

**COMMISSION REGULATION (EC) No 657/2008****of 10 July 2008****laying down detailed rules for applying Council Regulation (EC) No 1234/2007 as regards Community aid for supplying milk and certain milk products to pupils in educational establishments**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Therefore the preparation of meals should be restricted accordingly.

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) <sup>(1)</sup>, and in particular Article 102 in conjunction with Article 4 thereof,

- (5) To take into account the different consumption habits of milk and certain milk products in the Community and to respond to the existing health and nutritional tendencies, the list of eligible products should be extended and simplified while leaving the possibility for Member States to determine their own range of products in compliance with that list.

Whereas:

(1) Commission Regulation (EC) No 2707/2000 of 11 December 2000 laying down rules for applying Council Regulation (EC) No 1255/1999 as regards Community aid for supplying milk and certain milk products to pupils in educational establishments <sup>(2)</sup> has been substantially amended several times <sup>(3)</sup>. Since further amendments are necessary, that Regulation should be repealed and replaced by a new Regulation in the interest of clarity and rationality.

- (6) In order to ensure that the products eligible for aid offer a high level of health protection, those products should be prepared in accordance with the requirements laid down in Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs <sup>(4)</sup>, and carry the identification mark required by Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin <sup>(5)</sup>.

(2) The aid for supplying milk and certain milk products to pupils should be available at nurseries, other pre-school establishments, primary and secondary schools. In the light of the fight against obesity, and in order to provide children with healthy dairy products, these type of schools should be treated equally and have access to the scheme. To simplify management, consumption by pupils in residence at school holiday camps should be excluded.

- (7) For the purposes of the management and supervision of the aid scheme an approval procedure for applicants should be established.

(3) In order to clarify the application of the aid scheme it should be stressed that pupils should benefit from the aid only during school days. Moreover, the total number of school days should be confirmed by the educational authority or by the educational establishment of each Member State, excluding holidays.

- (8) The rate of aid for the various eligible products should be determined taking into account the rate for milk as laid down in Article 102 of Regulation (EC) No 1234/2007 as well as technical relations between the products.

(4) Experience has shown monitoring difficulties as regards the use of subsidised milk products in the preparation of meals served to pupils. Moreover, this is not an effective way of attaining the educational purpose of the scheme.

- (9) As regards the payment of the aid, the requirements to be met by applicants should be specified and rules on the lodging of applications, on the checks and sanctions to be applied by the competent authorities and on the payment procedure should be laid down.

- (10) Under Article 102(4) of Regulation (EC) No 1234/2007, the maximum daily quantity per pupil on which aid can be granted is the equivalent of 0,25 litres of milk. Equivalences between milk and the various other products should be specified.

<sup>(1)</sup> OJ L 299, 16.11.2007, p. 1. Regulation as last amended by Commission Regulation (EC) No 510/2008 (OJ L 149, 7.6.2008, p. 61).

<sup>(2)</sup> OJ L 311, 12.12.2000, p. 37. Regulation as last amended by Regulation (EC) No 1544/2007 (OJ L 337, 21.12.2007, p. 64).

<sup>(3)</sup> See Annex IV.

<sup>(4)</sup> OJ L 139, 30.4.2004, p. 1, corrected by OJ L 226, 25.6.2004, p. 3.

<sup>(5)</sup> OJ L 139, 30.4.2004, p. 55, corrected by OJ L 226, 25.6.2004, p. 22. Regulation as last amended by Commission Regulation (EC) No 1243/2007 (OJ L 281, 25.10.2007, p. 8).

- (11) Rules on supervision of the aid scheme should be laid down by the Member States in order to guarantee that the aid is duly reflected in the price paid by beneficiaries and that subsidised products are not deflected from their intended use.
- (12) To protect the Community's financial interests, adequate control measures should be adopted to combat irregularities and fraud. These control measures should involve full administrative checking supplemented by on-the-spot checks. The scope, content, timing and reporting of such control measures should be specified to ensure an equitable and uniform approach between Member States, taking account of their different scheme implementation. Furthermore, unduly paid amounts should be recovered and sanctions should be determined in order to deter applicants from fraudulent behaviour.
- (13) In order to simplify the administrative work of the Member States, the calculation of the maximum subsidisable quantity for the aid should be made on the basis of the number of pupils in regular attendance as established in the applicant's roll.
- (14) Experience has shown that the beneficiaries are not sufficiently aware of the role played by the European Union in the school milk scheme. The subsidising role of the European Union in the scheme should therefore be clearly indicated in each educational establishment participating in the school milk scheme.
- (15) Certain information related to the school milk scheme should be forwarded to the Commission each year for monitoring purposes.
- (16) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

#### Article 1

##### Subject matter

This Regulation lays down rules for applying Regulation (EC) No 1234/2007 as regards Community aid for supplying certain milk products to pupils in educational establishments (hereinafter the aid) under Article 102 of that Regulation.

