COMMISSION REGULATION (EC) No 3392/93

of 10 December 1993

on detailed rules for the application of Council Regulation (EEC) No 1842/83 laying down general rules for the supply of milk and certain milk products at reduced prices to school children

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organization of the market in milk and milk products [1], as last amended by Regulation (EEC) No 2701/92 [2], and in particular Article 26 (4) thereof,

Having regard to Council Regulation (EEC) No 1842/83 of 30 June 1983 laying down general rules for the supply of milk and certain milk products at reduced prices to school children [3], as last amended by Regulation (EEC) No 2748/93 [4], and in particular Article 2 thereof,

Whereas Article 1 (3) of Regulation (EEC) No 1842/83 provides for the Community aid amounts to be set by reference to the milk target price for the milk year in question; whereas following amendment of that provision the aid amounts set in Article 4 (1) of Commission Regulation (EEC) No 2167/83 [5], as last amended by Regulation (EEC) No 1861/93 [6], must be adjusted;

Whereas in the light of experience and in view of the need to limit expenditure on the scheme some of the implementing rules should be amended;

Whereas in view of the budgetary considerations referred to, the derogation in Article 2 (2) of Regulation (EEC) No 1842/83 with regard to the maximum quantity of 0,25 litres should be discontinued;

Whereas the Community aid amounts, as set, should reflect developments in production techniques, of cheese in particular;

Whereas the use of milk products in the preparation of meals served to school children is beset by control difficulties and does not seem to make any substantial contribution to attaining the aims behind the aid scheme; whereas this distribution possibility should therefore be restricted;

Whereas to simplify administrative procedures under the school milk programme annual vouchers should be discontinued and administration based solely on approval of the interested parties;

Whereas Member States should be required, for the various products distributed, to set maximum prices for school children in order to guarantee that the aid is passed on through the price;

Whereas the list of products on which Community aid can be granted should be revised in accordance with the aims behind the aim scheme;

Whereas, in view of the many amendments already made to Regulation (EEC) No 2167/83 and in the interests of clarity, that Regulation should replaced;

Whereas the Management Committee for Milk and Milk Products has not issued an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

1. The recipients of Community aid indicated in Article 1 (2) of Regulation (EEC) No 1842/83 shall be pupils regularly attending an educational establishment,

— including children attending nursery school or some other pre-school educational establishment run or recognized by the competent authority of the Member State, but

— excluding students at universities and comparable higher educational establishments.

However, Member States may decide to exclude pupils in secondary education.

2. The aid shall also cover periods of residence by pupils of the educational establishments indicated in paragraph 1 at holiday camps run by one of the bodies indicated in the first and second indents of Article 7 (1).

[1] OJ No L 148, 28. 6. 1968, p. 13.
[2] OJ No L 215, 30. 7. 1992, p. 64.
[3] OJ No L 183, 7. 7. 1983, p. 1.
[4] OJ No L 249, 7. 10. 1993, p. 1.
[5] OJ No L 206, 30. 7. 1983, p. 75.
[6] OJ No L 170, 13. 7. 1993, p. 14.

Article 2

1. Member States shall pay Community aid on the milk products of categories I and II set out in the Annex. They may optionally pay it on the milk products of categories III to VI of the Annex.

2. In the French overseas departments whole milk flavoured with chocolate or otherwise as indicated in the Annex may be reconstituted milk.

3. Member States may authorize the addition of a maximum of five milligrams of fluorine per kilogram to the products listed under categories I and II in the Annex.

Article 3

1. For products listed under categories III to VI of the Annex calculation of the maximum quantity of 0,25 litres of milk per pupil per school day specified in Article 2 (2) of Regulation (EEC) No 1842/83 shall be on the following basis :

— 100 kg of category III products shall count as 300 kg of whole milk,

— 100 kg of category IV products shall count as 765 kg of whole milk,

— 100 kg of category V products shall count as 850 kg of whole milk,

— 100 kg of category VI products shall count as 935 kg of whole milk.

2. For calculation of the Community aid and for purposes of the restriction indicated in paragraph 1 reference shall be made to the total quantities of milk products eligible for aid during the period for which application has been made.

3. The granting of the aid shall be conditional on a written commitment given by the educational establishment or organizing authority, as appropriate, to the competent authority not to use the subsidized milk products in the preparation of meals served to pupils.

The Commission may, however, grant Member States a derogation from this restriction on presentation of a duly substantiated request.

Article 4

1. The Community aid shall be :

(a) ECU 24,76 per 100 kg for category I (whole milk products) ;

(b) ECU 15,63 per 100 kg for category II (semi-skimmed milk) products ;

(c) for products of categories III, IV, V and VI an amount calculated per 100 kg using the equivalences specified in Article 3 (1).

2. If, however, the Community aid would be higher than the supplier's selling price to the educational establishment it shall be reduced to ensure that it does not exceed the price of the product concerned.

3. If the rate of the Community aid, expressed in ecus, is altered, the rate applicable on the first day of the month in question shall be valid for quantities supplied at reduced prices during that month.

However, if the aid application under Article 7 (4) is lodged after the school term the rate of aid shall be that applicable on the first day of the term.

4. Should the quantities as referred to in paragraph 1 be expressed in litres, conversion into kilograms shall be by application of the coefficient 1,0300.

Article 5

1. Community aid shall be granted only :

(a) for the supply of Community-produced foodstuffs as indicated in the Annex, purchased in the Member State in which the educational establishment is located ;

(b) to applicants as indicated in Article 7 (1) approved by the competent authority of the Member State in conformity with the provisions of Article 6.

2. Member States may if necessary check at the premises of suppliers to educational establishments the commercial documents relating to deliveries.

