered with a board may sell milk, either directly to the board acting as the representative of the producer by means of a special retail licence, or a cheese contract, or on the export market.

5. Most of the milk produced is processed by a very small number of private major organizations that are not owned or in any way controlled by the producers or the marketing boards. The producers believe that milk marketing boards are required to offset the dominant position of the small number of processing organizations buying their milk.

6. One of the principal objections voiced against the marketing boards is that they charge different prices for milk according to its intended use. The prices of milk intended for human consumption and processing are pooled, with a hierarchy of prices based on butter/skim milk powder as the floor and a premium for milk sold for human consumption and other products which varies according to the state of the market. This premium is justified on the grounds of the additional cost required to ensure a more even milk supply. The milk marketing boards also claim that their ability to equalize prices to producers has enabled them to promote the sales of liquid milk, by ensuring that the liquid milk market always has priority and by using the liquid milk premiums to spend large sums on advertising and sales promotion.

Marketing function of the boards

7. The marketing boards have developed the ability to dispose of milk produce cheaply and efficiently. One aspect of the boards of major importance is the considerable efforts they have deployed, in cooperation with the dairy industry, to promote consumption. During the early 1950's liquid milk consumption began to decline. In order to offset this trend, sales divisions were established with the task of organizing promotional campaigns to develop consumption and outlets. As a result, liquid milk consumption accounts for about 60% of total milk production as compared to an EEC average of under 30%.

8. This is a unique achievement in the Community, and it is clearly to the advantage of the Community to maintain the marketing organization which has made it possible to maximize direct consumption of milk.

Problems facing the milk sector

9. The desirability of maintaining the marketing boards is all the more evident when one takes into account trends in milk production and consumption within the Community.

10. Since 1960 milk production in the Community has increased at the rate of 1.7% a year, while milk consumption tended to stop in the late 1960's and is now falling. As production increases and consumption falls, surpluses have increased from 10.4% of all milk delivered to dairies in 1975 to 14.4% in 1977 and, given the present trends, the present surplus will worsen.

11. The United Kingdom market is an important one for a number of Member States of the Community and, given the impact of price rises due to the progressive termination of transitional measures and the ad hoc dismantling of monetary compensatory amounts, it is possible that the market in dairy produce in the United Kingdom will decrease. It is all the more important therefore that an effective marketing organization be maintained.

Producers' incomes

12. The Committee on Agriculture has pointed out in its price report for 1978/79¹ that one of the most difficult problems facing the Community's agricultural policy at present is the increasing regional disparities in income of farmers. The role played by the marketing boards in this context should not be neglected.

¹ Doc. 35/78

13. One of the most important characteristics of the marketing boards is that they serve the needs of all producers within the area covered. The boards are obliged to buy milk offered by all registered producers on condition that it satisfies hygiene and quality requirements.

This obligation applies even in the most peripheral regions. No subsidy for haulage is required since costs are pooled. Milk prices, therefore, are approximately the same throughout the country. Thus the boards are of critical importance in maintaining the economic security of producers in the peripheral regions.

14. The great majority of producers consider that the marketing boards have provided them with a security of income which they would not have been able to achieve otherwise. This is partly the result of the flexibility¹ that the boards have achieved in day-to-day management of the dairy market. This flexibility is based on the ability of the boards : to pool prices for milk used for fresh and manufactured products; and to direct milk flows from one region to another according to the balance of supply and demand.

15. The boards also provide a wide range of services to producers including artificial insemination, a continuous accounting system and economic advisory service and veterinary services.

¹ This flexibility results in extremely low costs of the marketing organization to producers. For 1976/77, the net marketing expenses of the board represented 0.363 pence per litre (the guaranteed price then being 9.443 pence per litre).

PART TWO : THE COMMISSION'S PROPOSALS

16. In view of these considerations, the Commission considers that the basic regulation on the common organization of the market in milk and milk products should be amended so as to allow for the continued existence of the marketing boards, on the condition that certain of the rights enjoyed by these organizations be given up.

17. The Commission proposes, therefore, that producers' organizations (representing at least 80% of the number and 50% of the production of the milk producers) be granted :

- the exclusive right within certain regions to purchase milk produced; and
- the right to equalize prices paid to producers.

Provision shall be made to ensure that exercise of these rights :

- is consistent with the general principles of the Treaty, in particular as regards the free movement of goods, and avoids discrimination against producers selling their milk to the organization and persons wishing to buy milk from it;
- does not affect competition in the agricultural sector more than is absolutely necessary; and
- does not jeopardize the efficient functioning of the market in milk and milk products, particularly as regards price and intervention arrangements.

These rights will be subject to certain conditions and, in particular :

- that a quantity, equal to at least 150% of the Community average, of the milk produced in the area concerned is used for direct human consumption; and
- that there is a greater per capita direct human consumption than the Community average.

