COMMISSION REGULATION (EEC) No 1391/78

of 23 June 1978

laying down amended rules for the application of the system of premiums for the non-marketing of milk and milk products and for the conversion of dairy herds

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1078/77 of 17 May 1977 introducing a system of premiums for the non-marketing of milk and milk products and for the conversion of dairy herds (1), as last amended by Regulation (EEC) No 1041/78 (2), and in particular Article 7 thereof,

Whereas application of the system of premiums for the non-marketing of milk and milk products and for the conversion of dairy herds has been extended; whereas certain conditions laid down in Regulation (EEC) No 1078/77 have been amended; whereas, therefore, Commission Regulation (EEC) No 1307/77 of 15 June 1977 laying down rules for the application of the system of premiums for the non-marketing of milk and milk products and the conversion of dairy herds (3), as last amended by Regulation (EEC) No 689/78 (4), should be amended accordingly, whereas experience requires that some of the rules should be clarified so as to assist their application; whereas, for the sake of clarity, it would appear advisable to repeal Regulation (EEC) No 1307/77 and to adopt a new text incorporating the provisions of Commission Regulation (EEC) No 36/78 of 9 January 1978 on certain special cases as regards the application of the system of premiums for the non-marketing of milk and milk products and for the conversion of dairy herds (5);

Whereas, in order to ensure that a check can be kept throughout the period to which the obligations under the scheme relate, it is necessary to know not only the numbers of dairy cows but also the numbers of all-female animals suitable for milk production; whereas all such animals must therefore be registered and marked and their particulars entered on an identity card, by means of which it may be checked whether the use of the animal has been in accordance with the rules; whereas, however, since a system of identity cards is open to abuse in the event of the animals being sold, it is desirable that it be made clear to farmers that they are to be responsible for its return, thus ensuring that they will not sell their animals without making the necessary provisions for the card to be returned to them;

Whereas in order to avoid any extra administrative work, existing national marks and identity cards may be used, cross-frontier trade is not involved;

Whereas, for the purposes of the conversion premium, the number of the various animals which the farmer may keep on his holding must be calculated in terms of a livestock unit equal to one adult bovine animal; whereas, since a change in the herd may be caused by seasonal factors or by the replacement of animals, without affecting the farmer's ability to fulfil his obligation, the number of livestock units should be calculated for each yeaf in such a way that animals kept for a short period and animals whose classification changes in the course of the year as a result of age are counted on a year basis;

Whereas, in order that a check may be kept on compliance with the obligation not to use areas under forage for milk production, all such areas must be registered and, since an unforeseen change of use is possible, all areas belonging to the holding must in fact be registered;

Whereas premiums already paid must be recovered if the obligations under the premium system are not met; whereas, however, in certain cases, and in particular if the recipient is temporarily or permanently unable to fulfil these obligations by reason of circumstances beyond his control and which he cannot remedy save at disproportionate cost to himself (6), it appears justified to release him temporarily or permanently from those obligations; whereas, however, the obligations under the premium system should continue to apply where the holding is transferred;

(1) OJ No L 131, 26. 5. 1977, p. 1.
(2) OJ No L 134, 22. 5. 1978, p. 9.
(3) OJ No L 150, 18. 6. 1977, p. 24.
(4) OJ No L 93, 7. 4. 1978, p. 17.
(5) OJ No L 7, 10. 1. 1978, p. 6.

(6) ECR 1968, 549 and 1970, 1125.

Whereas regular communications from the Member States as to the number of applications submitted and approved are necessary in order that a check may be kept on the operation of the premium system and its uniform application; whereas such communications are also necessary for purposes of the report to the Council provided for in Article 13 of Regulation (EEC) No 1078/77;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

TITLE I

Definitions

Article 1

1. For the purposes of Regulation (EEC) No 1078/77 and this Regulation:

(a) 'dairy cow' means a female domestic bovine animal suitable for the production of milk for marketing purposes and having calved at least once; this definition shall include in-calf heifers;

(b) 'dairy herd' means all female domestic bovine animals at least six months old suitable for the production of milk for marketing;

(c) 'cow of a beef breed' means a female domestic bovine animal having calved at least once and belonging to one of the breeds recognized as fit for meat production by the competent authority of the Member State concerned; the definition shall include in-calf heifers of a beef breed;

(d) 'area under forage' means the total agricultural area farmed by a producer within the meaning of Article 5 (a) of Regulation (EEC) No 1078/77.

2. Only a heifer in respect of which the recipient has presented proof to the competent authorities that it calved or aborted within nine months after it was counted in for the purposes of the rights and obligations arising under this Regulation shall be recognized as a dairy cow or cow of a beef breed.