#### Article 2

##### Beneficiaries

The beneficiaries of the aid shall be pupils in regular attendance at the following types of educational establishment: nursery

schools/other pre-school establishments, primary and secondary schools, administered or recognised by the Member State's competent authority.

#### Article 3

##### Eligible products

1. Member States may pay the aid on eligible products listed in Annex I. They may apply stricter standards in compliance with the requirements for eligible products specified in Annex I.
2. In the French overseas departments, milk flavoured with chocolate or otherwise, referred to in Annex I, may be reconstituted milk.
3. Member States may authorise the addition of a maximum of 5 mg of fluorine per kilogram to category I products.
4. Aid shall only be granted on the products listed in Annex I to this Regulation if the products comply with the requirements of Regulation (EC) No 852/2004 and Regulation (EC) No 853/2004, and in particular with the requirements concerning preparation in an approved establishment and the identification marking requirements specified in Section I of Annex II to Regulation (EC) No 853/2004.

#### Article 4

##### Rate of aid

1. The aid rates are set out in Annex II.
2. If an aid rate in euro is altered, the rate in force on the first day of the month shall apply to all quantities supplied during that month.
3. If the quantities supplied are expressed in litres, the coefficient 1,03 shall be used for conversion into kilograms.

#### Article 5

##### Maximum subsidisable quantity

1. Member States shall verify that the maximum 0,25 litre quantity referred to in Article 102(4) of Regulation (EC) No 1234/2007 is not exceeded, taking into account the number of school days and the number of pupils in regular attendance during the period covered by a payment application and taking into account the coefficient referred to in Article 4(3) of this Regulation.
2. For products in categories II to V listed in Annex I in the verification referred to in paragraph 1 the following equivalences shall be used:
  - (a) category II: 100 kg = 90 kg of milk;
  - (b) category III: 100 kg = 300 kg of milk;

(c) category IV: 100 kg = 899 kg of milk;

(d) category V: 100 kg = 765 kg of milk.

3. The beneficiaries specified in Article 2 shall benefit from the aid only on school days. The total number of school days, excluding holidays, shall be notified by the education authority or by the educational establishment to the competent authority of the Member State and, where appropriate, to the applicant. Pupils shall not benefit from the aid during stays at holiday camps.

4. Milk and milk products used in the preparation of meals shall not benefit from the aid.

However, milk and milk products used in the preparation of meals within the premises of the educational establishment and which do not involve heat treatment may benefit from the aid. Moreover, heating of products listed under Category I(a) and (b) of Annex I may be allowed.

5. For the purposes of paragraph 4 with regard to differentiating products used in heated preparation and non-heated preparation and/or direct consumption a coefficient may be used, established on the basis of quantities used in the past and/or recipes to the satisfaction of the Member State concerned.

#### Article 6

##### General conditions for granting the aid

1. An aid application is only valid if lodged by an applicant approved in accordance with Articles 7, 8 and 9 for the supply of Community products listed in Annex I.

2. Aid can be applied for by:

- (a) an educational establishment;
- (b) an education authority in respect of the products distributed to the pupils within its area;
- (c) the supplier of the products, if the Member State so provides;
- (d) an organisation acting on behalf of one or more educational establishments or education authorities and specifically established for that purpose, if the Member State so provides.

#### Article 7

##### Approval of applicants

Applicants for aid must be approved for that purpose by the competent authority of the Member State in which the educa-

tional establishment to which the products are supplied is located.

#### Article 8

##### General conditions for approval

1. Approval is conditional on the following written commitments by the applicant to the competent authority:

- (a) to use the products only for consumption in accordance with this Regulation by the pupils of its educational establishment or of the establishments in respect of which it will apply for aid;
- (b) to repay any aid unduly paid, for the quantities concerned, if it has been found that the products have not been distributed to the beneficiaries referred to in Article 2 or that it has been paid for quantities other than those established in accordance with Article 5;
- (c) to make supporting documents available to the competent authorities on their request;
- (d) to submit to any check decided on by the Member State's competent authority, in particular the scrutiny of records and physical inspection.

