

**COUNCIL REGULATION (EEC) No 1422/78**

of 20 June 1978

**concerning the granting of certain special rights to milk producer organizations  
in the United Kingdom**

THE COUNCIL OF THE EUROPEAN  
COMMUNITIES,

Having regard to the Treaty establishing the European  
Economic 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<sup>(1)</sup>, as last  
amended by Regulation (EEC) No 1421/78<sup>(2)</sup>, and in  
particular Article 25 (2) and (3) thereof,

Having regard to the proposal from the Commission,

Whereas under Article 25 (1) of Regulation (EEC) No  
804/68 a Member State may, at its request and under  
certain conditions, be authorized to grant a producer  
organization the exclusive right to purchase milk  
produced in the region concerned and the right to  
equalize the prices paid to producers;

Whereas the United Kingdom has requested the  
Commission to grant such authorization in respect of  
five organizations existing within its territory and  
referred to as 'Milk Marketing Boards' (hereinafter  
referred to as MMBs); whereas, in accordance with  
Article 25 (2) of Regulation (EEC) No 804/68, the  
granting of the authorization requested is subject in  
particular to the Council's establishing that certain  
conditions relating to the level of milk use in the  
Member State concerned for direct human consump-  
tion are satisfied; whereas according to all the statis-  
tical data available these conditions are at present satis-  
fied in the United Kingdom;

Whereas, in addition to the establishment of these  
conditions, general rules governing the granting and  
maintenance of the authorization requested by the  
United Kingdom must be adopted; whereas it is in  
particular necessary to stipulate the procedure to be  
followed to establish the degree of representativeness  
which the MMBs must prove under Article 25 (1) of  
Regulation (EEC) No 804/68 so that the rights in ques-  
tion can be granted to them;

Whereas detailed rules must be adopted at Commu-  
nity level, taking account of the conditions referred to  
in Article 25 (3) (a) of Regulation (EEC) No 804/68, to  
avoid any misuse of the rights granted to the MMBs

and to ensure that they do not apply them in practice  
in a manner incompatible with the general principles  
of the Treaty and Community law; whereas, more-  
over, it is necessary to define the cases in which the  
producers concerned may withhold their milk from  
the MMBs, without compromising the efficient func-  
tioning of the MMBs;

Whereas provisions should be drawn up to ensure  
equality of access and treatment for all persons  
wishing to buy milk from the MMBs and to prevent  
the selling prices applied by the MMBs from  
reducing, as a result of the price equalization system,  
the competitiveness on the United Kingdom market  
of milk products imported from the other Member  
States;

Whereas provision should be made for the possibility  
of adopting transitional provisions to enable the  
MMBs to adapt to the Community provisions which  
will henceforth be applicable,

HAS ADOPTED THIS REGULATION:

TITLE I

**Conditions governing the grant and mainte-  
nance of special rights**

*Article 1*

1. It is established that, as regards the United  
Kingdom, the conditions referred to in Article 25 (2)  
of Regulation (EEC) No 804/68 are at present  
fulfilled.

2. Under the conditions laid down in this Regula-  
tion, the United Kingdom may therefore be author-  
ized to grant to the following producer organizations  
the rights set out in Article 25 (1) of Regulation (EEC)  
No 804/68:

- the Milk Marketing Board of England and Wales,
- the Scottish Milk Marketing Board,
- the Aberdeen and District Milk Marketing Board,
- the North of Scotland Milk Marketing Board,
- the Milk Marketing Board for Northern Ireland.

<sup>(1)</sup> OJ No L 148, 28. 6. 1968, p. 13.

<sup>(2)</sup> See page 12 of this Official Journal.

## 3. Such authorization :

- (a) shall not be granted until the United Kingdom has forwarded to the Commission documents proving that the requirements referred to in Article 2 have been satisfied ;
- (b) shall be maintained only so long as the conditions referred to in Article 25 (2) of Regulation (EEC) No 804/68 and Articles 3, 4, 5, 9 and 10 of this Regulation continue to be fulfilled.

*Article 2*

1. In order to establish the degree of representativeness referred to in Article 25 (1) of Regulation (EEC) No 804/68, each MMB shall organize a poll under the supervision of the competent United Kingdom authority.

2. The poll, which shall be secret, shall be on the question whether the voter is in agreement with maintaining the MMB carrying on the activities and exercising the rights resulting from this Regulation.

3. All the milk producers established in the region of the MMB concerned, including the producer retailers referred to in Article 8 but excluding producers who, during the 12 months preceding the poll have not sold their milk unprocessed, shall be invited to take part in the poll.