3. In determining the quantity of milk on which the premium will be calculated:

(a) the following equivalences shall be applied to the dairy products disposed of by the producer in the 12 calendar months preceding the date when the application is lodged:

— one kilogram of milk equals one litre of milk,

— one kilogram of butter equals 23 litres of milk,

— one kilogram of cheese equals 10 litres of milk,

— one kilogram of milk fat equals 27 litres of milk;

(b) the quantity of milk arrived at by applying point (a) shall, where appropriate, be reduced proportionally:

— as provided for in Articles 2 (1) and 3 (1) of Regulation (EEC) No 1078/77, where the number of dairy cows kept on the holding as recorded on the date of approval of the application is less than the appropriate number for the quantity of milk in question;

— by a further amount, where it is found that during the period between the day when the application is lodged and the day when it is approved the applicant has not, in respect of all his dairy cows other than those which are the subject of a reduction made under the foregoing indent, observed the undertakings referred to in the second and third indents of Article 2 (2) (b) of Regulation (EEC) No 1078/77; this adjustment shall be calculated on the basis of the number involved of the livestock units referred to in Article 2 (1) (b).

Article 2

1. For the purposes of Article 3 (2) (c) of Regulation (EEC) No 1078/77:

(a) the reference date shall be the date when the application for the conversion premium is approved;

(b) the numbers of sheep and cattle shall be converted into livestock units (LU) on the following basis of one livestock unit equalling:

— one domestic bovine animal at least 12 months old,

— two domestic bovine animals between six and 12 months old,

— five sheep at least 12 months old.

2. The required number of livestock units shall be considered to be kept when the producer presents satisfactory proof, for each year of the conversion period, that, having regard to the period for which each animal is kept and to its livestock value in that year as determined in accordance with paragraph 1 (b), the number as calculated on an annual average basis is not less than the number of livestock units at the reference date.

3. For the determination of the number of livestock units kept during the conversion period the following shall also be treated as one livestock unit:

— four domestic bovine animals less than six months old,

— 12 sheep less than 12 months old.

This provision shall apply to these categories only up to the point where they constitute 25 % of the total number of livestock units kept on the holding concerned.

Article 3

1. For the purposes of the premium system, the dates of lodging and approval of the application shall be determined in accordance with national law.

Member States may, however, provide that for the purposes of Articles 1 (3) (b), 2 (1) (a), 5 (1) (c) and 10 (1) (a) the date of approval of the application shall be considered to be the day on which the marking and registration referred to in Article 5 (1) (b) take place.

2. For the purposes of Article 2 (2) of Regulation (EEC) No 1041/78, the day of payment of the premium shall be that on which the paying agency makes out the payment order.

TITLE II

Application and approval procedure

Article 4

1. Applications for premiums for the non-marketing of milk and milk products or for the conversion of dairy herds shall be lodged with the competent authority appointed by the Member States concerned, not later than the date referred to in Article 9 of Regulation (EEC) No 1078/77.

2. For each producer within the meaning of Article 5 (a) of Regulation (EEC) No 1078/77 the application shall include at least the following particulars:

(a) the type of premium applied for;

(b) the total number of bovine animals and sheep kept on the holding within the meaning of Article 5 (b) of Regulation (EEC) No 1078/77 at the time of lodging the application, with separate particulars as follows:

(aa) the number of dairy cows as defined in Article 1 (1) (a);

(bb) the number of other female bovine animals as defined in Article 1 (1) (b);

(cc) in the case of the conversion premium, the numbers of other animals classified in accordance with Article 2 (1) (b);

(c) the quantities of milk and milk products supplied in the course of the calendar year preceding the month in which the application was lodged; in the case of supplies to dairies, such quantities shall be confirmed by the purchasers, or by a competent authority;

(d) the area under forage farmed by the producer at the time of lodging of the application;

(e) a declaration by the producer stating that he is aware of the rules governing the premium system for the non-marketing of milk and milk products or the conversion of dairy herds to meat production.

Article 5

1. On receipt of the application, the competent authority shall:

(a) verify the particulars referred to in Article 4 (2) (b) and (c) and register the written undertaking referred to in Article 2 (2) or 3 (2) of Regulation (EEC) No 1078/77;

(b) mark and register the dairy herd kept on the holding within the meaning of Article 5 (b) of Regulation (EEC) No 1078/77 and issue for the herd the identity cards referred to in Article 7;

(c) determine, in the case of the conversion premium, the number of other animals referred to in Article 2 (1) (b) present on the holding when the application is approved;

(d) register the area under forage farmed by the applicant at the time of lodging the application;

(e) determine the quantity of milk, in kilograms, on which the premium is to be calculated, in accordance with Article 1 (3).