Article 6

1. Approval under Article 5 (1) (b) shall be conditional on a written commitment by the applicant to the competent authority :

(a) to make the milk products available only to pupils attached to its establishment or to the establishments for which it is applying for aid, and to repay an excess aid paid, should it be found :

— that aid has been received on quantities in excess of those yielded by application of Article 3,

— that products purchased under this Regulation have been deflected from their intended use ; and

(b) to make supporting documents available to the competent authority on request and to allow on site inspection.

2. Should the aid be applied for by the supplier to the educational establishment approval shall be conditional, in addition to the requirements of paragraph 1, on a written commitment by him to:

(a) keep records indicating the manufacturer of the milk products in question, the names and addresses of the educational establishments or other applicants as indicated in Article 7 (1) and the quantities of milk products sold to them, and to

(b) submit to any check decided on by the Member State to be made, in particular as regards scrutiny of records and product quality control.

3. Approval shall be withdrawn if serious infringement of the provisions of this Regulation is established. At the interested party's request approval may be reinstated following exhaustive checks, but only after a minimum period of suspension set by the Member State in line with the seriousness of the infringement.

4. For the 1993/94 school year vouchers issued under Article 6 of Regulation (EEC) No 2167/83 shall confer approval for the purposes of this Article.

Article 7

1. Application for payment shall be made by:

— the educational establishment, or

— an administrative authority applying in regard to the products distributed to the pupils for whom it is responsible, or

— by the supplier of products to the educational establishment, if the Member State so provides.

2. Application for payment must be made on a standard printed form as prescribed by the competent authority of the Member State, and must provide at least the following information:

— the quantities of each category of product distributed,

— the name and address of the educational establishment or administrative authority,

— the product prices.

Amounts must be substantiated by invoices held available to the controlling authority. These invoices must show separately the price of each product indicated in the Annex and be receipted or accompanied by proof of payment.

3. Without prejudice to paragraph 2, aid shall be paid to suppliers to educational establishments only:

— on submission of a receipt for the quantities actually delivered, or

— on the basis of an inspection report made by the competent authority prior to final payment of the aid, showing that the requirements for payment are met, or

— if the Member State so authorizes, on submission of the statement of account for an account held by the supplier by credit of which, and in no other way, the quantities delivered are paid for.

4. Except in cases of *force majeure,* applications for payment of the aid shall not be valid unless lodged by the last day of the fourth month following the month or school term of delivery of the products.

If this time limit is exceeded by less than two months the aid shall be paid but reduced by:

— 5 % if the application is less than one month late,

— 10 % in other cases.

5. The aid shall be paid by the competent authority within four months of the date on which the application is lodged, except in cases where administrative enquiries regarding entitlement to the aid have been initiated.

The competent authorities of Member States are, however, authorized to pay an advance within three months of the date on which the application is lodged, against a security for 110 % of the amount advanced. In such cases:

— the competent authority is authorized to pay the advance at the applicant's request, without requiring the supporting documents indicated in paragraph 3 on the basis of the quantities delivered; the supplier shall, within one month of payment of the advance, submit to the competent authority the documents necessary for final payment of the aid unless that authority draws up a report as indicated in the second indent of paragraph 3,

— final payment shall be made by the end of the sixth month following the end of the school year concerned or, where applicable, the holiday camp period.

Article 8

Member States may empower local authorities to pay the aid and administer the scheme. In certain cases determined by the Member State local authorities may be replaced by an association, approved by the Member State, to which the schools in question belong.

Article 9

Member States shall encourage programmes providing information on milk products when subsidized products are distributed in schools.

Article 10

1. Member States shall take the necessary measures to ensure that the amount of the aid is reflected in the price paid by the beneficiary.

To that end they shall set maximum prices to be paid by pupils for the various products listed in the Annex that are distributed on their territory. Those prices shall be notified to the Commission with information justifying their levels.

2. Member States shall take whatever supervisory action is needed to ensure that the provisions of this Regulation are respected.

Such action shall include scrutiny of invoices for delivery of the products listed in the Annex and checks on compliance with the maximum quantities receiving aid.

Action shall be supplemented by on-site inspection designed to check, in particular:

— compliance with the maximum prices indicated in paragraph 1,

— the records referred to in Article 6 (2),

— the use of the subsidized products in accordance with the provisions of this Regulation, in particular where there are grounds for suspecting deflection.

Article 11

Member States shall notify to the Commission:

(a) within three months of entry into force of this Regulation, the detailed provisions which they have adopted for its application;

(b) before 1 November of each year, the quantities on which aid was paid in the previous school year.

Article 12

Regulation (EEC) No 2167/83 is hereby repealed.

Article 13

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

It shall apply from 1 January 1994.

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

Done at Brussels, 10 December 1993.

For the Commission

René STEICHEN

Member of the Commission

ANNEX

List of the products eligible for Community aid under Article 2 (1) of Regulation (EEC) No 1842/83

Category I

(a) Whole milk, pasteurized or given UHT treatment;

(b) Whole milk flavoured with chocolate or otherwise, pasteurized or sterilized or given UHT treatment and containing at least 90% whole milk by weight;

(c) Whole milk yoghurt.

Category II

(a) Semi-skimmed milk, pasteurized or given UHT treatment;

(b) Semi-skimmed milk, flavoured with chocolate or otherwise, pasteurized or sterilized or given UHT treatment and containing at least 90 % semi-skimmed milk by weight.

Category III

Fresh and processed cheeses with a fat content by weight of the dry matter of not less than 40 %.

Category IV

Other cheeses with a fat content by weight of the dry matter of not less than 45 %.

Category V

Grana padano cheese.

Category VI

Parmigiano-Reggiano cheese.