2. Approvals granted under Articles 7, 8 and 9 of Regulation (EC) No 2707/2000 remain valid for the purposes of this Regulation.

#### Article 9

##### Specific conditions for the approval of certain applicants

If the aid is to be applied for by an applicant referred to in Article 6(2)(c) and (d), the applicant must make a written commitment, in addition to those referred to in Article 8, to keep records of the names and addresses of the educational establishments or, where appropriate, education authorities and the products and quantities sold or supplied to these establishments or authorities.

#### Article 10

##### Suspension and withdrawal of approval

If it is found that an applicant for aid no longer meets the conditions laid down in Articles 8 and 9, or any other obligation under this Regulation, approval shall be suspended for one to twelve months or withdrawn, depending on the gravity of the irregularity.

Such action shall not be taken in cases of *force majeure* or if the Member State finds that the irregularity was not committed deliberately or by negligence or was of minor importance.

Approval, once withdrawn, can be restored at the applicant's request after a minimum period of twelve months.

#### Article 11

##### Payment applications

1. Payment applications must be made as specified by the Member State's competent authority and include at least the following information:

- (a) the quantities distributed by category and subcategory of product;
- (b) the name and address or a unique identification number of the educational establishment or education authority to which the information under point (a) relates.

2. Member States shall specify the frequency of applications. These may cover periods of one to seven months.

3. Except in cases of *force majeure*, aid applications must, in order to be valid, be correctly filled in and be lodged by the last day of the third month following the end of the period to which they relate.

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

- (a) by 5 % if the overrun is one month or less;
  - (b) by 10 % if the overrun is more than a month but less than two months.
4. The amounts shown in the application must be supported by documentary evidence held available for the competent authorities. This must show separately the price of each product delivered and be receipted or accompanied by proof of payment.

#### Article 12

##### Payment of the aid

1. Without prejudice to Article 11(4), the aid shall be paid to suppliers or organisations referred to in Article 6(2)(c) and (d) only:

- (a) on presentation of a receipt for the quantities actually delivered; or

- (b) on the basis of the report of an inspection made by the competent authority before final payment of the aid, establishing that the payment requirements have been met; or

- (c) if the Member State so authorises, on presentation of an alternative proof that the quantities delivered for the purposes of this Regulation have been paid for.

2. The aid shall be paid by the competent authority within three months of the day of lodging of the correctly filled and valid application referred to in Article 11, unless administrative inquiries have been initiated.

#### Article 13

##### Payment of advances

1. Member States may pay an advance equal to the amount of the aid applied for, against a security equal to 110 % of the amount advanced.

2. If a supplier or an organisation referred to in Article 6(2)(c) and (d) applies for an advance the competent authority may pay it on the basis of the quantities delivered without requiring the documentary evidence referred to in Article 12(1). Within one month of the advance being paid, the supplier or organisation shall forward to the competent authority the documents required for the final payment of the aid, unless the latter draws up a report as provided for in Article 12(1)(b).

#### Article 14

##### Price monitoring

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

2. Member States may set maximum prices to be paid by beneficiaries for the various products listed in Annex I that are distributed on their territory.

#### Article 15

##### Controls and sanctions

1. Member States shall take all necessary measures to ensure compliance with this Regulation. These measures shall include full administrative checking of aid applications, which shall be supplemented by on-the-spot checks as specified in paragraphs 2 to 8.

2. Administrative checks shall be conducted on all aid applications and shall include checking of supporting documents as defined by the Member States, relating to product delivery and compliance with the maximum quantities per pupil per day referred to in Article 5(1).

The administrative checks referred to in the first subparagraph shall be supplemented by on-the spot checks carried out in particular on:

- (a) the impact of the aid on the price paid by the beneficiary;
- (b) the records referred to in Article 9 including financial records such as purchases and sales invoices and bank extracts;
- (c) use of the subsidised products in accordance with this Regulation, particularly if there are grounds for suspecting any irregularity.

3. The total number of on-the-spot checks carried out in respect of each period running from 1 August to 31 July shall cover at least 5 % of all the applicants referred to in Article 6. When the number of applicants in a Member State is less than hundred, the on-the-spot checks shall be carried out on the premises of five applicants. When the number of applicants in a Member State is less than five, 100 % of the applicants shall be controlled. The total number of on-the-spot checks carried out in respect of each period running from 1 August to 31 July shall, moreover, cover at least 5 % of the aid distributed at national level.