2. The approval of the application for a premium shall state expressly that the recipient of the premium is responsible for returning the identity card provided for in Article 7 and request that, in the event of the animal being sold, he should make appropriate contractual provision to ensure its return.

3. The producer shall notify the competent authority, before the beginning of the non-marketing or conversion period, of the date of its commencement, and this date shall be recorded on each identity card, provided for in Article 7.

Article 6

1. The amount of the premium referred to in Article 4 (1) and (2) of Regulation (EEC) No 1078/77 shall be converted into national currency at the conversion rates applicable on the day of approval of the application.

2. This rule shall also apply to premium amounts adapted under the terms of Article 2 (2) of Regulation (EEC) No 1041/78.

TITLE III

Checks

Article 7

1. For the purposes of checking compliance with the obligations under the premium scheme, an identity card shall be issued in at least one original and one copy for each animal marked and registered in accordance with Article 5 (1) (b). The original shall accompany the animal concerned throughout the non-marketing or conversion period, or until slaughter or export; the copy shall be kept by the issuing authority.

2. The identity card shall conform with the specimen set out in the Annex hereto. The size of the form shall be 210 × 148 mm. The paper used for the original shall be white and weigh at least 85 grams per square metre.

The Member States shall be responsible for printing their own identity cards.

Each identity card shall bear a serial number permitting identification.

3. Each Member State may use on its own territory an identity card issued under national law, provided that such card contains the particulars required under this Regulation.

In the event of slaughter in another Member State on export, the identity card issued under national law may not be used to claim entitlement to the premium. In such cases an identity card in accordance with paragraphs 1 and 2 shall be used.

4. Recipients of aid shall request the marking, registration and issue of an identity card for all bovine animals referred to in Article 1 (1) (a) and (b) in their possession before the expiry of their undertakings under the premium system.

The Member State may however replace this obligation by other control measures of equivalent effectiveness in the case of bovine animals which the recipient undertakes to keep for a maximum period of three months during the non-marketing or conversion period.

5. On each change of ownership the name, address and signature of the new owner shall be inserted on the identity card if the obligations arising under the premium system still apply to the animal concerned.

Article 8

1. In the case of sale, save as provided for in Article 6 of Regulation (EEC) No 1078/77, the animal shall be slaughtered or exported immediately. Slaughtering shall take place in a slaughterhouse approved by the Member State concerned.

2. In case of export, the customs office through which the animal leaves the Community shall stamp and date the identity card in the appropriate place after having checked the identity of the animal. The identity card shall then be returned to the exporter for transmission to the recipient of the premium, or returned direct to the latter.

3. In the event of the slaughter or death of the animal during the non-marketing or reconversion period, the competent authority shall certify the date of slaughter or death on the identity card and after checking the identity of the animal, return the card to the holder for transmission to the recipient.

4. Death or export shall not be regarded as proved until the recipient of the premium returns the original of the identity card stamped or certified in accordance with paragraph 2 or 3.

Article 9

1. Where the producer fails to prove to the satisfaction of the competent authority that he has complied with the obligations laid down in Article 2 or 3 of Regulation (EEC) No 1078/77, the Member State concerned shall take all necessary steps to recover any sums already paid in respect of that premium.

2. The previous paragraph shall also apply to a person who has taken over a holding and given an undertaking to the competent authority to continue to fulfil the obligations entered into by his predecessor in respect of the sums paid to either.

3. Where the applicant fails to provide proof in accordance with Articles 7 and 8 that the animals have been used for the prescribed purposes, entitlement to the premium shall be forfeited in respect of those animals for which such proof is not furnished.

4. Where the producer intends to transfer his holding, or part thereof, to another person, he shall first notify the competent authority and indicate to what extent, if any, the transferee is to take over his obligations under the premium scheme.

The competent authority shall inform the transferee as to the exact scope of the rights and obligations taken over by him. If necessary the competent authority shall recover all sums already paid to the recipient.

5. In the cases referred to in paragraph 4 where only a part of the farm is transferred, the Member States may allow the obligation laid down in the first indent of Article 2 (2) (b) and Article 3 (2) (b) of Regulation (EEC) No 1078/77 to be considered as being fulfilled if the transferee does not keep more than the number of dairy cows he had on the day of the transfer.

Article 10

1. Where the recipient of the premium acquires, during the period to which his undertakings apply, a holding supplying milk or milk products or part of such a holding, this shall not entail the extension of the undertakings to the acquired areas, provided that :

(a) the holding concerned is inherited or otherwise transferred free, and the holding or part of the holding acquired is totally separate from the existing holding at the time of the approval of the application, or

(b) the new holding is acquired with a view to changing holdings and the first holding is transferred at the latest at the end of the current vegetation period along with the successor's undertaking pursuant to the first subparagraph of Article 6 (1) of Regulation (EEC) No 1078/77.

