

WORKING DOCUMENT

**Contractual relations in the milk sector Regulation 261/2012 (Milk Package)
Maximum negotiation volumes**

Article 126c

Contractual negotiations in the milk and milk products sector

2. The negotiations by the producer organisation may take place:
 - (c) 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 in any particular Member State does not exceed 33 % of the total national production of that Member State; and
 - (iii) the volume of raw milk covered by such negotiations which is delivered in any particular Member State does not exceed 33 % of the total national production of that Member State;

3. Notwithstanding the conditions set out in points (ii) and (iii) of point (c) of paragraph 2, a producer organisation may negotiate pursuant to paragraph 1, 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.

2nd
Committee
Point 1.1.1.
bis

Draft Commission Delegated Regulation

Article 3

Calculation of amounts of raw milk production

For the purpose of Article 126c(2)(c) and (3) of Regulation (EC) No 1234/2007, the negotiation ceilings shall be calculated taking into account the delivery period of the raw milk subject to contractual negotiations and, where appropriate, the seasonal variability in milk production.

Draft Commission Implementing Regulation

Article 2

1. The notifications of the volumes of raw milk covered by contractual negotiations referred to in Article 126c(2)(f) of Regulation (EC) No 1234/2007 shall be made to the competent authority of the Member State or Member States
 - (a) where the production of raw milk takes place and,
 - (b) if different, where the delivery to a processor or a collector takes place.

2. A notification referred to in paragraph 1 shall be made before the start of negotiations and shall indicate the producer organisation's or the association's estimate of production volume to be covered by the negotiation and the expected time period of delivery of the raw milk volume.

3. By 31 January each year, each producer organisation or association shall, in addition to the notification referred to in paragraph 1, notify the volume of raw milk that was actually delivered under the contracts negotiated by the producer organisation in the previous calendar year.

Some examples for calculating the maximum negotiation volumes

Assumptions:

	Annual Production x 1000t	3.5%	33%	45%	Maximum negotiation volume (annual)	Legal Basis Art 126c
EU	150 000	5 250			5 250	2(c) (i)
MS A	10 000		3 300		3 300	2(c) (ii)
MS B	20 000		[6 600]		5 250	2(c) (i)
MS C	3 000		990		990	2(c) (ii)
MS D	223			100	100	3

Examples¹

Ex nr	Negotiating parties		Explanation	Maximum negotiation volume (annual)
	PO producing in MS	for delivery to processor in MS.....		
1	A	A		3 300
2	B	B		5 250
3	A	B	Production from MS A max 3 300	3 300
			Delivery to MS B max 5 250	
4	B	A	Production from MS B max 5 250	3 300
			Delivery to MS A max 3 300	
5	A & C	B	Production from MS A max 3 300	3 300
			Production from MS C max 990	& 990
			Delivery to MS B max 5 250	
6	B	A & C & D	Production from MS B max 5 250	
			Delivery to MS A max 3 300	3 300
			Delivery to MS C max 990	& 990
			Delivery to MS D max 100	& 100
7	B & C	A & B & C & D	Production from MS B max 5 250	In addition, the total from B+C max 5.250!!
			Production from MS C max 990	
			Delivery to MS A max 3 300	In addition, the total to A+ B+C+D max 5.250
			Delivery to MS B max 5 250	
			Delivery to MS C max 990	
			Delivery to MS D max 100	

Remarks

1. The maximum negotiation volume has to be judged for **each MS involved** in the negotiations comparing the limits of each individual MS of production and each MS of delivery; the lowest of these limits is decisive. The absolute maximum negotiation volume for one PO is 3.5% EU production (in the example 5 250) even if the milk is produced in or delivered to more than one MS.

¹ Some of the situations in the examples are rather unlikely to occur but are nevertheless useful for explaining the logic of the calculation

2. For the calculation of the maximum negotiation volumes the amounts of milk production for the EU and for each MS will be published as **annual figures** (Art 126c(5)). In order to judge the negotiation volumes notified by the PO the maximum volumes have to be calculated by the authorities taking into account the **time period for delivery** in the notification. (Art 2(2) Implementing Regulation and Art 3 of the Delegated Regulation).