4. On-the-spot checks shall be conducted throughout the period from 1 August to 31 July and shall cover a period of at least the previous 12 months.

5. The applicants subjected to on-the-spot checks shall be selected by the competent control authority taking due account of the different geographical areas, and on the basis of a risk analysis taking into consideration in particular the recurrent nature of errors and the findings of checks carried out in past years. The risk analysis shall also take account of the different amount of aid involved and type of applicants referred to in Article 6(2).

6. In cases where the applicant referred to in Article 6(2)(b), (c) and (d) applies for the aid, the on-the-spot check carried out on the premises of the applicant shall be supplemented by on-the-spot checks on the premises of at least two educational

establishments or at least of 1 % of the educational establishments stated on the applicant's roll, whichever is the greater.

7. Provided that the purpose of the control is not jeopardised, advance notice, strictly limited to the minimum time period necessary, may be given.

8. The competent control authority shall draw up a control report on each on-the-spot check. The report shall describe precisely the different items controlled.

The control report shall be divided into the following parts:

- (a) a general part containing, in particular, the following information:
  - (i) the scheme, the period covered, the controlled applications, quantities of milk products on which the aid was paid and financial amount involved;
  - (ii) the responsible persons present;
- (b) a part describing separately the checks carried out and containing, in particular, the following information:
  - (i) the documents checked;
  - (ii) the nature and extent of checks carried out;
  - (iii) remarks and findings.

9. For recovery of unduly paid amounts, Article 73(1), (3), (4) and (8) of Commission Regulation (EC) No 796/2004 <sup>(1)</sup> applies *mutatis mutandis*.

10. Without prejudice to Article 10, in case of fraud, the applicant shall, in addition to the recovery of unduly paid amounts in accordance with paragraph 9, pay an amount equal to the difference between the amount initially paid and the amount the applicant is entitled to.

#### Article 16

#### European school milk poster

Educational establishments distributing products in accordance with this Regulation shall produce or have produced a poster in accordance with the minimum requirements laid down in Annex III, to be permanently situated at a clearly visible and readable place at the main entrance of the establishment.

<sup>(1)</sup> OJ L 141, 30.4.2004, p. 18.

*Article 17***Notifications**

1. By 30 November following the end of the previous period running from 1 August to 31 July, Member States shall provide the Commission with summary details of the number of participating applicants and educational establishments, on-the-spot checks carried out and the related findings.
2. Before 31 January each year Member States shall provide the Commission with at least the following information related to the previous period running from 1 August to 31 July:
  - (a) the quantities of milk and milk products broken down by categories and sub-categories on which aid has been paid during the previous period running from 1 August to 31 July as well as the maximum permissible quantity and its calculation;
  - (b) the estimated number of pupils participating in the school milk scheme.
3. The form and content of the notifications shall be defined on the basis of models made available by the Commission to the Member States. Those models shall not apply until the Management Committee for Common Organisation of Agricultural Markets has been informed.

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

Done at Brussels, 10 July 2008.

*Article 18***Repeal**

Regulation (EC) No 2707/2000 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex IV.

*Article 19***Transitional provision**

1. Regulation (EC) No 2707/2000 continues to apply for deliveries carried out before 1 August 2008.
2. Authorisations granted in accordance with Article 2(3) of Regulation (EC) No 2707/2000 continue to apply until 31 December 2008.

*Article 20***Entry into force**

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

It shall apply from 1 August 2008.

*For the Commission*  
Mariann FISCHER BOEL  
*Member of the Commission*

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## ANNEX I

## LIST OF PRODUCTS ELIGIBLE FOR COMMUNITY AID

**Category I**

- (a) heat-treated milk <sup>(1)</sup>;
- (b) heat-treated milk with chocolate, fruit juice <sup>(2)</sup> or flavoured, containing at least 90 % by weight of the milk indicated in point (a) and containing maximum 7 % of added sugar <sup>(3)</sup> and/or honey;
- (c) fermented milk products with or without fruit juice <sup>(2)</sup>, flavoured or non-flavoured, containing at least 90 % by weight of the milk indicated in point (a) and containing maximum 7 % of added sugar <sup>(3)</sup> and/or honey.

**Category II**

Flavoured and non-flavoured fermented milk products with fruit <sup>(4)</sup>, containing at least 80 % by weight of the milk indicated in Category I point (a) and containing maximum 7 % added sugar <sup>(3)</sup> and/or honey.