4. Each voter shall have a number of votes as follows :

- (a) one vote by virtue of being an individual producer (producer vote),
- (b) a number of other votes calculated by dividing by 10 the total number of milk cows the voter possesses on a date which shall be determined by the competent United Kingdom authority and which shall fall within a period of six months preceding the poll, with any remainder counting for one vote (production vote).

5. For the purposes of establishing the degree of representativeness referred to in Article 25 (1) of Regulation (EEC) No 804/68, the votes not cast, or cast but not valid :

- (a) shall be disregarded if they are producer votes within the meaning of paragraph 4 (a) ;
- (b) shall be regarded as negative votes if they are production votes within the meaning of paragraph 4 (b).

## 6. The United Kingdom :

- (a) shall determine the other rules governing the poll, in particular as regards authorizing votes by proxy or by post ;

- (b) shall take the necessary measures to ensure that the producers concerned are fully informed in good time of the significance of the poll.

*Article 3*

1. National provisions and the internal rules of the MMBs shall provide that subsequent polls, on the question referred to in Article 2 (2) and governed by the provisions of paragraphs 4, 5 and 6 of the said Article, shall be organized by the MMB in question after the granting of the rights referred to in Article 25 (1) of Regulation (EEC) No 804/68 if at least 1 % of the producers selling milk to the MMB, totalling at least 10, so request.

Producer retailers who have sent the MMB in question the declaration referred to in Article 8 (2) (c) may not join in such a request or take part in the poll.

2. However, no request for a new poll shall be accepted before the expiry of a period of five years following the earlier poll.

3. The United Kingdom shall immediately inform the Commission of :

- any valid request for a new poll,
- the results of that poll.

If, under Article 2 (5), the result of the poll does not confirm the degree of representativeness of an MMB as referred to in Article 25 (1) of Regulation (EEC) No 804/68, the Commission shall withdraw the authorization for the MMB in question and shall, where necessary, adopt provisional measures to take account of the new situation.

*Article 4*

1. For the purpose of examining whether the authorization referred to in Article 1 (2) should be maintained, the values referred to in Article 25 (2) of Regulation (EEC) No 804/68 shall be established on the basis of the three year average of the quantities concerned.

2. In addition to whole drinking milk the following fresh milk products shall be regarded as fresh products within the meaning of Article 25 (2) of Regulation (EEC) No 804/68 if they are used for direct human consumption :

- semi-skimmed milk,
- skimmed milk,
- buttermilk,
- cream,
- yoghourt.

The milk equivalent of such products shall be determined, in accordance with rules to be laid down, on the basis of the content of butterfat and of protein derived from milk.

3. In accordance with rules to be laid down, the United Kingdom shall periodically inform the Commission of trends in human consumption of whole milk and of fresh products, as referred to in paragraph 2, in relation to milk production in the United Kingdom.

4. Where it is established that the conditions referred to in Article 25 (2) of Regulation (EEC) No 804/68 are no longer being satisfied and that this situation is likely to continue, the Commission shall examine the reasons for it and, if appropriate, shall make recommendations to the United Kingdom taking account of trends in its national milk sector. Should it prove impossible to redress the situation, the Commission shall withdraw the authorization granted to the United Kingdom.

#### *Article 5*

The authorization referred to in Article 1 (2) shall contain special conditions to ensure compliance with the following provisions :

1. Any operations of the MMBs in the processing of milk for direct human consumption and the manufacture of milk products shall be subject to a separate system of financial management and administration with a view to placing their processing undertakings on an equal footing with other independent undertakings, particularly as regards supplies, prices charged and credit terms ; MMBs may grant their undertakings loans or other financial transfers only on prevailing market terms.
2. The profits made by MMBs shall be limited to the absolute minimum necessary to enable it to carry out its statutory functions, with the exception of the activities referred to in paragraph 1, and the relevant funds may be used for this purpose only.
3. MMB contributions from producers shall :
  - (a) be authorized only in so far as is necessary for the performance of their statutory functions ;
  - (b) be proportional to the services rendered in the case of contributions from producer retailers who have sent the MMB the declaration referred to in Article 8 (2) (c).

#### *Article 6*

1. Authorization shall only be granted subject to any such subsequent amendment as may be necessary to adapt this authorization and the conditions governing it to any amendments to Community law.

2. The United Kingdom shall include the condition referred to in paragraph 1 in the instrument by which it grants the MMBs the rights referred to in Article 25 (1) of Regulation (EEC) No 804/68.