18. It must be emphasized that these provisions alone will not be sufficient to allow for the continued activity of the marketing boards in their present forms.

19. The marketing boards have gradually, in past years, developed a capacity to process milk either for butter or cheese. Historically, this was the result of the need to recover debts from a particular factory or to provide processing capacity in an under-served area.

The marketing boards consider that these manufacturing activities are important in judging milk prices negotiated with the processing sector and they consider that no serious problems with that sector have been encountered.

It has been argued, however, by certain of the dairy manufacturers that the monopoly supply position of the marketing boards confers upon them an unfair advantage in manufacturing.

The Commission also proposes, therefore, that the marketing boards maintain separate accounts, management and administration for its processing activities to ensure that they compete on an equal footing with the outside processing industries, particularly in respect of the availability of supplies, prices paid, credit and loan facilities and other financial transfers.

20. The Commission also proposes that the organization should be based on the same principles underlying all cooperatives, i.e. that profits should be strictly limited to the minimum necessary for the objectives mentioned in its statutes and that compulsory financial levies on producers be employed only to the extent necessary to enable the organization to perform its functions.

21. The Commission also proposes that the organization's exclusive right and obligation to purchase milk produced in each region shall not cover quantities which the producer withholds for :

- (a) marketing in a non-Member country or another Member State;
- (b) processing into butter or skimmed milk powder for sale to the intervention agency where the price paid by the organization has been below that of the intervention price;
- (c) milk produced by producer retailers who have stated in writing that they do not wish to become members;
- (d) milk sold by producers to a producer retailer; and
- (e) milk excluded by sale to the organization by mutual consent.

PART THREE : COMMUNITY LAW AND THE MILK MARKETING BOARDS

22. Despite these advantages demonstrated by the milk marketing boards, there remain, however, certain respects in which the marketing boards may appear to be incompatible with Community legislation and, in particular :

- (a) the exclusive right to purchase in a determined region; and
- (b) the equalization of prices.

The right of a cooperative to impose rules on all producers within a particular region is not itself evidence that the cooperative is acting in contradiction to the rules laid down by the Treaty. For example, the Commission itself, in its proposals on the Mediterranean regions, proposes that producers' associations in the fruit and vegetable sector should be able to extend to non-members rules on production, marketing and withdrawal prices, as well as the obligation to pay all or part of the subscription to these associations¹.

23. Therefore, there are no insurmountable obstacles. The marketing boards can be reconciled with the basic objectives of the Treaty, particularly if the advantages of the boards are recognized and their role in safeguarding the incomes of producers and in stimulating consumption of dairy produce in a Community market.

There are four areas in which contradiction with the Treaty could exist :

- (i) free movement;
- (ii) non-discrimination;
- (iii) fundamental rights and proportionality;
- (iv) competition.

Free movement

24. A certain number of fears have been expressed by milk producers in other Member States concerning the milk marketing boards, in particular that they are believed to restrict imports of milk and dairy produce into the United Kingdom.

25. These fears are unfounded. The marketing boards have no control whatsoever over imports. The only import controls existing in the past were exercised by the Government, under GATT arrangements etc., and not by the marketing boards.

¹ Doc. 470/77, p. 16.

26. In order to ensure compliance with the EEC's requirements on free trade, the marketing boards have already adapted to Community arrangements : for example, the contractual obligation of buyers not to buy milk elsewhere and restrictions on the import market have disappeared. The guaranteed price has disappeared with the end of the transitional period.

27. Moreover, the marketing boards are concerned with negotiating the purchase and sale of milk. Given the transport problems involved, other Member States are interested principally in the export of dairy produce to the United Kingdom. And this sector, the manufacturing and marketing of dairy produce, as in all the other Member States, is the domain of individual private companies which have no connection with the marketing boards.

28. The fact that fears concerning imports are unfounded can best be illustrated by the startling increase in imports of dairy produce from the United Kingdom's partners in recent years :

UK imports from other Member States
(1,000t)

	<u>Butter</u>	<u>Cheese</u>
1972	147	66
1973	187	83
1974	326	102
1975	365	114
1976	375	114

Indeed, if the milk marketing boards were to be abolished, liquid milk consumption would decrease and processing would increase in the United Kingdom, so excluding a part of cheese and butter imports from other Member States.

29. The position, however, is less clear if one examines the question of whether the exclusive right to purchase milk can be considered to be a quantitative restriction. REWE-ZENTRAL FINANZ and TASCA judgments¹ laid down the principle that a quantitative restriction could be considered as any measure capable of acting as a direct or indirect, real or potential hindrance to imports between Member States.

¹ Case 4/75, Reports 1975.6, p. 843, and Case 65/75, Reports 1976.2, p. 309.