**Category III**

Flavoured and non-flavoured fresh and processed cheeses containing at least 90 % by weight of cheese.

**Category IV**

Grana Padano cheese and Parmigiano Reggiano cheese.

**Category V**

Flavoured and non-flavoured cheeses, containing at least 90 % by weight of cheese, and not falling under categories III and IV.

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<sup>(1)</sup> Including lactose free milk drink.

<sup>(2)</sup> Fruit juice shall be applied in accordance with Council Directive 2001/112/EC of 20 December 2001 relating to fruit juices and certain similar products intended for human consumption.

<sup>(3)</sup> For the purpose of this category, sugar shall mean the items listed under CN code 1701 and 1702. In the case of milk- and milk-derivative-based drinks, energy-reduced or with no added sugar, sweeteners shall be used in accordance with European Parliament and Council Directive 94/35/EC of 30 June 1994 on sweeteners for use in foodstuffs.

<sup>(4)</sup> For the purpose of this category, fermented milk products with fruit shall always contain fruit, fruit pulp, fruit purée or fruit juice. For the purpose of this category fruit shall mean the items listed under Chapter 8 of the Combined Nomenclature excluding nuts and products containing nuts. Fruit juice, fruit pulp and fruit purée shall be applied in accordance with Council Directive 2001/112/EC of 20 December 2001 relating to fruit juices and certain similar products intended for human consumption.

<sup>(5)</sup> For the purpose of this category, sugar shall mean the items listed under CN code 1701 and 1702. The sugar added to the fruit shall be included in the maximum 7 % added sugar. In the case of milk- and milk-derivate-based preparations, energy-reduced or with no added sugar, sweeteners shall be used in accordance with European Parliament and Council Directive 94/35/EC of 30 June 1994 on sweeteners for use in foodstuffs.

*ANNEX II***Aid rates**

- (a) EUR 18,15/100 kg for category I products;
  - (b) EUR 16,34/100 kg for category II products;
  - (c) EUR 54,45/100 kg for category III products;
  - (d) EUR 163,14/100 kg for category IV products;
  - (e) EUR 138,85/100 kg for category V products.
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## ANNEX III

**Minimum requirements for the European school milk poster**

*Poster size:* A3 or bigger

*Letters:* 1 cm or bigger

*Title:* European school milk

*Content:* At least the following wording taking into account the type of educational establishment:

'Our [type of educational establishment (e.g. nursery/pre-school/school)] provides dairy products subsidised by the European Union under the European school milk scheme'.

It is recommended to emphasise nutritional benefits and nutritional guidelines for children.

*Placement:* Clearly visible and readable at the main entrance of the educational establishment.

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## ANNEX IV

## Correlation table

Regulation (EC) No 2707/2000	This Regulation
Article 1	Article 1
Article 2(1)(a), (b) and (c)	Article 2
Article 2(2)	—
Article 2(3)	—
Article 3	Article 3(1), first sentence
—	Article 3(1), second sentence
Article 3(2), (3) and (4)	Article 3(2), (3) and (4)
Article 4(1)	Article 4(1)
Article 4(2)	—
Article 4(3), first subparagraph	Article 4(2)
Article 4(3), second subparagraph,	—
Article 4(4)	Article 4(3)
Article 5	—
—	Article 5
Article 6(1)	—
—	Article 6(1)
Article 6(2)	Article 6(2)
Article 7	Article 7
Article 8	Article 8(1)
—	Article 8(2)
Article 9(1)	Article 9
Article 9(2)	—
Article 10	Article 10
Article 11	Article 11
Article 12(1)(a)	Article 12(1)(a)
Article 12(1)(b)	Article 12(1)(b)
Article 12(1)(c)	—
—	Article 12(1)(c)
Article 12(2)	Article 12(2)
Article 12(3)	—
Article 13(1) and (2)	Article 13(1) and (2)
Article 13(3)	—
Article 14(1), first subparagraph	Article 14(1)
Article 14(1), second subparagraph, first sentence	Article 14(2)
Article 14(1), second subparagraph, second and third sentences	—
Article 14(2) and (3)	—
Article 15	—
—	Article 15
Article 16	—
—	Article 16
Article 17	—
—	Articles 17-20
Annex I	—
—	Annex I
Annex II	—
—	Annex II
—	Annex III
—	Annex IV