Example As assumed above the annual production of MS A is 10 000 so the maximum negotiation volume (annual) is 3 300.

- A PO makes a notification for a negotiation of 1 500 with a delivery period of 4 months for production and delivery in MS A. Although the negotiation volume (1 500) is lower than the maximum negotiation volume (annual) (3 300), the negotiation volume exceeds the 33% limit because the period of delivery has to be taken into account. The maximum negotiation volume for a delivery period of 4 months would be 1 100 (= 4/12 of 33% (Art 126c(2)(c) (ii)) of 10 000 (annual production MS A)).

Likewise, a notified negotiation volume of 4 000 for a delivery period of 18 months would respect the 33% limit because the maximum negotiation volume for a delivery period of 18 months would amount to 4 950 (18/12 of 33% (Art 126c(2)(c) (ii)) of 10 000 (annual production MS A)).

3. Where **seasonal fluctuations** are significant MS should take account of the seasonal variability in milk production (Art 3 Delegated Regulation). Therefore notification has to be made to all MS involved.

Example As assumed above the annual production of MS C is 3 000 so the maximum negotiation volume (annual) is 990. Assume that the seasonal fluctuations in production are significant e.g.

Production per month in % (e.g. based on the average monthly % over the 3 most recent years)

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
2	4	8	14	15	13	12	11	8	6	4	3	100

- A PO makes a notification for a negotiation of 360 with a delivery period of 3 months (April, May & June) for production and delivery in MS C. The maximum negotiation volume for 3 months, based on a pro rata approach as under the example to remark 2, would result in a limit of 248 (= 3/12 of 33% (Art 126c(2)(c) (ii)) of 3 000 (annual production MS C)). However, as it is significant, the MS should take account of the seasonal variability for calculating the maximum negotiation volume. During the relevant period of delivery the estimated volume of production would be 42% (= 14+15+13). Therefore, if seasonal variability in production is into account, the negotiation limit for the delivery period (Apr – Jun) would amount to 416 (=42% of 33% (Art 126c(2)(c) (ii)) of 3 000 (annual production MS C)).

- A PO makes a notification for a negotiation of 200 with a delivery period of 3 months (Oct – Dec) for production and delivery in MS C. Taking into account seasonal variability in production, the negotiation limit for the delivery period (Oct – Dec) would amount to 128 (=13% (6+4+3) of 33% (Art 126c(2)(c) (ii)) of 3 000 (annual production MS C)). Therefore the negotiation can not take place as its volume exceeds the limits.

4. Not every negotiation is successful and results in a delivery. For practical reasons and in order to limit the administrative burden for operators as well as for authorities MS may decide that not each individual negotiation has to be notified under Article 2(1) of the Implementing Regulation if the elements of the notification remain unchanged (same volume, same time period of delivery, same MS involved). The notification referred to in Article 2(3) has to be made anyway and will show the raw milk volumes actually delivered and thus the volumes successfully negotiated on an annual basis.

For illustration purposes the seasonality of EU cow milk collection is presented below

	2011	2010	2009	average 3 last years
Jan	8.15%	8.07%	8.33%	8.19%
Feb	7.60%	7.56%	7.78%	7.65%
Mar	8.69%	8.63%	8.77%	8.70%
Apr	8.80%	8.73%	8.88%	8.80%
May	9.16%	9.27%	9.27%	9.23%
Jun	8.65%	8.79%	8.77%	8.74%
Jul	8.69%	8.61%	8.60%	8.64%
Aug	8.40%	8.41%	8.30%	8.37%
Sep	7.98%	8.04%	7.77%	7.93%
Oct	8.03%	8.13%	7.94%	8.03%
Nov	7.70%	7.75%	7.59%	7.68%
Dec	8.13%	8.02%	8.00%	8.05%