3. The authorization granted to the United Kingdom may be provisional in order to enable the United Kingdom and the MMBs to adapt, within a period to be determined, to the provisions of this Regulation.

## TITLE II

### Conditions governing the exercise of special rights

#### *Article 7*

1. The rights referred to in Article 25 (1) of Regulation (EEC) No 804/68 shall not apply to the quantities of milk which the producer withholds from sale to the MMB either by agreement with that organization or with a view to :

- (a) marketing, in either unprocessed or processed form, in another Member State or in a third country, or
- (b) conversion into butter or skimmed-milk powder to be sold to the intervention agency, where it is established that the price paid to the producer by the MMB has fallen, over a period to be determined, below the level which would have resulted from the intervention prices applicable during the same period, taking account of the market situation.

2. Producers may form groups and/or resort to intermediaries to carry out the operations referred to in paragraph 1 (a) and (b).

3. The rules for implementing this Article shall specify in particular the supervision measures to be introduced.

#### *Article 8*

1. The rights referred to in Article 25 (1) of Regulation (EEC) No 804/68 shall not apply to :

- (a) quantities of milk produced by a producer retailer as defined in paragraph 2 ;
- (b) quantities of milk sold to a producer retailer by other producers within the limits referred to in paragraph 3 (b).

2. A producer retailer within the meaning of paragraph 1 shall be an individual producer :

- (a) whose total production has not exceeded an average annual quantity of 100 000 kilograms over a period of three calendar years preceding the date of lodging of the declaration referred to in (c) ;

- (b) who sells the milk of his cows kept on his holding directly to the final consumer in the form of liquid milk, and
- (c) who has declared to the MMB concerned that he wishes to be exempted from all obligations and to forgo all rights to sell to the MMB for a period of at least five years.

3. The producer retailer may, however :

- (a) sell up to 25 % of his annual production to buyers other than the final consumer ;
- (b) sell to the final consumer, in the form of liquid milk, a quantity of milk bought from other producers which shall not exceed 25 % of his own annual production.

#### Article 9

With regard to the selling prices applied by the MMBs to milk sold by them, the following shall apply :

1. Prices shall be identical for all buyers concerned and may be differentiated only :
  - (a) on the basis of the use intended by the buyer ;
  - (b) on the basis of other criteria established in accordance with the procedure referred to in paragraph 4.
2. Differentiation on the basis of intended use may not have the effect of causing distortion of competition on the United Kingdom market between milk products from other Member States and local products.
3. To obviate this risk, no selling price applied by the MMBs for milk which they sell may fall below a price corresponding to the lowest price applied on the United Kingdom market for the milk product concerned imported into the United Kingdom from other Member States.
4. All selling prices actually applied by an MMB shall, in accordance with the provisions referred to in paragraphs 1, 2 and 3, be established on the basis of negotiations at which the MMBs and their milk purchasers are represented on an equal footing.
5. The United Kingdom shall :
  - (a) take the necessary steps to obtain advance information on the selling prices applied by MMBs on the basis of the various uses for which the milk is intended ;
  - (b) communicate such prices to the Commission prior to their application.

The Commission shall communicate the prices concerned to the other Member States and shall embody them in an examination to be undertaken by the Management Committee for Milk and Milk Products, in accordance with Article 31 of Regulation (EEC) No 804/68.

### TITLE III

#### Final provisions

##### Article 10

1. The United Kingdom shall take the necessary measures for continuing supervision of compliance by the MMBs with Community principles and rules and with the special conditions governing the authorization.

2. The United Kingdom shall adapt national rules governing the MMBs to bring them into line with Community regulations. This adaptation shall involve *inter alia* :

- (a) abolishing the power of the MMBs to hinder, by means of a licensing system, the free establishment of processing undertakings in the area concerned ;
- (b) abolishing the rights of the MMBs to recall to the United Kingdom liquid milk market milk allocated to buyers, if it is intended for export in unprocessed or processed form.

##### Article 11

Where transitional measures are required to facilitate the transition of the MMBs to the arrangements introduced in this Regulation, they shall be adopted in accordance with the procedure laid down in Article 30 of Regulation (EEC) No 804/68.

These measures shall not affect the principles referred to in the first indent of Article 25 (3) (a) of Regulation (EEC) No 804/68. They shall not apply beyond a period of four months following the date of entry into force of this Regulation, as regards Article 9, nor beyond a period of one year as regards the other provisions of this Regulation.

##### Article 12

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

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

Done at Luxembourg, 20 June 1978.

*For the Council*

*The President*

P. DALSAGER

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