2. When an area is acquired by a recipeint of the premium after the beginning of the non-marketing or conversion period and is transferred by him during that period, the undertakings shall not apply in respect of that area from the date of its second transfer unless the transferee is himself bound by corresponding undertakings.

TITLE IV

Special cases

Article 11

Where :

(a) by order of the authorities under a disease eradication programme animals listed pursuant to Article 4 (2) (b) have been slaughtered after the date on which the application for the premium was lodged and within the period prescribed in such order, or

(b) as a result of *force majeure*, the animals perish or are slaughtered in an emergency after the date on which the application was lodged,

the animals concerned shall be regarded as existing when the applications was approved.

Article 12

1. In cases of *force majeure* occurring after the application has been approved, Member States may provide that the premiums already paid shall not be recoverable even if the obligations under the scheme have not been fulfilled and, if necessary, the non-marketing or reconversion period may be suspended for a specified period and extended accordingly.

2. Provision for non-recovery of the premium may, in particular, be made in the following cases :

(a) death of the recipient, provided that he farmed his holding himself ;

(b) an extended period of disability such as to prevent the recipient from carrying on his occupation, provided that he farmed his holding himself ;

(c) compulsory purchase of a substantial part of the utilized agricultural area of the holding farmed by the recipient, provided that such compulsory purchase was not foreseeable at the date when the application was approved.

3. Provision for suspension of the relevant period may, in particular, be made in the following cases :

(a) a serious natural disaster substantially affecting the land farmed by the recipient ;

(b) accidental destruction of buildings normally used by the recipient for cattle or sheep farming purposes ;

(c) an outbreak of epizootic disease affecting all or part of the recipient's cattle or sheep herd.

4. The Member States shall inform the Commission of all cases of *force majeure* accepted as such by them.

TITLE V

Final provisions

Article 13

1. Member States shall, not later than the end of each month, inform the Commission of the number of applications approved by the competent authority during the previous month, and of the quantities of milk and milk products as referred to in Article 5 (1) (e).

2. Applications shall be classified according to the number of dairy cows actually kept on the holdings concerned. Applications made under Article 2 (3) or (4) of Regulation (EEC) No 1078/77 shall be communicated separately.

Article 14

Regulations (EEC) No 1307/77 and (EEC) No 36/78 are hereby repealed.

Article 15

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities.*

It shall apply with effect from 22 May 1978. Article 2 (3), the second subparagraph of Article 7 (4) and Articles 9 (5) and 11 (b) shall also apply, on request of the interested parties, to applications approved before that date.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 23 June 1978.

For the Commission

Finn GUNDELACH

Vice-President

EUROPEAN COMMUNITIES — *ANNEX* — Front

NON-MARKETING PREMIUM (*) **CONVERSION PREMIUM (*)**	**IDENTITY CARD No .....** **ORIGINAL**
1. Issuing authority :	2. Producer :
3. Exact description of animal : Mark : Breed : External features : ..... , ... 19 ..... (Place) (Date) (Signature and stamp of issuing authority)	4. Beginning of : non-marketing period (*) conversion period (*) ..... 19 ..... (Date) (Signature of producer) 5. The animal identified in section 3 — has been slaughtered (*) — has died (*) — has left the Community (*) on ..... 19 ..... (Signature and stamp)

NB : Section No 5 to be completed according to case by the slaughterhouse, the veterinary surgeon, the meat inspector or the customs office where the animal left the Community.

(*) Delete as appropriate.

Back

6. **Change of ownership of animal identified on front of card**	
7. Name, forename and address of new owner :	8. Date of change of ownership and signature of new owner :

Important note

This identity card is valid only for such period as the non-marketing or conversion premium scheme under Regulation (EEC) No 1078/77 applies to the abovementioned animal.

The return of this identity card to the issuing authority is a condition of entitlement to the premium.

EUROPEAN COMMUNITIES

NON-MARKETING PREMIUM (*) **CONVERSION PREMIUM (*)**	**IDENTITY CARD No .....** **COPY**
1. Issuing authority :	2. Producer :
3. Exact description of animal : Mark : Breed : External features : ..... , ... 19 ..... (Place) (Date) (Signature and stamp of issuing authority)	4. Beginning of : non-marketing period (*) conversion period (*) ..... 19 ..... (Date) on ..... 19 ..... (Date)

(*) Delete as appropriate.