In the light of this judgment it may be considered that the price structure in the UK, whereby a higher price of milk for direct consumption subsidizes the lower price of milk for the processing industry, constitutes a potential obstacle. This, however, is far from clear and there is no evidence that any restriction on imports results. The Milk Marketing Board argues that lower prices paid for milk for certain products is due to the depressed state of the market caused by the build-up of stocks in the UK by exporters in other EEC countries. The Board also points out that the MMB has been taken to arbitration by the processors on the grounds that the price of milk for butter/skim milk has been considered excessive.

Moreover, the NEUMANN judgment¹ can be seen as allowing for such a pricing system, since the court stated that where the requirements of the common organization renders such action imperative, the rules on free movement may be infringed.

Fundamental rights and proportionality

30. The milk marketing boards impose obligations upon producers to observe a number of rules in order to obtain certain advantages for the Community and producers, in the form of improved marketing and more stable prices. Producers may protest, however, that their fundamental rights have been infringed by the restrictions imposed.

31. The court, however, in the NOLD judgment², stated that the fundamental rights of producers are subject to the limitations laid down by the public interest. Therefore, if a public interest can be demonstrated, the argument of fundamental rights is no longer valid.

32. The same arguments apply to the question of proportionality, that is, that the measures proposed must be in proportion to the objective sought. If it can be established that the MMB's powers, such as the exclusive right to purchase, are in proportion to the objectives laid down in Article 39 of the EEC Treaty, then this argument does not constitute a valid objection to the marketing boards.

¹ Case 17/67, 13.12.1967, Reports for 1967, p. 441.

² Case 4/73, Vol. 1974, p. 508.

Competition

33. The milk marketing boards create producer monopolies and, at first glance, may seem to be in contradiction with Articles 85 to 94 of the Treaty.

34. However, Article 42 of the Treaty states that Articles 85 to 94 are applicable to the agricultural sector only to the extent determined by the Council, account being taken of the objective set out in Article 39. Without entering too closely into the details the opinion of the court may be summarized as being that the rules of the common agricultural market prevail over those of the common market, on condition that derogations leading to a distortion in competition should be kept to a minimum.

35. Moreover, Article 86 on the dominant position presupposes, in the court's view, that the undertaking carries out its activities in a substantial part of the common market, and we are dealing here with regional organizations.

36. The main problem once more concerns the possible effect that the present system operated by the milk marketing boards could have on competition through the indirect subsidization of the processing of milk.

CONCLUSIONS

37. It is clear that the present milk marketing boards present very few legal problems particularly in view of Articles 40 and 42 of the Treaty, which allow for any measures required to attain the objectives set out in Article 39, and which establish the predominance of the common agricultural market over the rules of competition.

38. There are two main problems - free trade and the pricing policy of the marketing boards. Of these, only the pricing policy seems to present any real difficulty since there is no evidence that the marketing boards interfere with free trade.

39. In April 1976 a delegation from the Committee on Agriculture of the European Parliament visited the Headquarters of the Milk Marketing Board, the body responsible for the purchase of milk in England and Wales. One of the principal tasks of the delegation was to establish whether the milk marketing boards, on the British model, had a rightful place in the framework of the Community's agricultural policy.

As a result of this examination of the Milk Marketing Board members of the delegation came to the conclusion that the Milk Marketing Board was well adapted to the needs of the British producer. The Milk Marketing Board represents a producers' organization which has achieved a high degree of efficiency in the marketing of milk and milk products at a very low cost to the producer. An extensive range of services are offered which help the farmer to increase the quality of his stock and develop management policies suited to his particular needs.

40. The Milk Marketing Board has already adapted itself to a number of requirements of British membership of the Common Market and intends to adapt further so as to conform to a wider Community framework; on these conditions it should be allowed to continue.

41. The Milk Marketing Board represents a valuable example of a highly developed regional marketing organization. It meets the particular requirements of the UK and the British situation and, in particular, a high level of liquid milk consumption.

42. In view of the importance of the milk marketing boards in maintaining a high level of consumption in the British market, and in view of the fact that the marketing boards, as laid down in the Commission's proposal, will not create any impediment to intra-Community trade, the Committee on Agriculture believes that it can approve the principle that the milk marketing boards should be allowed to continue their operations.

43. Considering that the Milk Marketing Board plays an important role in the improvement of the market balance in the milk sector, because of its contribution to liquid milk consumption, and that the modified proposals include provisions to ensure that differentiation of milk prices according to intended use will not cause any distortion in competition between the United Kingdom and other Member States (to which end no United Kingdom milk selling price would be below the lowest price of milk products imported into the United Kingdom), the Committee on Agriculture believes that the new proposals can be approved.

